

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1986

PREPARED BY THE LEGAL DIVISION

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\*Not Resolved. Still pending in OAL.

\*\*In July-Dec. 1985 Digest.

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-55  
OAL DOCKET NO. CCC 4356-84  
APPLICATION NO. 44439-21

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

Complainant,

v.

CARL ALLEGOOD, LINDA ENNIS, BETTY  
JARRETT, MICHAEL FAYAD, CHESTER  
GLASS, WALTER SHAUL, JOHN MANLEY,  
JOHN DOMI, ELLIS McMILLAN, RUSSELL  
GIUFFRIDA, CARL WILSON, GERALD  
ADES, RICHARD ULLNER AND TERRY  
WELBORN

Respondents.

FINAL ORDER

This matter having been transmitted to the Office of Administrative Law for a hearing; and it appearing that Carl Allegood has failed to appear at scheduled proceedings; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 12, 1986;

IT IS on this 27<sup>th</sup> of May 1986, ORDERED that the initial decision of the Office of Administrative Law in this matter is affirmed;

IT IS FURTHER ORDERED that the application of Carl Allegood for a casino employee license (junket representative and sole owner/operator junket enterprise) is

denied based upon his constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in count one of the complaint, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Carl Allegood, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
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DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-55  
OAL DOCKET NO. CCC 4356-84  
APPLICATION NO. 44573-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
CARL ALLEGOOD, LINDA ENNIS, BETTY :  
JARRETT, MICHAEL FAYAD, CHESTER :  
GLASS, WALTER SHAUL, JOHN MANLEY, :  
JOHN DOMI, ELLIS McMILLAN, RUSSELL :  
GIUFFRIDA, CARL WILSON, GERALD :  
ADES, RICHARD ULLNER AND TERRY :  
WELBORN :  
Respondents. :

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This matter having been transmitted to the Office of Administrative Law for a hearing; and it appearing that Linda P. Ennis has failed to appear at scheduled proceedings; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 12, 1986;

IT IS on this 27<sup>th</sup> of May 1986, ORDERED that the initial decision of the Office of Administrative Law in this matter is affirmed;

IT IS FURTHER ORDERED that the application of Linda P. Ennis for a casino employee license (junket representative) is denied based upon her constructive admission pursuant to

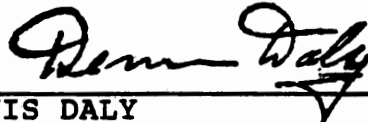
N.J.S.A. 5:12-108(d) of the matters and facts contained in count two of the complaint, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Linda P. Ennis, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-55  
OAL DOCKET NO. CCC 4356-84  
APPLICATION NO. 44794-21

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

Complainant, :

v. :

FINAL ORDER

CARL ALLEGOOD, LINDA ENNIS, BETTY :  
JARRETT, MICHAEL FAYAD, CHESTER :  
GLASS, WALTER SHAUL, JOHN MANLEY, :  
JOHN DOMI, ELLIS McMILLAN, RUSSELL :  
GIUFFRIDA, CARL WILSON, GERALD :  
ADES, RICHARD ULLNER AND TERRY :  
WELBORN :

Respondents. :

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This matter having been transmitted to the Office of Administrative Law for a hearing; and it appearing that John Domi has failed to appear at scheduled proceedings; and an initial decision having been filed with the Casino Control Commission (Commission) concluding that John Domi has abandoned his request for a hearing; and the Commission having considered the entire record of these proceedings at its public meeting of March 12, 1986;

IT IS on this 27<sup>th</sup> day of May 1986, ORDERED that the initial decision of the Office of Administrative Law in this matter is affirmed;

IT IS FURTHER ORDERED that count eight of the complaint against John Domi is dismissed without prejudice; and

IT IS FURTHER ORDERED that the Division of Gaming Enforcement report on John Domi's qualifications for licensure within a reasonable period of time; and

IT IS FURTHER ORDERED that copies of this final order be served upon John Domi, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

*Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. CCC 4356-84  
DOCKET NO. 84-55  
LICENSE NO. 44037-21

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

Complainant, :

v. : FINAL ORDER

CARL ALLEGOOD, LINDA ENNIS, BETTY :  
JARRETT, MICHAEL FAYAD, CHESTER :  
GLASS, WALTER SHAUL, JOHN MANLEY, :  
JOHN DOMI, ELLIS McMILLAN, RUSSELL :  
GIUFFRIDA, CARL WILSON, GERALD :  
ADES, RICHARD ULLNER AND TERRY :  
WELBORN, :

Respondents. :

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This matter having been transmitted to the Office of Administrative Law for a hearing; and an initial decision having been filed with the Casino Control Commission (Commission) incorporating a proposed stipulation of facts and settlement agreement resolving count ten of the complaint which pertains to respondent Russell Giuffrida; and the parties having subsequently modified the terms of the proposed settlement to delete the last paragraph concerning dismissal of the complaint; and the Commission having considered the entire record of the proceedings at its public meeting of April 9, 1986,

IT IS on this 27<sup>th</sup> day of May 1986, ORDERED that the initial decision of the Office of Administrative Law be

modified to eliminate the last paragraph in the settlement concerning dismissal of the complaint; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), respondent Russell Giuffrida is reprimanded for having engaged in junket activities without proper licensure on the dates specified in the settlement agreement in violation of N.J.S.A. 5:12-102 and N.J.A.C. 19:49-2.1 et seq.; and

IT IS FURTHER ORDERED that this reprimand shall be made a permanent part of the license file of Russell Giuffrida; and

IT IS FURTHER ORDERED that copies of this final order shall be served upon Russell Giuffrida, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-55  
APPLICATION NO. 44303-21

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

Complainant, :

v. : FINAL ORDER

CARL ALLEGOOD, LINDA ENNIS, BETTY :  
JARRETT, MICHAEL FAYAD, CHESTER :  
GLASS, WALTER SHAUL, JOHN MANLEY, :  
JOHN DOMI, ELLIS McMILLAN, RUSSELL :  
GIUFFRIDA, CARL WILSON, GERALD :  
ADES, RICHARD ULLNER AND TERRY :  
WELBORN :

Respondents. :

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A complaint having been filed by the Division of Gaming Enforcement wherein count seven seeks denial of John Manley's application for a casino employee license; and the Casino Control Commission (Commission) having attempted service of the complaint by certified mail as required by N.J.S.A. 5:12-108(b); and said correspondence having been returned as undeliverable; and the Commission having considered the entire record of the proceedings at its public meeting of March 12, 1986,

IT IS on this 27<sup>th</sup> day of May 1986, ORDERED that count seven of the complaint against John Manley is dismissed without prejudice; and

IT IS FURTHER ORDERED that the Division of Gaming Enforcement report on John Manley's qualifications for licensure within a reasonable period of time; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 4356-84

AGENCY DKT. NO. 84-55

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**CARL ALLEGOOD, LINDA ENNIS,  
BETTY JARRETT, MICHAEL FAYAD,  
CHESTER GLASS, WALTER SHAUL,  
JOHN MANLEY, JOHN DOMI,  
ELLIS MC MILLAN, RUSSELL  
GIUFFRIDA, CARL WILSON,  
GERALD ADES, RICHARD ULLNER,  
AND TERRY WELBORN,**

Respondents.

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**Lee D. Gottesman, Deputy Attorney General, for petitioner (W. Cary Edwards, Jr.,  
Attorney General of New Jersey, attorney)**

**Russell Giuffrida, respondent, pro se**

Record Closed: December 19, 1985

Decided: January 27, 1986

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

**STATEMENT OF CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on February 21, 1984, as amended, which charges the respondents with having acted as junket representatives while failing to be in compliance with licensing requirements, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:49-2.

PROCEDURAL HISTORY

On February 21, 1984, the Division of Gaming Enforcement filed with the Casino Control Commission its complaints in this and two related matters (State v. Adamar of New Jersey, Inc., et al, OAL DKT. NO. CCC 4354-84 and State v. Gary Eilenberg, et al, OAL DKT. NO. CCC 4355-84). Amendments to the complaint were filed on March 20 and April 17, 1984. Answers to the complaint were filed by the respondents and on June 14, 1984, 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.

Prehearing conferences in this and the two related matters were held on July 16, 1984 and February 13, 1985. After it was determined that the matters should not be consolidated for hearing, the hearing in this matter was scheduled to be held on June 10 through 14 and 17 through 21, 1985. The parties received confirmation of these dates by Notice of Hearing dated May 9, 1985.

Respondents Allegood, Ennis, Jarrett, Domi and Giuffrida did not appear at the hearing, which proceeded as scheduled and was completed as to the appearing respondents on June 12, 1985. A partial initial decision was issued on August 12, 1985.

Pursuant to N.J.A.C. 1:1-8.2, the respondents who did not appear at the hearing were each sent a letter, dated August 27, 1985, affording them an opportunity to explain why they did not appear and why it should not be concluded that they had abandoned their right to a hearing. Respondents Jarrett and Giuffrida replied in writing, stating the reasons for their failures to appear. Their explanations established good cause for the rescheduling of a hearing on those aspects of the complaint which pertain to them. Subsequently, the Division of Gaming Enforcement and Russell Giuffrida entered into a settlement agreement and the executed Stipulation of Facts and Settlement Agreement was submitted on December 19, 1985. For administrative purposes the Clerk of the Office of Administrative Law has assigned the contested case concerning the remaining respondent, Betty Jarrett, its own docket number: OAL DKT. NO. CCC 503-86.

FINDINGS OF FACT

I have reviewed the entire record and the terms of settlement and I **FIND**:

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

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

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

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

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

January 27, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 28, 1986  
DATE

Bernadette P. Friga  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 31 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS

None

WITNESSES

None

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Division of Gaming Enforcement  
Richard J. Hughes Justice Complex  
25 Market Street  
CN 047  
Trenton, New Jersey 08625

By: Lee D. Gottesman  
Deputy Attorney General  
(609) 984-6177

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STATE OF NEW JERSEY, )  
DEPARTMENT OF LAW AND PUBLIC )  
SAFETY, DIVISION OF GAMING )  
ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CARL ALLEGOOD, LINDA ENNIS, )  
BETTY JARRETT, MICHAEL FAYAD, )  
CHESTER GLASS, WALTER SHAUL, )  
JOHN MANLEY, JOHN DOMI, ELLIS )  
McMILLAN, RUSSELL GIUFFRIDA, )  
CARL WILSON, GERALD ADES, )  
RICHARD ULLNER, and TERRY )  
WELBORN, )  
 )  
Respondents. )

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-55

STIPULATION OF FACTS AND  
SETTLEMENT AGREEMENT

RUSSELL GIUFFRIDA

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Lee D. Gottesman, Deputy Attorney General, and Respondent, Russell Giuffrida, set forth below are the facts and proposed terms of settlement that have been agreed upon and stipulated to as follows:

FACTS

1. Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter "Division") is responsible, pursuant to P.L. 1977, subsection 76, for the enforcement of the provisions of the Casino Control Act and the regulations promulgated thereunder, and for the prosecution before the Casino Control Commission (hereinafter "Commission") of all proceedings for violations of the Casino Control Act and the regulations promulgated thereunder.

2. Respondent, Russell Giuffrida ("Giuffrida") is now and was at all times relevant to this matter a resident of the State of New York, residing at 48 Maltby Street, Jamestown, New York 14701.

3. Giuffrida was the holder of a temporary junket representative license, No. 44037-21, issued by the Commission on February 28, 1983. Said temporary junket representative license was renewed by the Commission in February 1984 for a six-month period, and expired on or about August 29, 1984.

4. Giuffrida was the holder of a temporary sole owner/operator junket enterprise license endorsement, issued by the Commission on May 5, 1983. Said temporary sole

owner/operator junket enterprise license endorsement was renewed by the Commission in May 1984 for a six-month period, and expired on or about November 6, 1984.

5. At no time referenced herein was Giuffrida employed by a licensed junket enterprise or by a casino licensee.

6. On or about February 6 and March 13, 1983, Giuffrida acted as a junket representative for junkets originating in Jamestown, New York and arriving at the Tropicana Hotel and Casino, Atlantic City, New Jersey.

WHEREAS, Respondent, Russell Giuffrida, admits that his conduct in bringing a junket to the Tropicana Hotel and Casino on February 6, 1983, without having been licensed as a junket representative, sole owner/operator junket enterprise and without having been employed by a licensed junket enterprise or casino licensee, constituted a violation of N.J.S.A. 5:12-102, N.J.A.C. 19:49-2.1, N.J.A.C. 19:49-2.2 and N.J.A.C. 19:49-2.3; and

WHEREAS, Respondent, Russell Giuffrida, admits that his conduct in bringing a junket to the Tropicana Hotel and Casino on March 13, 1983 while temporarily licensed as a junket representative, without having been licensed as a sole owner/operator junket enterprise and without having been employed by a licensed junket enterprise or casino licensee,

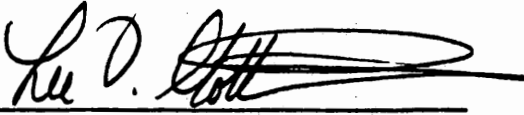
constituted a violation of N.J.S.A. 5:12-102, N.J.A.C. 19:49-2.1, N.J.A.C. 19:49-2.2 and N.J.A.C. 19:49-2.3; and

WHEREAS, Respondent, Russell Giuffrida, recognizes the seriousness of the violations committed by him as detailed above; and

WHEREAS, Respondent, Russell Giuffrida, recognizes the need to comply with the Casino Control Act and regulations promulgated thereunder by the Casino Control Commission and agrees to comply with the aforementioned statutory and regulatory provisions;

NOW, BE IT THEREFORE RESOLVED that Respondent, Russell Giuffrida, agrees to accept a letter of censure from the Casino Control Commission for the conduct detailed above, which shall be made a permanent part of his licensing file and accepted in full settlement of the allegations contained within the Tenth Count of the Division of Gaming Enforcement's Complaint.

IT IS FURTHER RESOLVED that upon acceptance of said letter of censure by Respondent, Russell Giuffrida, the Division of Gaming Enforcement shall dismiss said Complaint with prejudice as to Respondent, Russell Giuffrida.

By:   
Lee D. Gottesman  
Deputy Attorney General

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

By:   
Russell Giuffrida  
Respondent



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

ABANDONMENT

OAL DKT. NO. CCC 4356-84

AGENCY DKT. NO. 84-55

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**CARL ALLEGOOD, LINDA ENNIS,  
BETTY JARRETT, MICHAEL FAYAD,  
CHESTER GLASS, WALTER SHAUL,  
JOHN MANLEY, JOHN DOMI,  
ELLIS MC MILLAN, RUSSELL  
GIUFFRIDA, CARL WILSON,  
GERALD ADES, RICHARD ULLNER,  
AND TERRY WELBORN,**

Respondents.

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Lee D. Gottesman, Deputy Attorney General, for petitioner (W. Cary Edwards, Jr.,  
Attorney General of New Jersey, attorney)

No appearance by or for respondents Allegood, Ennis and Domi

Record Closed: December 19, 1985

Decided: January 27, 1986

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 February 21, 1984, as amended, which charges the respondents with having acted as junket representatives while failing to be in compliance with licensing requirements, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:49-2.

On February 21, 1984, the Division of Gaming Enforcement filed with the Casino Control Commission its complaints in this and two related matters (State v. Adamar of New Jersey, Inc., et al, OAL DKT. NO. CCC 4354-84 and State v. Gary Eilenberg, et al, OAL DKT. NO. CCC 4355-84). Amendments to the complaint were filed on March 20 and April 17, 1984. Answers to the complaint were filed by the respondents and on June 14, 1984, 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.

Prehearing conferences in this and the two related matters were held on July 16, 1984 and February 13, 1985. After it was determined that the matters should not be consolidated for hearing, the hearing in this matter was scheduled to be held on June 10 through 14 and 17 through 21, 1985. The parties received confirmation of these dates by Notice of Hearing dated May 9, 1985.

Respondents Allegood, Ennis, Jarrett, Domi and Giuffrida did not appear at the hearing, which proceeded as scheduled and was completed as to the appearing respondents on June 12, 1985. A partial initial decision was issued on August 12, 1985.

Pursuant to N.J.A.C. 1:1-8.2, the respondents who did not appear at the hearing were each sent a letter, dated August 27, 1985, affording them an opportunity to explain why they did not appear and why it should not be concluded that they had abandoned their right to a hearing. Respondents Jarrett and Giuffrida replied in writing, stating the reasons for their failures to appear. Their explanations established good cause for the rescheduling of a hearing on those aspects of the complaint which pertain to them. Subsequently, the Division of Gaming Enforcement and Russell Giuffrida entered into a settlement agreement and the executed Stipulation of Facts and Settlement Agreement was submitted on December 19, 1985. For administrative purposes, the Clerk of the Office of Administrative Law has assigned the contested case concerning the remaining respondent, Betty Jarrett, its own docket number: OAL DKT. NO. CCC 503-86.

On December 10, 1985, I was notified that respondents Allegood, Ennis and Domi did not respond to the letter affording them an opportunity to explain the reasons for their nonappearance. Based upon the foregoing, I **FIND:**

1. No appearance was entered by respondents Allegood, Ennis and Domi on the scheduled hearing date.

- 2. The Office of Administrative Law has received no communication from these respondents offering an explanation for their failures to appear.

Based upon the foregoing discussion and the specific findings of fact, I **CONCLUDE** that Carl Allegood, Linda Ennis and John Domi have abandoned their requests for a hearing.

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.

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

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

January 27, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 28, 1986  
DATE

Bernadette J. Fisher  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 31 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

None

WITNESSES

None



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

PARTIAL

INITIAL DECISION

OAL DKT. NO. CCC 4356-84

AGENCY DKT. NO. 84-55

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**CARL ALLEGOOD, LINDA ENNIS,  
BETTY JARRETT, MICHAEL FAYAD,  
CHESTER GLASS, WALTER SHAUL,  
JOHN MANLEY, JOHN DOMI,  
ELLIS MC MILLAN, RUSSELL  
GUIFRIDA, CARL WILSON,  
GERALD ADES, RICHARD ULLNER,  
AND TERRY WELBORN,**

Respondents.

---

**Lee D. Gottesman, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Charles A. Matison, Esq., for respondents Fayad, Glass, Shaul, Wilson, Ades, Ullner,  
and Welborn (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss,  
attorneys)**

**Ellis McMillan, respondent, pro se**

Record Closed: June 12, 1985

Decided: August 12, 1985

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on February 21, 1984, as amended, which charges the respondents with having acted as junket representatives while failing to be in compliance with licensing requirements, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:49-2. The issues to be resolved in this matter are as follows:

1. Whether any of the respondents has performed the functions of a junket representative while not in compliance with the licensing requirements of section 102 of the Casino Control Act and N.J.A.C. 19:49-2, and if so, whether this conduct demonstrates such a lack of good character, honesty and integrity, within the meaning of sections 89b(2), 90b and 102b of the Act, as to require judgment that the respondent is unqualified for licensure, pursuant to section 129 of the Act.
2. Whether such conduct, if established, requires judgment imposing a monetary penalty, or some other appropriate sanction, pursuant to section 129 of the Act.

PROCEDURAL HISTORY

On February 21, 1984, the Division of Gaming Enforcement filed with the Casino Control Commission its complaints in this and two related matters (State v. Adamar of New Jersey, Inc., et al, OAL Dkt. No. CCC 4354-84 and State v. Gary Eilenberg, et al, OAL Dkt. No. CCC 4355-84). Amendments to the complaint were filed on March 20 and April 17, 1984. Answers to the complaint were filed by the respondents and on June 14, 1984, 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.

Prehearing conferences in this and the two related matters were held on July 16, 1984, and February 13, 1985. After it was determined that the matters should not be consolidated for hearing, the hearing in this matter was held on June 10, 11 and 12, 1985.

Respondents Allegood, Ennis, Jarrett, Domi, and Guifrida did not appear at the hearing. Pursuant to N.J.A.C. 1:1-8.2, these respondents are being given an opportunity to explain why they did not appear and why it should not be concluded that they have abandoned their right to a hearing. Respondent Guifrida has stated in writing that a family emergency prevented his appearance and his explanation establishes good cause for the rescheduling of a hearing on that aspect of the complaint which pertains to him.

At the commencement of the hearing, counsel for the Division of Gaming Enforcement and for respondent Chester Glass stated that a stipulation of settlement concerning the Division's complaint against Mr. Glass would be filed directly with the Casino Control Commission. Finally, it should be noted that service of the complaint upon respondent John Manley has never been effectuated and he did not enter an appearance at the hearing.

#### FINDINGS OF FACT

Amendments to section 102 of the Casino Control Act, concerning junkets and complimentary services, became effective on January 27, 1983. On that date, it became mandatory that an individual performing the functions of a junket representative be licensed as a casino employee and be employed by a licensed casino or junket enterprise, or have an additional license endorsement as a junket representative, sole owner/operator. Prior to January 1983, "casino marketing activity," which involved the procurement of players who received complimentary services valued at less than \$200, would be conducted by "field agents." According to the testimony of Senior Applications Analyst Donald E. Hamer, an employee of the Casino Control Commission, a person who had filed with the Commission a Form 4 application to conduct casino marketing activity prior to January 1983 was considered to be registered as a field agent and was allowed to solicit players who would receive complimentary services valued at less than \$200.

Richard Franz, Deputy Director of the License Division of the Casino Control Commission, testified that letters were sent in October 1982 to enterprises and individuals that might be affected by the proposed amendments to the Casino Control Act which became effective in January 1983 (exhibits P-1a to P-1d). Casino licensees and service industry enterprises were informed that the amendments would eliminate the category of field agent and that activities previously defined as "casino marketing activities" would be classified as "junkets." Anyone engaging in "casino marketing activities" as of the effective date of the proposed amendments would be required to be licensed in accordance with the junket licensure requirements of the proposed amendments. According to Deputy Director Franz, the casino licensees were informed that they would be responsible for insuring that the people with whom they did junket business were properly licensed. A meeting was held with employees of the Tropicana Casino Hotel in October 1982, and license division employees discussed with the Tropicana employees the foregoing changes. The casino licensees were informed that casino marketing activity might be disrupted if individuals performing the functions of a junket representative were not properly licensed.

Deputy Director Franz testified that junket representative license application began to be filed with the Casino Control Commission after the informational letters were mailed in October 1982. The first temporary junket representative licenses were issued and became effective on January 27, 1983, which was the effective date of the amendments to the Casino Control Act. To implement the changes in the Act, N.J.A.C. 19:49-1.1 et seq. was adopted on an emergency basis on January 11, 1983, and approved by the Governor on January 27, 1983 (exhibit R-2).

Respondent Walter Shaul, of Toronto, Canada, has been licensed as a junket representative in the state of Nevada since 1972. In October 1982, respondent Shaul began bringing junket trips to the Tropicana Casino Hotel in Atlantic City, New Jersey, even though he had not filed as a field agent. According to Mr. Shaul, he was given two junket dates by the Tropicana to see if he would work out, and no one from the Tropicana advised him concerning any licensure requirements. Prior to the amendment of section 102 of the Casino Control Act, Mr. Shaul procured patrons for seven trips to the Tropicana, charging a fee of \$70 per person (exhibit RS-3).

Mr. Shaul did not initiate an inquiry concerning licensure in New Jersey. In December 1982, he received a telephone call from the marketing department at the Tropicana. He was informed that the licensing statute was going to change and that it would be necessary to complete application papers and return them as soon as possible. Mr. Shaul completed two sets of forms, which were subsequently filed with the Casino Control Commission (exhibits RS-1a and RS-1b). While his application was pending, Mr. Shaul participated in arranging junkets from Toronto, Canada, to the Tropicana, on February 5 and 19, and March 5 and 19, 1983. He procured the customers for these junkets, and he charged them a fee of \$70 or \$75 per person. It was the candid testimony of Mr. Shaul that he understood in February and March 1983 that he would be required to be licensed, but he was never told that there would be a deadline for accomplishing licensure and he believed that the junkets which he arranged were handled in a proper manner, and in compliance with New Jersey law.

Mr. Shaul was issued temporary junket representative license number 44788-21 in April 1983 (exhibit P-16). He continued to bring two junkets per month to Atlantic City until March 1984. His temporary junket representative license was not renewed by the Casino Control Commission and it expired in April 1984 (exhibit RS-2).

On his Personal History Disclosure forms, Mr. Shaul disclosed his 1978 conviction in Toronto, Canada for permitting gambling at his licensed card club. Mr. Shaul explained that he has applied for a pardon. Letters from customers, friends and professional associates attesting to Mr. Shaul's reputation for good character, honesty and integrity were admitted into evidence as exhibits RS-6a to p.

Richard Ullner of Cincinnati, Ohio, is the sole owner of Midwest Travel Services. He filed as a field agent with the Casino Control Commission early in 1982 and he procured customers for gambling trips to the Tropicana in October, November and December 1982. At some time in December 1982, Mr. Ullner received a telephone call from Elizabeth Yoachum of the Tropicana marketing department. According to Mr. Ullner, he was informed that it was necessary for him to fill out and submit a new application. He could not specifically recall whether he also received a written communication concerning the need to submit a new application. Mr. Ullner's Personal History Disclosure form was filed with the Casino Control Commission on February 4, 1983 (exhibit RU-1). It was his testimony that he had received no communication from

the Casino Control Commission concerning a change in the junket representative licensin statute. Because he had previously filed as a field agent, Mr. Ullner assumed that his field agent status would "roll over" into the junket representative license which he had applied for.

Mr. Ullner procured customers for a junket to the Tropicana on February 21, 1983. Each customer who was charged paid a fee of \$100. The witness testified credibly that he believed he was in full compliance with New Jersey licensure regulations at the time of his February 1983 junket trip to the Tropicana.

On March 30, 1983, this respondent was issued temporary junket representative, sole owner/operator junket enterprise license number 44587-21. Although this temporary license did not expire until September 1984, Mr. Ullner brought his last junket trip to Atlantic City in November 1983. Letters from family, friends and professional associates attesting to Mr. Ullner's reputation for good character, honesty and integrity were admitted into evidence as exhibits RU-2a to d.

Beginning in October 1982, respondent Gerald Ades, of Louisville, Kentucky began organizing junket trips to the Tropicana. At that time, Mr. Ades had not filed with the Casino Control Commission as a field agent. It was his testimony, however, that he asked Elizabeth Yoachum of the Tropicana marketing department if he needed a license and she informed him that he could bring in trips with someone else who was licensed. Thus, Mr. Ades ran his trips with respondent Richard Ullner. Mr. Ades is also licensed to be a junket representative in the state of Nevada.

According to Mr. Ades, he was called by Ms. Yoachum in December 1982 and told that the licensing system was changing and that he would need to file an application for a new license. Ms. Yoachum sent Mr. Ades the application forms, which he then prepared and had filed (exhibit RA-1). Subsequently, Mr. Ades received a letter from Ms. Yoachum which urged him to promptly return the application forms, which he had already done (exhibit RS-5).

Near the end of January 1983, Ms. Yoachum provided Mr. Ades with the date of February 21, 1983, to bring a junket to the Tropicana. Mr. Ades procured one half of the customers for the junket and Mr. Ullner procured the other customers. Each charge his customers a service fee.

On March 16, 1983, respondent Ades was issued a temporary junket representative, sole owner/operator junket enterprise license number 44312-21 (exhibit P-16). From March 1983 until August 1984, Mr. Ades brought a junket to Atlantic City during every month but one. In September 1984, his temporary license expired (exhibit RA-2) and he has not brought any junket trips to Atlantic City since that date. It was the testimony of Mr. Ades that at the time of the February 21, 1983, junket to the Tropicana, he believed that he was in compliance with all New Jersey rules and regulations concerning junkets. In particular, he believed he was in compliance because he had been told by Ms. Yoachum that everything would be all right if he filed the new application. Letters from friends, business and professional associates attesting to the reputation of Mr. Ades for good character, honesty and integrity were admitted into evidence as exhibits RA-3a to f.

Respondent Carl Wilson is a 78-year-old resident of Charlotte, North Carolina. He is a disabled veteran and he became involved in running junkets to supplement his disability income. In 1981, Mr. Wilson filed as a field agent with the Casino Control Commission (exhibits RWIL-1 and RWIL-5). Once a month during 1982, Mr. Wilson brought junket trips to the Tropicana in Atlantic City.

By letter from the Casino Control Commission, dated October 18, 1982 (exhibit RWIL-3), Mr. Wilson was informed that amendments to the Casino Control Act concerning "casino marketing activities" might be proposed in the near future. Mr. Wilson was informed by the letter that enactment of the proposed amendments would require that he file an upgraded application for licensure in order to continue bringing junkets to Atlantic City. According to Mr. Wilson, he never received any notice that the amendments were enacted or had become effective. He acknowledged that he never contacted the Casino Control Commission concerning the licensure changes. Mr. Wilson filed his Personal History Disclosure Form 2A with the Casino Control Commission on January 27, 1983 (exhibit RWIL-4).

It was the testimony of Mr. Wilson that he would receive notice from Ms. Yoachum of the Tropicana concerning dates on which he would be permitted to bring junkets. This notice would be received from ten days to three weeks prior to the trip date. Mr. Wilson procured patrons for junket trips to the Tropicana in February and March 1983. He charged these patrons a service fee of up to \$100, except for extremely good players or relatives, who would not be required to pay the service fee.

On March 23, 1983, the Casino Control Commission issued to Mr. Wilson temporary junket representative, sole owner/operator junket enterprise license number 44579-21 (exhibit P-16). Mr. Wilson continued to bring junket trips to Atlantic City until his temporary license expired in September 1984 (exhibit RWIL-8). According to Mr. Wilson, he believed that he was in compliance with all rules and regulations when he ran his junket trips to Atlantic City.

Respondent Terry Welborn, of Greensboro, North Carolina, filed with the Casino Control Commission as a field agent in 1982. As a field agent, he brought gambling trips to the Tropicana in Atlantic City once a month during 1982. For these trips, the Tropicana provided a date and a plane and Mr. Welborn procured the players. He would continually monitor the players for amounts wagered and the duration of play.

According to Mr. Welborn, junket arrangements with the Tropicana were always made with Elizabeth Yoachum of the Tropicana Marketing Department. Late in 1982, Ms. Yoachum informed Mr. Welborn by telephone that the Casino Control Act was being amended and that he would need to apply for a sole owner/operator license. Mr. Welborn promptly filled out the necessary forms which he received in the mail and returned them to the Casino Control Commission, which received them on February 1, 1983 (exhibit RW-1). Mr. Welborn could not recall receiving any written communication from either the Tropicana or from the Casino Control Commission concerning proposed changes in the licensure requirements for junket activity.

Mr. Welborn continued to bring a junket trip to the Tropicana once a month. In February 1983, Mr. Welborn performed the functions of a junket representative when he brought a gambling trip to the Tropicana. He procured the players and charged each a service fee of \$100. On March 30, 1983, the Casino Control Commission issued to Mr. Welborn temporary junket representative license number 44562-21 and temporary junket enterprise license number 1113-70 (exhibits RW-2 and 3). Mr. Welborn continued to run junket trips to the Tropicana until his temporary licenses expired in September 1984 (exhibit RW-4).

Mr. Welborn testified sincerely that when he brought the February 1983 junket trip to the Tropicana he had no feeling whatsoever that he was in violation of licensing regulations. The marketing department of the Tropicana had provided him with the date

for the trip and he was sure that the Tropicana personnel would let him know if he was not in compliance with regulations. Mr. Welborn had no reason to believe that he would have been provided with a date for the trip if he had been in violation of licensing regulations. Mr. Welborn believed that his field agent status would carry him over until he was issued his sole owner/operator license, so he did not inquire on his own if the amendments to the Casino Control Act had become effective.

Mr. Welborn acknowledged that he had been asked by Elizabeth Yoachum to permit respondent Linda Ennis to use his license so that she could bring a junket trip to the Tropicana. According to Mr. Welborn, he asked Ms. Yoachum if the arrangement was legal and she stated that she did not see any problem. The trip subsequently took place, and Mr. Welborn received no money from Ms. Ennis.

At the hearing, Mr. Welborn offered letters from personal and professional associates which attest to his reputation for good character, honesty and integrity. These letters were admitted into evidence as exhibits RW-5a to e.

Michael Fayad, of Aliquippa, Pennsylvania, operates Casino and Sports Travel, and he filed as a field agent with the Casino Control Commission in 1981 (exhibit RF-1). In the fall of 1982, Mr. Fayad was contacted by the Tropicana marketing department and asked if he would be interested in bringing gambling trips to the Tropicana. Thereafter, he arranged junkets from Pittsburgh and Latrobe, Pennsylvania and Youngstown, Ohio, once or twice per month.

In December 1982, Mr. Fayad became aware of proposed changes in the junket licensing requirements. Although he did not recall receiving a letter from the Tropicana concerning the need to file a new license application (see exhibit RS-5), he telephoned the Casino Control Commission staff and was informed that even individuals who had filed as field agents would be required to apply for a junket representative license.

Mr. Fayad filled out an application for a junket representative license and after twice making corrections, it was filed with the Casino Control Commission on March 14, 1983 (exhibit RF-7). While this application was pending, Mr. Fayad continued to bring junket trips to the Tropicana. Although he was not certain of the dates, Mr. Fayad acknowledged that he had performed the functions of a junket representative on the junkets identified in the fourth count of the complaint in this matter. Mr. Fayad

procured the patrons for these junkets and those that were charged paid service fees up to \$69 per person. On February 27, March 20 and May 15, 1983, Mr. Fayad served as the junket representative on prearranged junkets to the Tropicana which had originated in Latrobe, Pennsylvania. On February 7, March 21 and 28, April 29 and May 10, 1983, Mr. Fayad was the junket representative on prearranged junkets to the Tropicana which had originated in Pittsburgh, Pennsylvania. On February 28, March 27, April 10 and 19, and May 10, 1983, Mr. Fayad acted as the junket representative on prearranged junkets to the Tropicana which had originated in Youngstown, Ohio (see exhibits P-5a to c, P-6a to e and P-7a to e).

On May 4, 1983, the Casino Control Commission issued to respondent Fayad a temporary junket representative, sole owner/operator junket enterprise license, number 45377-21 (exhibit RF-2). Casino Sports and Travel was issued a temporary junket enterprise license number 1439-70 on February 1, 1984 (exhibit RF-3). Following receipt of his temporary license, Mr. Fayad continued to run junket trips to the Tropicana. His temporary junket representative license expired in May 1984 (exhibit RF-4) and the temporary junket enterprise license for Casino Sports and Travel expired on January 30, 1985. Mr. Fayad organized his last junket trip to Atlantic City in April 1984. It was the testimony of Mr. Fayad that he believed he had been in compliance with the junket licensing requirements when he organized junket trips to Atlantic City between February and May 1983. Since he had been approved as a field agent, he felt there would be no problem operating legally during the transition from field agent status to licensure as a junket representative. According to his testimony, he never knew that it would be a violation to keep bringing junkets to the Tropicana and he was never told that his field agent status would not be effective after any certain date. He acknowledged that he did not inquire concerning the effective date of the junket representative amendments, nor did he inquire as to whether his field agent status would continue to be effective following the change in licensure requirements. He was told that he needed to file a new application in order to comply with the licensing changes and he had done so. Letters from personal, community and professional associates attesting to Mr. Fayad's reputation for good character, honesty and integrity were admitted into evidence as exhibits RF-8a to f.

Respondent Ellis McMillan had filed as a field agent with the Casino Control Commission prior to the change in licensure requirements in January 1983. At some time in January 1983, Mr. McMillan spoke with a staff person at the Casino Contr

Commission and requested an application for a junket representative license. The application was sent to him and he prepared it.

It was the testimony of Mr. McMillan that he sent his prepared Personal History Disclosure Form to Resorts International Hotel Casino, with the understanding that it would be forwarded to the Casino Control Commission. When he subsequently checked with the Commission staff as to the status of his application, he was informed that it had not yet been filed. He then proceeded to pick up the application from the casino and to file it with the Casino Control Commission in September 1983.

On March 7, 1983, Mr. McMillan performed the functions of a junket representative on a prearranged junket trip to the Tropicana from Columbus, Ohio. He procured the customers for this trip and he charged a fee of \$50 per person. The trip had been arranged pursuant to a telephone call from the Tropicana which afforded him the opportunity to bring the trip on March 7, 1983 (exhibit P-12a).

Mr. McMillan was issued temporary junket representative, sole owner/operator junket enterprise license number 48834-21 on October 26, 1983. It was the testimony of Mr. McMillan that he believed his status as a field agent was still valid on March 7, 1983. Mr. McMillan's temporary licensure has expired.

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

#### CONCLUSIONS OF LAW

Pursuant to section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), junket representatives shall be licensed in accordance with the qualification requirements for casino employees which are set forth in sections 89 and 90 of the Act. Pursuant to these sections and section 80 of the Act, among the qualifications which such a licensee must establish by clear and convincing evidence is his reputation for good character, honesty and integrity.

N.J.A.C. 19:49-2.1(a) defines junket representative as any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the

participants on, any junket to a licensed casino, regardless of whether or not those activities occurred within the state of New Jersey. Pursuant to N.J.A.C. 19:49-2.1(c)1 and 2, a person acting as a junket representative must be licensed as a junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise.

The temporary junket representative and junket representative sole owner/operator junket enterprise licenses which were issued to each of the respondents in 1983 have all expired. Between January 27, 1983, and the time of issuance of a temporary license, each respondent engaged in activities meeting the definition of a junket representative, pursuant to N.J.A.C. 19:49-2.1. Based upon the foregoing discussion and undisputed facts, I CONCLUDE that the operation of junket activities by each respondent prior to his temporary licensure as a junket representative and junket representative sole owner/operator junket enterprise violated the provisions of N.J.A.C. 19:49-2.1(c)1 and 2.

The operation of junket activities without proper licensure calls into question the good character, honesty and integrity of each respondent. However, each respondent testified credibly concerning his belief, albeit mistaken, that his junket representative activities were being conducted in compliance with the regulations of the Casino Control Commission. While the mistaken belief that the activities were proper does not excuse the violation of the licensing requirements of section 102 of the Act and N.J.A.C. 19:49-2.1 et seq., I CONCLUDE that the respondents' conduct does not demonstrate such a lack of good character, honesty and integrity, within the meaning of sections 89b(2), 90b and 102b of the Act, as to require judgment that the respondents are unqualified for licensure, pursuant to section 129 of the Act.

Sections 129 and 130 of the Casino Control Act authorize the imposition of sanctions for violations of the provisions of the Casino Control Act or regulations promulgated thereunder. The respondents created a potential risk to the public and to the integrity of gaming operations by the conduct of junket representative activities while they were not in compliance with licensure requirements. However, the conduct occurred without the knowledge that it was in contravention of the provisions of the Casino Control Act and regulations promulgated thereunder. In addition, each respondent applied for and was issued temporary licensure which permitted the junket activities to continue. Following the expiration of their temporary licenses, the respondents have been unable to perform junket activities for the licensed casinos in Atlantic City. Considering the

foregoing factors, I **CONCLUDE** that the appropriate sanction for the violative conduct of each respondent is the issuance of a letter of reprimand which shall be made a permanent part of each respondent's file, pursuant to sections 129(8) and 130 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that a letter of reprimand shall be issued and made a permanent part of the file of respondents Michael Fayad, Walter Shaul, Ellis McMillan, Carl Wilson, Gerald Ades, Richard Ullner and Terry Welborn.

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

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

August 12, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

August 14, 1985  
DATE

Mary Ann Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

August 19, 1985  
DATE

Ronald J. Parker /s/  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

- P-1a to c      Letters, dated October 18, 1982, concerning possible amendments to the Casino Control Act
- P-1d            List of junket representative applicants with attached letter
- P-2a            Junket report
- P-2b            Sworn interview of Gerald Ades and others, dated December 27, 1983
- P-3a and b      Junket reports
- P-3c            Sworn interviews of Betty Jarrett and Carl Allegood, dated July 1, 1983
- P-3d            Sworn interview of Carl Allegood, dated December 11, 1983
- P-3e            Sworn interview of Carl Allegood, dated March 1, 1983
- P-4a to d      Junket reports
- P-4e            Sworn interviews of Chester Glass, Terry Welborn and Linda Ennis, dated December 19, 1983
- P-5a to c      Junket reports
- P-6a to e      Junket reports
- P-7a to e      Junket reports
- P-7f            Sworn interview of Michael Fayad, dated November 18, 1983
- P-8a and b      Junket reports
- P-9a to e      Junket reports
- P-10            Junket report
- P-11a to d      Junket reports
- P-12a            Junket report
- P-12b            Sworn interview of Ellis McMillan, dated December 20, 1983
- P-13a to d      Junket reports
- P-13e            November 14, 1983
- P-14a and b      Junket reports
- P-14c            Sworn interview of Carl Wilson, dated December 20, 1983

- P-15 Sworn interviews of Elizabeth Yoachum and Harold Klarich, dated July 22, 1983
- P-16 Junket representative information memo, dated June 6, 1985

**FOR THE RESPONDENTS:**

- R-1 Not in evidence (interim procedures)
- R-2 Emergency rules, 15 N.J.R. 257
- RA-1 Personal History Disclosure Form for Gerald Ades
- RA-2 License Expiration Notice, dated September 12, 1984
- RA-3a to f Character letters
- RF-1 Notice to Michael Fayad, dated September 28, 1981
- RF-2 License letter, dated May 4, 1983
- RF-3 License letter, dated February 10, 1984
- RF-4 Expiration Notice, dated May 2, 1984
- RF-5 Not in evidence
- RF-6 Expiration Notice, dated January 31, 1985
- RF-7 Personal History Disclosure Form of Michael Fayad
- RF-8a to f Character letters
- RS-1a and b Personal History Disclosure Forms of Walter Shaul
- RS-2 Expiration letter, dated April 11, 1984
- RS-3 List of junket dates prior to license approval, dated November 17, 1983
- RS-4 Not in evidence
- RS-5 Notice from the Tropicana Casino Hotel, dated January 19, 1983
- RS-6a to p Character letters
- RU-1 Personal History Disclosure Form of Richard Ullner
- RU-2a to d Character letters
- RW-1 Personal History Disclosure Form of Terry Welborn
- RW-2 License letter, dated March 30, 1983

RW-3 License letter, dated March 31, 1983  
RW-4 Expiration Notice, dated September 28, 1984  
RW-5a to e Character letters  
RWIL-1 Personal History Disclosure Form of Carl Wilson  
RWIL-2 Business Entity Disclosure Form  
RWIL-3 Amendment Notice, dated October 18, 1982  
RWIL-4 Personal History Disclosure Form of Carl Wilson  
RWIL-5 Amendment Notice, dated September 28, 1981  
RWIL-6 License letter, dated March 23, 1983  
RWIL-7 License letter, dated March 21, 1984  
RWIL-8 Expiration Notice, dated September 28, 1984

WITNESSES

FOR THE PETITIONER:

Donald E. Hamer  
Richard Franz  
Gerald Rogers

FOR THE RESPONDENTS:

Ellis McMillan  
Walter Shaul  
Richard Ullner  
Gerald Ades  
Carl Wilson  
Terry Welborn  
Michael Fayad

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-134; 85-476  
OAL DOCKET NO. CCC 5098-85  
APPLICATION NO. 54710-21  
REGISTRATION NO. 62252-40

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APPLICATION OF ANTHONY ALOSI FOR :  
A CASINO EMPLOYEE LICENSE :  
AND : FINAL ORDER  
STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, DIVISION:  
OF GAMING ENFORCEMENT, :  
Complainant :  
v. :  
ANTHONY ALOSI, :  
Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and Anthony Alosi having filed exceptions to the initial decision; and the Division of Gaming Enforcement having filed a reply to the exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this 13<sup>th</sup> day of MAY 1986, ORDERED that the initial decision is modified as follows:

The Commission rejects the finding that the applicant's drug convictions constitute offenses which render his continued licensure inimical to the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4) as unnecessary in light of the finding that the applicant is disqualified pursuant to N.J.S.A. 5:12-86(c)(3) and has not demonstrated his rehabilitation from this disqualification pursuant to N.J.S.A. 5:12-90(h).

IT IS FURTHER ORDERED that the application of Anthony Alosi for a casino employee license is denied and his casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Anthony Alosi is prohibited from applying for any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8(a); and

IT IS FURTHER ORDERED that copies of this final order be served upon Anthony Alosi, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 5098-85**

**AGENCY DKT. NO. 85-EA-134**

**ANTHONY ALOSI,**

Petitioner,

v.

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

Respondent.

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**Guy S. Michael, Esq., for petitioner (Brown & Michael, attorneys)**

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

**Record Closed: January 9, 1986**

**Decided: February 18, 1986**

**BEFORE EDGAR R. HOLMES, ALJ:**

The petitioner applied for licensure as a casino employee. The Division of Gaming Enforcement objected to his licensure by letter to the Casino Control Commission, dated June 25, 1985. In the interim the petitioner was registered. The parties agreed to consolidate the matters for trial at the prehearing conference. A complaint was filed with the Casino Control Commission on December 6, 1985, and deemed denied by respondent pursuant to a stipulation of the parties at the hearing. The matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on January 9, 1986, at the Atlantic County Civil Courthouse in Atlantic City.

FIRST STATUTORY DISQUALIFICATION

The Division proved that the petitioner was convicted in the Commonwealth of Pennsylvania upon his plea of guilty to four counts involving drug offenses committed on February 4, 1983, in Criminal Action 2046-83 filed in the County of Bucks (P-3 evidence). The conviction was entered on January 25, 1984, on the Criminal Court sheet (P-4 evidence). The third count of Criminal Action 2046-83 alleged possession of methamphetamine with the intent to deliver and the fourth count alleged actual delivery of methamphetamine. These crimes are equivalent to N.J.S.A. 24:21-19a(1) and are high misdemeanors. Thus, the petitioner has been convicted of a crime enumerated under the casino license disqualification criteria in N.J.S.A. 5:12-86c(3) and I so FIND.

SECOND STATUTORY DISQUALIFICATION

The Division proved that the petitioner was convicted in the Commonwealth of Pennsylvania upon his plea of guilty to six counts involving drug offenses committed on the 3rd of March 1983, in Criminal Action 0055-84 filed in the County of Bucks (P-5 evidence). The conviction was entered on February 22, 1984, on the Criminal Court sheet (P-6 evidence). The third count of Criminal Action 0055-84 alleged possession of methamphetamine with the intent to deliver. This crime is equivalent to N.J.S.A. 24:21-19a(1) and is a high misdemeanor. Thus, the petitioner has been convicted of a crime enumerated under the casino license disqualification criteria in N.J.S.A. 5:12-86c(3) and I so FIND.

OTHER ARRESTS AND CRIMINAL INVOLVEMENT

January 27, 1983

Christopher McAteer, a detective with the Bucks County Task Force, operating in an undercover capacity and who was involved in the preceding arrests and convictions, testified that a prior arrest of Alosi involving the purchase of one-half ounce of methamphetamine was not-prossed. He relates that he met Alosi through an informant and sat with him in the back seat of an automobile for approximately one-half hour, at the conclusion of which the transaction was made. This was on January 27, 1983, approximately a week preceding the February 4, 1983 purchase resulting in the conviction

of January 25, 1984. McAteer alleges that this matter was nol-prossed because the informant handled the drugs.<sup>1</sup>

Alosi testified that the matter was nol-prossed because it was not he that made the sale; he was not there. I believe McAteer and not Alosi for reasons that will become clear infra.

November 26, 1981

Alosi was arrested at the Philadelphia International Airport and charged with drug possession. The circumstances are related by way of hearsay through police reports. Apparently, Alosi attempted to board an airplane with a handgun in his suitcase. He claimed that he was arrested only after he asked the baggage checker the proper procedure for transporting such a weapon. He was with a female companion. A search of the vehicle produced drugs. A search of Alosi's suitcase revealed the weapon. Apparently, his female companion asserted ownership of the drugs. Alosi had a permit for the gun. The charges were dismissed as to Alosi. He testified that he had no knowledge of the drugs and that the car belonged to his female companion, who merely drove him to the airport. I note in passing that the police report reveals the car was registered to Alosi's place of business, Alco Welding, 2521 Wyandotle Road, Willow Grove, Pennsylvania.

August 9, 1982

This arrest occurred as a result of a sheriff's levy on Alosi's property. The police reports reveal and Alosi admitted that he attempted to remove his property from the sheriff before it was sold. He was caught in the act, charged with defrauding secured creditors, and the charges were dismissed upon payment to the secured creditors.

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<sup>1</sup>This would have compelled disclosure of the informant's identity in open court. Roviaro v. United States, 353 U.S. 53, 1 L. Ed. 2nd 639, 77 S. Ct. 623 (1957). So long as a confidential informant continues to produce, prosecuting attorneys are reluctant to divulge his identity to the world for obvious reasons. This informant was used in the succeeding transactions but obviously kept his hands out of the deal on those two occasions.

July 2, 1984

After Alosi's convictions in Bucks County, he moved to Brigantine, New Jersey. While there, the Brigantine Police Force had him under surveillance for a period of time. Captain Burns testified that he followed Alosi on one occasion in plain clothes to the Circle Bar when Alosi was in the company of two drug users known to Captain Burns. After a few drinks, Alosi and his companions went to Atlantic City. Burns followed them. Burns observed a furtive exchange take place across from the China Land Restaurant. A search warrant was obtained and on July 2, 1984, a search of Alosi's apartment revealed a syringe containing a fluid later proved positive for methamphetamine. Alosi later pled guilty to the disorderly persons offense of drug paraphernalia—to wit, a syringe. Alosi explained this syringe as being left over from his drug-using days. He claims he did not remember the syringe was still there. He further denied knowing his companions from the Circle Bar. He said they were hitchhikers. He denied a furtive transaction and said he only went to Atlantic City to transact business at the Western Union.

#### REHABILITATION

Pursuant to N.J.S.A. 5:12-90h, an applicant for a casino employee license can avoid disqualification by affirmatively demonstrating his rehabilitation. A registrant may also avoid disqualification by the same or lesser criteria since the language of N.J.S.A. 5:12-91b is couched in discretionary rather than mandatory language.

The applicant presented himself in a most intriguing manner. He acknowledged his drug dependency up to January 25, 1984, the date of his last Pennsylvania drug conviction. He characterized himself during his period of drug dependency as "the type of person his mother taught [him] not to associate with." He described the economic consequences of his drug addiction—the loss of a large welding business he had started from scratch. He described the deterioration of his marriage and his relationship with his father. He said that he felt responsible for his father's death. He described the deterioration of his own personality and the resulting loss of "sensitivity."

On the other hand, he denied he had the requisite mens rea for every single drug arrest or conviction reported herein. Perhaps this was an attempt by the applicant to meet the criteria of N.J.S.A. 5:12-90h(2) and (6). In any case, it rendered his testimony on the issue of rehabilitation incredible.

His denial, referred to above, that he was not present during the \$600 methamphetamine sale transacted on January 27, 1983, with Detective McAteer, comes despite McAteer's testimony that Alosi, McAteer and McAteer's informant sat together in the back seat of a car for one-half hour, that McAteer had Alosi under surveillance from that period on and conducted a subsequent personal transaction with him, to which Alosi pled guilty, and finally that McAteer conducted a raid on Alosi's home and arrested him on March 3, for an offense that day and the two prior offenses.

In addition, Alosi denied he participated in a drug transaction with McAteer on February 4, 1983, and despite his plea of guilty to actual delivery of methamphetamine, now claims he pled guilty only because he was present when a deal was transacted between McAteer and the informant. Additionally, despite Alosi's plea of guilty to possession with intent to deliver methamphetamine on March 3, 1983, he now claims the drugs were merely for his own use and for the use of his friends on that day. This contradicts McAteer's testimony that his informant haggled with Alosi on that day for one ounce of methamphetamine at \$1,100.

Finally, Alosi's denial that he knew a syringe was in his shirt drawer from sometime prior to January 1984 until July 2, 1984, coupled with his description of his companions on that day as merely unknown hitchhickers, defies belief.

Alosi produced character witnesses.

Derrick Hall, his probation officer, testified that Alosi was "no problem," and had a perfect reporting record.

John Miletto, a friend from Alosi's boyhood and now a pit boss, testified he knew of no problems with Alosi and would have no qualms about hiring him. He first learned of Alosi's drug problems at the hearing. He said it did not change his opinion.

Mark DeLAssandro, on the other hand, knew of Alosi's problems prior to the hearing. He is a floor person at a casino. He has been in close contact with Alosi recently and also grew up with Alosi. He said he would have no qualms about hiring Alosi at a casino.

Janet Kinsell, who is Alosi's supervisor at Trump Castle, testified that he is a good employee. She said he performs well, is a gentleman, and there have been no complaints from customers or fellow workers of Alosi in the traffic department where he is employed as a valet.

In considering the rehabilitation criteria set forth in N.J.S.A. 5:12-90h, I make the additional findings that:

1. The petitioner has applied for licensure and is presently registered.
2. The nature of the offenses is sale of methamphetamines. These offenses are serious. They involve transactions of one-half ounce or more.
3. The circumstances of the offense are that these were sales to strangers and for the sole purpose of profit.
4. The dates of the offenses were within the past three years.
5. The applicant was a mature adult when the sales were made; he was in his mid-thirties.
6. The offenses were repeated on more than one occasion.
7. There were no mitigating social conditions which may have contributed to the offenses, such as drug addiction as a result of long-term illness or injury.
8. There is no evidence of rehabilitation as of the date the applicant claims he was rehabilitated. He has a subsequent conviction.

I **FIND** that the petitioner has utterly failed to prove rehabilitation. I further **FIND** that the petitioner has not proved that he has the requisite good character, honesty and integrity for licensure required by the act.

I therefore **ORDER** that the respondent's casino employee license application be **DENIED**.

I further **CONCLUDE** that the respondent's continued registration would be inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(4).

I therefore **ORDER** that the respondent's casino registration be **REVOKED**.

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

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

February 18, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

2/19/86  
DATE

Receipt Acknowledged:  
Ruth Stout  
CASINO CONTROL COMMISSION

FEB 20 1986  
DATE

Mailed to Parties:  
[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

**For petitioner:**

**Christopher McAteer  
Thomas Hollinger  
Michael Burns**

**For respondent:**

**Janet Kinsell  
Anthony Alosi  
Derrick Hall  
John Miletto  
Mark DelAssandro**

EXHIBIT LIST

- P-1 Criminal Action 2047, four pages  
P-2 Criminal Court sheet 2047, one page  
P-3 Criminal Action 2046, four pages  
P-4 Criminal Court sheet 2046, two pages  
P-5 Criminal Action 0055, five pages  
P-6 Criminal Court sheet 0055, three pages  
P-7 Investigation report, November 26, 1981, eight pages  
P-8 Complaint report, August 9, 1982, two pages  
P-9 Brigantine Complaint, July 14, 1984, one page**
- R-1 Probation report, one page  
R-2 Probation letter, December 30, 1985, one page  
R-3 Judge Geisz letter, December 30, 1985, one page**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-97  
OAL DOCKET NO. CCC 03962-85  
LICENSE NO. 47562-21

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

Complainant, :

v. :

KAREN BERENATO, :

Respondent. :

---

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision of the Office of Administrative Law which incorporates a proposed stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against the respondent for a violation of N.J.S.A. 5:12-100(n); and the Commission having considered the entire record of these proceedings at its public meeting of January 15, 1986,

IT IS on this *18<sup>th</sup>* day of February 1986, ORDERED that the initial decision of the Office of Administrative Law, which incorporates the proposed stipulation of settlement, is affirmed and incorporated herein by reference; and

IT IS FURTHER ORDERED that Karen Berenato pay a civil penalty in the amount of \$200, due and payable upon receipt

of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Karen Berenato's casino employee license is suspended for five (5) working days to be effective as follows: March 24, 25, 26, 27 and 28, 1986; and

IT IS FURTHER ORDERED that during this period of suspension Karen Berenato shall not be entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon Karen Berenato, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 3962-85

AGENCY DKT. NO. 85-97

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

Petitioner,

v.

**KAREN BERENATO,**

Respondent.

---

**Norma Plenty, Law Clerk, for the petitioner (Irwin I. Kimmelman, Attorney General  
of New Jersey, attorney)**

**Karen Berenato, respondent, pro se**

Record Closed: October 22, 1985

Decided: December 5, 1985

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint on March 11, 1985 with the Casino Control Commission seeking sanctions against respondent's license for gambling in a casino. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.A.C. 52:14F-1 et seq.

The respondent admitted both at the prehearing conference and at the plenary hearing that she was wagering at craps at Harrah's Casino. The parties agreed to a

settlement at the hearing. The settlement contemplates a fine in the amount of \$200 to be paid by Karen Berenato and a five-working-day suspension of her license. Based on the representations of the parties at the prehearing conference and at the plenary hearing, I **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their representations in open court.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 5, 1985  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12/10/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 11 1985  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS IN EVIDENCE

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 84-EA-221; 84-CSI-22  
OAL DOCKET NO. CCC 320-85  
APPLICATION NOS. 44567-21; 1114-70

---

APPLICATION OF EDWARD D. BERKOW :

FOR A CASINO EMPLOYEE LICENSE :

AND :

FINAL ORDER

APPLICATION OF EDWARD D. BERKOW :

FOR A JUNKET ENTERPRISE LICENSE :

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A hearing in these matters having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and Edward D. Berkow having filed exceptions to the initial decision and a motion to reopen the record; and the Division of Gaming Enforcement having filed a reply to the exceptions and opposed the motion to reopen; and the Commission having considered the entire record of these proceedings at its public meeting of May 14, 1986,

IT IS on this 30<sup>th</sup> day of June 1986, ORDERED that the motion to reopen is denied because all parties have not consented to the expansion of the record; and

IT IS FURTHER ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the applications of Edward D. Berkow for a casino employee license and junket enterprise license are denied substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Edward D. Berkow is prohibited from applying for any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8(a); and

IT IS FURTHER ORDERED that copies of this final order be served upon Edward D. Berkow, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

APR 2 - 1986

CASINO CONTROL COMMISSION  
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 0320-85

AGENCY DKT. NOS. 84-CSI-22

and 84-EA-221

**EDWARD D. BERKOW,**

Petitioner,

v.

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

---

**Robert A. Rohrbaugh, Esq.,** an attorney-at-law of the State of Maryland and of the District of Columbia, admitted pro hac vice, for the petitioner (Louis A. Petroni, Esq., of Montgomery, McCracken, Walker and Rhoads, attorney)

**Anthony V. D'Elia,** Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: February 10, 1986

Decided: March 26, 1986

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

STATEMENT OF THE CASE

Edward D. Berkow, petitioner, applied to the Casino Control Commission (Commission) for licensure as a junket representative and/or as a junket enterprise, pursuant to N.J.S.A. 5:12-102b and 102c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the contention that Mr. Berkow had refused to participate in a sworn interview, in violation of sections

80d and 86b of the Casino Control Act (Act). The petitioner challenged the reasonableness of the Division's request.

### PROCEDURAL HISTORY

Mr. Berkow submitted the appropriate application forms to the Commission on February 2, 1983. By letter dated December 14, 1984, the Commission advised the applicant that, based upon the information received in a report from the Division, dated November 26, 1984, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. By letter filed with the Commission on December 27, 1984, the petitioner requested a hearing. On January 18, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 19, 1985, and the matter was scheduled for hearing. The matter was placed on the inactive list, effective April 15, 1985, for a period of six months. The matter was heard and the record closed on February 10, 1986.

### FINDINGS OF FACT

#### (A) UNDISPUTED FACTS

At the commencement of the hearing, the parties agreed to the following stipulation:

On February 2, 1983, Edward Berkow filed with the Commission an application for a junket enterprise and junket representative license. The application was forwarded to the Division which received the file on February 8, 1983. Thereafter, on March 2, 1983, Mr. Berkow received temporary licensure as a junket enterprise and junket representative pursuant to N.J.S.A. 5:12-102(e). The temporary license expired 12 months from the date of the issuance and was renewable in the absence of an objection by the Division, for one additional six month period. Accordingly, Mr. Berkow's licenses expired on September 1, 1984.

As of the date of the expiration, no decision had been rendered by the Division. However, according to the discovery received from the Division, the investigative summary report had been prepared on May 25, 1983, only months after Mr. Berkow had been granted his temporary license. According to the Investigative Summary,

provided by the DGE to counsel, Mr. Berkow was interviewed personally on August 19, 1982, October 14, 1982, October 27, 1982 and November 3, 1982. It is noteworthy that each of these interviews was conducted prior to Mr. Berkow even receiving his temporary license and, during each interview, Mr. Berkow's associations were discussed, including his long-standing friendship with Mr. Doyle. Mr. Berkow was interviewed personally in an unsworn statement by DGE agent Mike G. Brown. Apparently, the information derived during these interviews did not cause the Division substantial difficulties since Mr. Berkow's temporary license was subsequently issued and, in fact, renewed in March, 1984.

On March 14, 1984, Mr. Berkow's residence was searched pursuant to search warrant issued by the Circuit Court from Montgomery County. The affidavit for the search warrant was signed by Detective Scofide (J-1).

On September 7, 1984, Mr. Berkow sought an order in the Law Division of the Superior Court permitting him the opportunity to continue with his employment, especially since the Division had not concluded its investigation within the eighteen months.

On November 5, 1984, the Division of Gaming Enforcement requested Mr. Berkow to submit for an interview for the purpose of questioning him about the same matters raised in the alleged Grand Jury Investigation (P-1 and J-1, para. 4).

Mr. Berkow, through counsel, relied upon his Fifth Amendment privilege when the DGE took the position that Mr. Berkow refused to cooperate and the DGE would not agree to any alternative method (P-2 and P-3).

In April, 1985, the Office of Administrative Law placed the instant matter on the inactive docket for six months at the request of Mr. Rohrbaugh and to which Mr. D'Elia did not object. At the time the matter was placed on the inactive list, the Division saw no prejudice by the delay and was still willing to have Mr. Berkow interviewed. The Division's position did not change during the period of inactivity. When the six months lapsed, counsel for Mr. Berkow contacted the counsel for the Division of Gaming Enforcement to request that the matter be scheduled for a hearing. In doing so, it was agreed that the circumstances had not changed substantially. After the January 9, 1986 hearing date had been continued by this Court, Mr. Berkow forwarded a letter to the Division of Gaming Enforcement indicating he was prepared to submit [to] such an interview (P-4, R-1, P-5 and P-6).

The parties also stipulated that the applicant did not submit to a sworn investigative interview despite an unspecified number of oral requests made by the Division.

Prior to issuing these requests to the applicant, the Division had in its possession a copy of an "Application and Affidavit for Search and Seizure Warrant," signed by Detective Peter Scofide of the New Jersey State Police and TFC Heber E. Watts of the Maryland State Police. This application was submitted to and signed by William Cave, Judge, Circuit Court for Montgomery County, Maryland. The application and affidavit stated that the affiants believed that certain persons, including the applicant, had previously committed and continued to commit conduct which was in violation of various New Jersey criminal statutes as well as the Casino Control Act, and that the criminal activities might involve organized crime. The application sought permission to seize documentation, which consisted of business contacts and/or relationships with the casinos in Atlantic City, New Jersey. The application also stated that the New Jersey State Police and Division of Criminal Justice were collaborating in an investigation, which had revealed evidence of criminal conduct. The search and seizure was conducted on March 15, 1984, and various documents and business records belonging to the applicant were seized. On November 5, 1984, the Division issued a written request that the applicant appear for an interview.

The applicant, through counsel, responded to the Division's oral requests and stated that the applicant would not appear unless he was assured that the sworn interview would not be made available to the Division of Criminal Justice (J-1).

By letter dated November 14, 1984, from petitioner's counsel to Deputy Attorney General Gottesman, who was then responsible for the matter, the petitioner's position concerning the written request that he submit to a sworn interview was clarified (P-1). Counsel noted that Mr. Berkow had been advised by the Division of Criminal Justice that he was the target of a grand jury probe; nevertheless, the Division, another arm of the Attorney General's office, demanded that the petitioner submit to a sworn interview. Counsel sought a mechanism whereby the results of a sworn interview of the applicant would be sealed and would not be accessible to the Division of Criminal Justice or otherwise used in a criminal prosecution as a condition of making the petitioner available. The Division rejected this proposal.

By letter dated November 26, 1984, the Division advised the Commission of its objection to licensure of the petitioner (P-2).

By letter dated March 8, 1985, counsel for the petitioner notified the Division that the District Court of Maryland for Montgomery County had entered an Order for

Expungement of Records, dated January 18, 1985, which concerned criminal charges initiated following the execution of the search warrant, which charges were unrelated to the probable cause set forth in the application for the warrant (P-3).

On April 10, 1985, the petitioner filed an action in the Circuit Court, Montgomery County, Maryland, against two members of the New Jersey State Police, who had participated in the investigation and the execution of the search warrant (P-5). The action sought the return to the petitioner of all items seized during the execution of the warrant, and alleged that continued retention was wrongful and that the items seized had been mishandled. By order dated February 7, 1986, the defendants were required to deposit the documents seized from the petitioner's residence with an independent third-party for retention (P-6).

By letter dated January 22, 1986, counsel for the petitioner advised Deputy Attorney General D'Elia that the petitioner was willing to submit to a sworn interview (P-4). By letter dated January 29, 1986, Deputy Attorney General D'Elia advised Mr. Rohrbaugh that the Division was not willing to withdraw the objection to the application in exchange for the petitioner's submission to a sworn interview (R-1).

Deputy Attorney General Gottesman testified that he was the deputy attorney general assigned to the Berkow application and that he initiated the requests for a sworn interview. The basis of his requests was the application and affidavit for a search warrant in Maryland, which he first observed in the summer of 1984. Deputy Attorney General Gottesman testified that the Division's file on the petitioner contained no derogatory information other than the application and affidavit for search warrant. In addition, the deputy attorney general testified that, in May 1983, a hold had been placed on the Division's file by the Division of Criminal Justice and the State Police. A hold order freezes the Division's investigation in order not to prejudice an ongoing parallel investigation by the other agencies. Nevertheless, the Division of Criminal Justice provided no information to the Division concerning the investigation. Deputy Attorney General Gottesman testified that he had no knowledge whether Division investigators prepared reports which memorialized investigation interviews and/or other investigative efforts. However, this testimony appears to be inconsistent with the record in Division of Gaming Enforcement v. Eilenberg, Klarich and Goldberg, OAL DKT. NO. CCC 4355-84, decided December 27, 1985, Casino Control Commission DKT. NO. 84-54, Order of Remand, March 1986.

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

DISCUSSION OF LAW AND CONCLUSIONS

The Division contends that Mr. Berkow's applications for licensure should be denied by reason of his refusal to participate in a sworn interview requested by the Division in its letter of November 5, 1984. This refusal, the Division contends, constitutes a violation of sections 80b and 86d. The applicant challenges the Division's position and, contends that the Division's request was unreasonable, that the Division's unwillingness to seal any such interview constitutes an attempt to deprive the applicant of his Fifth Amendment rights, and that the applicant's current willingness to submit to an interview cures any prior refusal.

Legalized casino gambling in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to the most pervasive and stringent regulation. In re Application of Martin, 90 N.J. 295, 319-320 (1982); Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 168 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. N.J. Casino Control Commission, 85 N.J. 325, 328 (1981), app. disp., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as modified, 90 N.J. 361, app. disp., 459 U.S. 1081 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the State Supreme Court in Knight v. City of Margate at 381:

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

Further, it has been recognized that one of the primary goals of the Act was "to guard against any danger of infiltration by organized crime." In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 340 (App. Div. 1981). Also, the Act was intended to preclude the entry into the industry of persons who seek financial gains by means of criminal activity conducted in an occupational manner, N.J.S.A. 5:12-1b(9), as well as to prevent persons with "unacceptable backgrounds and records of behavior" from controlling casinos. N.J.S.A. 5:12-1b(15).

As a means of achieving these goals, the Legislature reposed with the Division broad investigatory obligations for all phases of the regulatory process. N.J.S.A. 5:12-76. Further, the Legislature obligated each participant in the industry, including applicants for licensure, to cooperate with the Division in the performance of its duties. N.J.S.A. 5:12-1b(8). Section 80d serves to underscore the affirmative responsibility of all persons who require licensure.

That portion of section 80d in dispute states:

\* \* \*

If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the commission.

Section 80d clearly and unequivocally obligated Mr. Berkow to comply with the Division's request that he submit to a sworn interview.

Also, section 86b states that a casino license may be denied in the event of:

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79

(Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter

evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission.

The Division contended that the applicant should not be permitted to challenge the reasonableness of the Division's request for a sworn interview, and that the applications should be denied by reason of the applicant's failure to submit. The Division's argument concerning reasonableness was rejected at the hearing. More specifically, the denial of an application by reason of a failure to respond to a formal request under section 80d is clearly discretionary. Therefore, it is essential to examine the circumstances underlying any purported failure. This includes circumstances peculiar to an applicant as well as to the Division. The Division's argument that a purported impossibility of an applicant to comply was the only circumstance which could be examined was too restrictive. By analogy, a failure to disclose under section 86b may also lead to denial of a license. However, an applicant has the opportunity to establish that the nondisclosure is excusable and does not warrant disqualification. In the matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission, February 26, 1979. The Commission placed no limitations upon an applicant's opportunity to establish an excuse. Similarly, a person charged with a failure to comply under section 80d shall have an unrestricted opportunity to establish that the failure was excusable, including that the Division's request was unreasonable. I so **CONCLUDE**.

The status of this matter is that the Division was in the process of investigating Mr. Berkow's applications, which had been filed voluntarily with the Commission. In the performance of its investigative duties under section 76b(1), the Division issued a formal request to the applicant for a sworn interview, under section 80d. The Division's written request followed several oral requests, which were rejected. The applicant does not dispute that the Division's request was lawful in all respects. Ultimately, the applicant, by letter from counsel, stated that he would not comply with the request as stated (P-1). However, the applicant offered to submit to an interview upon the condition that the interview would be sealed and not used in any possible subsequent criminal proceedings. The applicant proposed this condition in order to preserve his Fifth Amendment rights, in light of an investigation of him and others by the Division of Criminal Justice concerning the applicant's possible involvement in violations

of New Jersey criminal laws and provisions of the Act, and to further his application for licensure. The Division rejected this proposal (P-2).

The conditions proposed by the applicant would have placed the Division in the position of conducting an investigation, the results of which could not be used for the purposes intended, i.e., to determine the applicant's qualifications for licensure and/or to prosecute violations of the Act. The Division's acceptance of the conditions would have constituted a waiver of its obligations under the Act. Accordingly, it was entirely proper for the Division to reject the conditions. Therefore, the applicant's unwillingness to submit to an interview clearly constitutes a refusal under section 80d and a failure to provide information under section 86b. I so CONCLUDE.

Next is whether the Division's request was unreasonable and thereby excuses the applicant's refusal. Aside from the basic facts already stated, the applicant offered no facts to support his contention. More specifically, the applicant offered no evidence of the subject matter of his interviews by the Division, which occurred prior to his application for licensure. Further, the applicant did not establish that the subject matter of the requested interview was in any way related to the subject matter of the prior interviews. Given the intervening events, i.e., the applications for licensure and the events set forth in the Division's application for a search warrant, which raise serious questions concerning the applicant's qualifications, the Division's request appears to be reasonable in all respects. I so CONCLUDE.

The applicant's contention that the Division's request constitutes an attempt to deprive him of his Fifth Amendment rights is without merit. Despite interviews by the Division, apparently concerning potential violations of the Act, Mr. Berkow voluntarily filed his applications. These filings activated the investigative process to which all applicants are subjected. Acceptance of the applicant's argument would preclude the Division from performing its mandatory investigative function under section 76, as well as preclude the Commission from making a well-informed determination of the applicant's qualifications for licensure under section 64. Further, the applicant's refusal to appear and assert the privilege denies the Division and the Commission the opportunity to determine if the privilege was raised properly. Finally, in the event the applicant asserted his privilege properly during the sworn interview, the Division would have the opportunity to oppose licensure on the basis of negative inferences to be drawn as to specific questions posed. Division of Gaming Enforcement v. Merlino and Leonetti, OAL

DKT. NO. CCC 3313-84 (January 31, 1985), reversed, Casino Control Commission (November 18, 1985); In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities, OAL DKT. NO. CCC 1807-83 and OAL DKT. NO. CCC 1809-83 (consolidated) (December 22, 1983), reversed and remanded, Casino Control Commission (May 25, 1984). Accordingly, the applicant has an obligation to appear and respond, albeit by the assertion of his privilege, to specific questions. The contention that the Division has deprived the applicant of his Fifth Amendment rights is without any basis because the applicant could have submitted to a sworn interview and asserted the privilege. More specifically, at no time did the Division ever deny the applicant the opportunity to assert the privilege. Further, the applications have not been opposed by reason of the applicant's assertion of the privilege. Therefore, and as in Martin at 332, I decline to decide whether licensure could be denied constitutionally by reason of an applicant's assertion of his Fifth Amendment rights to questions posed by the Division during and as part of its investigation. I so **CONCLUDE**.

The applicant also contends that his current willingness to submit to an interview effectively cures his earlier refusal. This argument is also without merit. Although during the earlier phases of this proceeding the Division indicated a willingness to conduct an interview, it did not agree that an interview would constitute a cure for the earlier violation. In addition, in order for a submission to an interview to cure an earlier refusal, the circumstances at the time of the original refusal and during the intervening period must be examined. Here, at the time the Division first requested an interview, it had reason to believe that the applicant was involved in conduct which violated the criminal laws of this state as well as the Act. Accordingly, it was important for the Division to conduct a timely interview. In addition and given the events which have transpired since the request, it appears that the applicant has had the opportunity to effectively alter the circumstances of his earlier conduct and that the benefits of a timely interview may well have been lost to the Division. Accordingly, the applicant has had the opportunity and may well have obfuscated the performance of the investigatory phase of licensure. Accordingly, the applicant's current willingness to submit to an interview does not mitigate to any degree the significance of his original refusal. I so **CONCLUDE**.

The remaining issue to be resolved is the impact, if any, of the applicant's refusal upon his applications for licensure. The Division argues for denial.

The nature of the potential misconduct by the applicant bears directly upon the integrity of the industry as well as the regulatory process and leads inescapably to denial. A conclusion to the contrary would serve only to frustrate the purposes of the Act. I so CONCLUDE.

DISPOSITION

It is ORDERED that the applications of Edward D. Berkow for licensure as a junket representative and/or as a junket enterprise be DENIED.

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

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

March 26, 1986  
DATE

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

Receipt Acknowledged:

March 27, 1986  
DATE

Bernadette P. Figen  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 31 1986  
DATE

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

ml/EE

EXHIBITS INTO EVIDENCE

- J-1 Stipulations.(23 pages)
- P-1 Letter to Lee D. Gottesman, Deputy Attorney General, from Robert A. Rohrbaugh, Esq., November 14, 1984 (3 pages)
- P-2 Letter to Walter N. Read, Chairman, Casino Control Commission, from Lee D. Gottesman, Deputy Attorney General, November 26, 1984 (8 pages)
- P-3 Letter to Anthony "DeLeo" (D'Elia), Deputy Attorney General, from Robert A. Rohrbaugh, Esq., March 8, 1985; together with Order for Expungement of Records, entered in the matter State of Maryland v. Edward David Berkow, District of Maryland for Montgomery County, case number 606877D5-84A, B, C, D, January 18, 1985 (2 pages)
- P-4 Letter to Anthony D'Elia, Deputy Attorney General, from Robert A. Rohrbaugh, Esq., January 22, 1986 (2 pages)
- P-5 Edward Berkow v. Ronald Lemanowicz and Peter Scofide, Circuit Court for Montgomery County, Maryland, Docket number 5871, Complaint, filed on April 10, 1985 (5 pages)
- P-6 Edward Berkow v. Ronald Lemanowicz and Peter Scofide, Circuit Court for Montgomery County, Maryland, Docket number 5871, Order, February 7, 1986 (4 pages)
- P-7 Affidavit of Robert Pellegrini, October 29, 1984
- R-1 Letter to Robert Rohrbaugh, Esq., from Anthony D'Elia, Deputy Attorney General, January 29, 1986, with attachments (8 pages)

WITNESSES

For the petitioner:

None

For the respondent:

Lee D. Gottesman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-259  
OAL DOCKET NO. CCC 6675-85  
REGISTRATION NO. 50183-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
FRANK J. BUDD, JR. :  
Respondent. :

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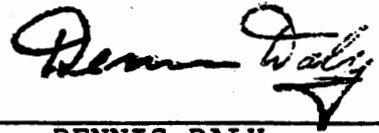
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of March 5, 1986,

IT IS on this 20th day of MARCH 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Frank J. Budd, Jr., the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6675-85

AGENCY DKT. NO. 85-259

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

Petitioner,

v.

**FRANK J. BUDD, JR.,**

Respondent.

---

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

**Frank J. Budd, Jr., respondent, pro se**

Record Closed: December 30, 1985

Decided: January 27, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division filed a complaint with the Casino Control Commission on June 12, 1985, seeking to revoke the respondent's casino hotel registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 15, 1985, and the matter was heard on December 30, 1985, in Atlantic City, New Jersey.

At the conclusion of the testimony of Officer William Stephens of the Longport Police Department and Patrolman James McGarry of the Longport Police

Department, the Division of Gaming Enforcement moved to withdraw the complaint on the grounds that the victim of an alleged rape, which was the underlying cause of this revocation proceeding, failed to honor her subpoena and was now nowhere to be found. Based on the testimony that was offered thus far in the proceeding, there was good cause to believe that a consent defense would prevail, and therefore, the motion to withdraw was granted.

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

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

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

January 27, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

January 28, 1986  
DATE

Bernadette J. Fagan  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 30 1986  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

Patrolman William Stephens

Patrolman James McGarry

EXHIBIT LIST

- P-1 Pleasantville Police Department report from Powers
- P-2 McGarry's report
- P-3 Supplemental report of McGarry
- P-4 Supplemental report of McGarry, May 28, 1984
- P-5 Supplemental report of McGarry, May 29, 1984
- P-6 Supplemental report of McGarry, May 30, 1984
- P-7 Supplemental report of McGarry
- P-8 Supplemental report of McGarry, June 25, 1984
- P-9 Supplemental report of McPhearson, June 25, 1984
- P-10 Supplemental report of McGarry, June 27, 1984
- P-11 Supplemental report of McGarry, July 3, 1984
- P-12 Investigation report of McGarry
- P-13 Supplemental report of McGarry
- P-14 Supplemental report of McGarry, July 3, 1984
- P-15 Supplemental report of McGarry, illegible, approx. July 6, 1984
- P-16 Supplemental report of McGarry, July 7, 1984
- P-17 Supplemental report of McGarry, July 8, 1984
- P-18 Victim's statement, May 28, 1984
- P-19 Rights statement, signed by Budd - statement of Budd typed from tape recorder

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-120  
APPLICATION NO. 58040-21  
OAL DOCKET NO. CCC 5097-85

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APPLICATION OF RAYMOND CABAN  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 15, 1986,

IT IS on this 31<sup>ST</sup> day of January 1986, ORDERED that the initial decision in this matter is modified as follows:

The respondent failed to establish by clear and convincing evidence that he possesses the requisite degree of good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89(b) (2) and 90(b).

IT IS FURTHER ORDERED that the application of Raymond Caban for a casino employee license be denied based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5097-85

AGENCY DKT. NO. 85-EA-120

**RAYMOND CABAN,**

Petitioner,

v.

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

Respondent.

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**Raymond Caban, petitioner, pro se**

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

Record Closed: November 21, 1985

Decided: December 3, 1985

**BEFORE EDGAR R. HOLMES, ALJ:**

Raymond Caban applied for licensure as a casino teller. The Division of Gaming Enforcement objected to his licensure by letter to the Casino Control Commission, dated June 11, 1985. The basis of the objection was eight disorderly person arrests between 1982 and 1984 and a presently outstanding warrant. The Division asserts that the applicant lacks the requisite good character, honesty, and integrity required by N.J.S.A. 5:12-89b(2). A prehearing conference was conducted on October 8, 1985. A plenary hearing was conducted on November 21, 1985, in Millville, New Jersey.

Based on the documents offered in evidence at the hearing and the testimony of Raymond Caban I **FIND** the following facts:

1. At the age of two or three, Raymond Caban was placed by DYFS in a foster home.
2. He was in a succession of foster homes until he was 17, at which time he was emancipated.
3. He completed the ninth grade at Bristol High School in Pennsylvania.
4. He is presently 24 years old and a resident of Millville, New Jersey, where he has resided for several years.
5. He supports himself by being on the City of Millville Workfare Program and a succession of odd jobs.
6. Because of his lack of skills and spotty employment record, he spends most of his time on the streets and is well known to the Millville City Police Department.
7. He has been convicted of disorderly or petty disorderly person offenses on nine occasions since 1980 in the City of Millville as follows:
  - A. Simple assault, April 2, 1980
  - B. Criminal mischief, April 4, 1980
  - C. Fighting and resisting, April 27, 1982
  - D. Disorderly person, April 27, 1982
  - E. Fighting, resisting and malicious damage, April 30, 1982
  - F. Criminal mischief, March 30, 1983

- G. Abusive language, April 27, 1983
  - H. Under 25 grams marijuana, August 15, 1983
  - I. Resisting and false information, August 14, 1984
8. As a result of these convictions and his inability to pay fines, he has spent a considerable time in the county jail in default of payment.
  9. He presently owes approximately \$500 to the municipal court for these violations.
  10. He frankly acknowledged all his arrests and gave details of the underlying facts.
  11. He alleges that he was under the influence of alcohol on every occasion that he was arrested.
  12. He denies that he has a problem with alcohol and reports that he "only has a drinking problem when he drinks."
  13. He tried to join the regular army and was not acceptable. He joined the National Guard, successfully completed training at Fort Knox, and was returned to his National Guard unit. He then purposefully missed drill meetings, hoping he would be returned to active duty as punishment. Instead, he was released.
  14. He sincerely believes that casino employment is his only way out of his dead-end existence.

I was impressed with the petitioner's candor at the hearing and his sincere desire to become a productive member of society. None of his convictions were for theft. The one violation involving honesty, on August 14, 1984, in which he gave false information to a police officer, was explained as an attempt to avoid being incarcerated on his birthday. He knew there was an outstanding warrant for his arrest for failure to pay a fine, so he gave the arresting officer his brother's name instead of his own.

This petitioner certainly needs a break; he started life with three strikes against him. Casino licensure, however, should not be viewed as a rehabilitation program. The requirement for licensure, that a person exhibit good character, honesty, and integrity, is absolutely necessary to insure public confidence in the casino industry. This applicant has failed to exhibit good character and integrity.

I **CONCLUDE** that the petitioner has failed to establish by clear and convincing evidence that he possesses the good character and integrity required for licensure by N.J.S.A. 5:12-89b(2).

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

At the hearing, the Deputy Attorney General advised the petitioner that N.J.S.A. 5:12-89b(2) was not a requirement for casino registration. In case the petitioner has not sought registration, I advise him to do so. A good track record as a registrant may serve the petitioner well in a future application for casino employee licensure.

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

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

December 3, 1985  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

December 4, 1985  
DATE

Receipt Acknowledged:  
Vincent J. Hill  
CASINO CONTROL COMMISSION  
Assistant Counsel

December 6, 1985  
DATE

Mailed to Parties:  
Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

**For the Petitioner:**

**Raymond Caban  
Michael Ogle**

**For the Respondent:**

**None**

EXHIBITS IN EVIDENCE

**P-1 and P-2    Letters of Recommendation**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-76  
OAL DOCKET NO. CCC 05626-85  
REGISTRATION NO. 38116-40

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

FINAL ORDER

Complainant, :

v. :

VINCENT R. CAIAZZO,

Respondent. :

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A hearing in this matter having been held before the of the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 16, 1986,

IT IS on this *21st* day of May 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Vincent R. Caiazzo is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a party hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from applying for any license, registration, qualification or

approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Vincent R. Caiazzo, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5626-85

AGENCY DKT. NO. 83-76

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

Petitioner,

v.

**VINCENT R. CAIAZZO,**

Respondent.

---

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

**Vincent R. Caiazzo, respondent, pro se**

Record Closed: January 27, 1986

Decided: March 6, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Vincent R. Caiazzo, respondent and the holder of casino hotel employee registration number 38116-40, with the commission of criminal misconduct which precludes continued registration under sections 86c(1) and (4) of the Casino Control Act (Act), for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The respondent contended that he was rehabilitated under section 91d, and opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 24, 1983. By letters dated March 28 and April 11, 1983, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed with the Commission on August 20, 1985, the respondent requested a hearing. On September 6, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 25, 1985, before Ralph J. Tolomeo, Administrative Law Judge. The matter was heard on January 27, 1986, at which time the record closed.

At the hearing, the statement of issues in the prehearing order was amended to provide:

1. Whether the respondent's conduct on December 7, 1981, which led to his conviction for a violation of N.J.S.A. 24:21-24 and N.J.S.A. 24:21-22 a(3), attempt to utter a forged prescription; and his conduct on December 9, 1982, which led to his conviction for a violation of N.J.S.A. 2C:12-1b(5), aggravated assault in the fourth degree, render continued registration to be inimical to the policies of the Act, under section 86c(4).
2. Whether the respondent's conduct on December 9, 1982, constitutes violations of N.J.S.A. 2C:12-1b(5), third degree, injury to a law enforcement officer, and of N.J.S.A. 2C:17-1a(1), aggravated arson, which are disqualifying offenses under section 86c(1) by means of section 86g.
3. In the event the Division establishes a section 86 disqualifier, the respondent has the opportunity to establish his rehabilitation, pursuant to section 91d.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Caiazzo is currently 31 years of age. He is married and he and his wife are expecting a child in April 1986.

Between 1977 and 1980, the respondent was incarcerated at Leesburg State Prison for atrocious assault and battery and arson, which acts were committed in Galloway Township, Atlantic County (P-3). The respondent had a positive record during his incarceration (R-1). He completed a behavioral modification program in self-control techniques (R-5); he earned a graduate equivalency degree from the State Department of Education (R-3 and R-4); and he attended Alcoholics Anonymous (R-2). The respondent was placed on parole during mid-1980.

During 1981, he was employed by the Atlantic City Italian Bakery.

On December 7, 1981, the respondent was arrested by the Pleasantville Police Department when at a pharmacy he presented a forged prescription for a controlled dangerous substance, which was for his personal use. The respondent was indicted and was charged with violations of N.J.S.A. 24:21-22a(3) and N.J.S.A. 24:21-24, attempt to utter a forged prescription. On March 1, 1982, the respondent pled guilty to the indictment. On March 12, 1982, the respondent was sentenced to 18 months, which was suspended upon the condition that he remain arrest-free, and was fined \$25, payable to the Violent Crimes Compensation Board.

The respondent's March 1, 1982 conviction constituted a violation of a condition of his earlier parole. In anticipation of being reincarcerated, the respondent participated in a 21-day detoxification program, because of his concern that he was addicted to percodan. On August 10, 1982, the respondent was incarcerated in the Atlantic County Jail because of his parole violation.

During this second period of incarceration and on November 9, 1982, the respondent was involved in an incident at the jail which led to the initiation of further criminal proceedings (P-2). More specifically, on November 9, 1982, the respondent was

assigned to dormitory C of the jail (P-3). He consumed a couple of glasses of "hooch" (inmate alcohol). Thereafter, two events occurred which purportedly involved the respondent. The remaining circumstances underlying the incidents were in dispute and will be discussed, infra.

On December 9, 1982, and as a result of the incidents on November 9, 1982, the respondent was indicted by a state grand jury (P-5). The respondent was charged with violations of N.J.S.A. 2C:12-1b(5), aggravated assault, of N.J.S.A. 2C:17-1a(1), aggravated arson, and of N.J.S.A. 2C:17-1c(1), failure to control or report a dangerous fire. On December 20, 1982, the respondent pled not guilty (P-6). On January 21, 1983, the respondent pled guilty to count one of the indictment, which was amended to the crime of the fourth degree. The remaining counts were dismissed. On February 10, 1983, the respondent was sentenced to 18 months, to run concurrently with his parole violations then being served, and was fined \$25, payable to the Violent Crimes Compensation Board.

In January 1983, the respondent was transferred to the Cumberland County Jail. On November 22, 1983, the respondent was transferred to Leesburg State Prison, where he remained until his release. While at Leesburg, the respondent worked in the food service department and was responsible for the storeroom inventory and purchasing on behalf of the institution. Also, he attended Cumberland County College where he completed two semesters of business math. He did not complete the program because he was paroled.

In November 1982, the respondent applied to the Commission for a registration. He provided full disclosure of his criminal record history on his application form.

Following his release from Leesburg, the respondent was employed as a salesperson by Interplex, a long distance telephone company, for a period of four months.

From March 1984 until the present, the applicant has been employed by the Atlantic City Italian Bakery as a baker.

Following his release from Leesburg in November 1983 and until March 1984, the respondent again used percodan. He attributed this drug usage to personal pressures.

In August 1984, the respondent was arrested by the Atlantic City Police Department and was charged with possession of a weapon. However, the charges were dropped by the prosecutor's office.

On October 5, 1985, the respondent was married.

The respondent attributed his criminal record history to an absence of direction and an attitude of not caring. However, and as a result of his marriage, he has now stabilized himself. The respondent's wife corroborated his change in attitudes.

The respondent wants to retain his registration in order to seek employment in the casino industry. He believes that the casino industry offers higher salaries and greater opportunities for advancement. Also, the respondent has experience in baking.

The respondent occasionally consumes beer.

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

**(B) DISPUTED FACTS**

In dispute was the respondent's conduct during the incident of November 9, 1982. The Division contended that the respondent injured a correction officer and started the dormitory fire.

The Division produced Kenneth Groblewsky, a correction officer at the Atlantic County Jail. The officer was assigned to post no. 5 on the first-floor dormitory area and was in control of dormitory C. The incident began when inmates threw their food trays into a hallway. Officer Groblewsky secured an inmate volunteer to clean up the mess. The officer observed the respondent harrass and threaten the inmate volunteer. When the inmate volunteer attempted to reenter the dormitory, the respondent shook and pushed the gate, which opened and struck the officer's hand. Officer Groblewsky had his hand X-rayed and it was bound and soaked for four days. The officer further testified that the gate was solid, and that he knew the respondent and possibly others were behind the gate, but were not visible to the officer. The disturbance involved many inmates in addition to the respondent.

Samuel DeFelice, a correction officer, was the Division's second witness. Officer DeFelice relieved Officer Groblewsky at approximately 6:15 p.m. Shortly thereafter, a fire was discovered in a window in a walkway (2-3 feet wide) across from dormitory C. The jail's smoke alarm was activated. Officer DeFelice attempted to extinguish the fire. There was a substantial amount of loud voices and confusion. The officer observed Mr. Caiazzo and other inmates toss objects, i.e., paper and trash, into the fire. Ultimately, the fire was extinguished. The respondent then threatened Officer DeFelice and stated that further disturbances would occur if officers returned to the dormitory. Officer DeFelice called for assistance and all inmates were evacuated. Officer DeFelice detected an odor of an alcoholic beverage on the respondent as he was escorted from the dormitory.

The Division also called Salvatore Rodio, a sherriff's officer, who conducted an investigation of the incident. During his investigation, Officer Rodio interviewed both the respondent and Herbert Adderly, another inmate (P-3 and P-4). The respondent admitted consumption of two glasses of "hooch" but denied any other involvement in the incidents (P-3). Inmate Adderly, who was also housed in dormitory C, stated that the respondent initiated the food tray incident, pushed the gate into Officer Groblewsky's hand and started the fire (P-4).

Mr. Caiazzo testified on his own behalf. The respondent stated that inmate Adderly had pushed the gate which caused the injury to Officer Groblewsky. Also, the respondent denied that he had thrown anything into the fire and, in fact, he at all times during the incident, had remained by his bunk, which was approximately 30 feet from the fire. Further, the respondent contended that Officer Groblewsky and/or Officer DeFelice had stripped the respondent, beat him up and placed him into solitary following the incident. The respondent also testified concerning his guilty plea to the assault charge which emanated from the incident. The respondent stated that while under oath he entered the plea and admitted the commission of the assault, although he now denies guilt, because it was part of a plea bargain and he perceived the plea bargain to be in his best interests.

The outcome of this matter rests upon a resolution of the substantial and significant conflict in the proofs, i.e., the credibility of the various witnesses.

Although the Division's witnesses did not have an interest in the outcome of the proceedings, they did have an interest contrary to that of the respondent at the time the incident occurred. Officer Groblewsky's testimony was corroborated by the respondent's guilty plea and by the statement made by inmate Adderly. Nevertheless, it must be noted that Adderly's statement is highly suspect by reasons of his status as an inmate and by the respondent's contention that Adderly was culpable. In addition, it appears that the purported injury to Officer Groblewsky was minor. Officer DeFelice's testimony was clear, detailed and specifically identified the respondent, and was corroborated by the statement of inmate Adderly.

The respondent's position in this matter must be recognized. He is the holder of a registration and the respondent and, as such, has a direct interest in the outcome of and a bias in these proceedings. His testimony concerning the incident was consistent with the statement he made to Officer Rodio during the investigation (P-3). However, the respondent's testimony concerning his role in the injury to Officer Groblewsky was the exact opposite of his testimony at the time he entered his guilty plea. Clearly, the respondent's testimony during one of the proceedings was untrue. Given this fact, it is not now necessary to determine which testimony, if either, was truthful. Rather, the fact that the respondent knowingly and purposefully testified untruthfully in one forum renders his exculpatory testimony in this proceeding to be unreliable and not worthy of belief. Accordingly, Officer Groblewsky's version of the incident, which was corroborated by the respondent's guilty plea entered with the knowledge that he would spend an additional substantial period of incarceration, is the more persuasive version. Similarly, I am not willing to accept the respondent's testimony regarding the fire. On the whole, Officer DeFelice's version of the incident was more persuasive. It is apparent that the respondent participated in that incident by throwing trash into the fire. However, there was no evidence, other than Adderly's statement, offered to establish that the respondent started the fire. Given the inherent concerns with Adderly's credibility, such a statement is insufficient proof.

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

1. Officer Groblewsky's testimony was corroborated by the respondent's testimony at the time he entered his guilty plea.
2. Officer Groblewsky's testimony is believable.

3. Inmate Adderly's statement is highly suspect by reason of his status as an inmate and by reason of his interest contrary to that of the respondent. No credibility is attached to this statement.
4. Officer DeFelice's testimony was clear, detailed and precise.
5. The respondent's testimony in this proceeding was opposite to his testimony given at the time he entered his guilty plea.
6. The respondent knowingly and purposely testified untruthfully either at the time of his guilty plea or in this proceeding.
7. The respondent's testimony herein was neither reliable nor credible.
8. The respondent participated in the fire incident by throwing trash into the fire.
9. There was no sufficient or credible evidence that the respondent started the fire.

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that the alleged violation of N.J.S.A. 2C:12-1b(5), aggravated assault in the third degree, and the alleged violation of N.J.S.A. 2C:17-1a(1), aggravated arson, by the respondent constitute a violation of section 86c(1) by means of section 86g and, accordingly, he is disqualified from continuing to hold a registration. In the alternative, the Division contends that the respondent's conduct on December 7, 1981, which led to his conviction for the violation of N.J.S.A. 24:21-24 and N.J.S.A. 24:21-22a(3), attempt to utter a forged prescription, and/or his conduct on December 9,

1982, which led to his conviction for a violation of N.J.S.A. 2C:12-1b(5), aggravated assault in the fourth degree, render continued registration to be inimical to the policies of the Act under section 86c(4).

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1)

Section 86g provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure.

A person is guilty of aggravated assault in the third degree, as defined by N.J.S.A. 2C:12-1b(5), if he commits a simple assault upon, among others, a "law enforcement officer acting in the performance of his duties while in a uniform. . . ." Otherwise, the elements of the offense are the same as those for simple assault. N.J.S.A. 2C:12-1a. The elements of aggravated assault against a law enforcement officer are basically the same as those for simple assault. Therefore, the respondent's guilty plea to a charge of aggravated assault in the fourth degree establishes all of the basic elements of the offense. Given the fact that Officer Groblewsky satisfies the criteria under N.J.S.A. 2C:12-1b(5)(a), it is clear that the respondent's conduct constituted a crime of the third degree, which is a disqualifying offense under section 86c(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent has committed aggravated assault in the third degree in violation of N.J.S.A. 2C:12-1b(5).

Aggravated arson as defined by N.J.S.A. 2C:17-1a(1) is a crime of the second degree. A person is guilty of aggravated arson if he starts a fire or causes an explosion, on his own property or the property of another, thereby purposely or knowingly placing another person in danger of death or bodily injury. An essential element of the offense is that the charged person started a fire.

Although there was no doubt that the respondent participated in the fire incident, there was no evidence that he started the fire.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 2C:17-1a.

I further CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent is disqualified from continued registration by operation of section 86c(1).

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

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

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

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

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

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

Since it was concluded that the respondent's conduct underlying his assault on December 9, 1982, constituted a disqualifying offense under section 86c(1), it need not be discussed further at this point.

Second, the respondent did not deny that his conviction established that on December 7, 1981, he attempted to utter a forged prescription for percodan for his own personal use. Such conduct is very serious in nature. In addition, and for the reasons which will be discussed in the following section, the respondent has not established sufficiently his rehabilitation. Accordingly, continued registration would be inimical to the policies of the Act.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent is disqualified from continued registration by operation of section 86c(4).

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

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Caiazzo is a registrant and desires employment as a baker. In such a position he would have minimal contact with patrons of the casino.

Second, the respondent committed a violation of N.J.S.A. 2C:12-1b(5), aggravated assault in the third degree, which offense was committed against a correction officer within a jail. Such conduct constitutes an automatic disqualifier under section 86c(1). This conduct is very serious. In addition, the respondent has a serious criminal record which spans an extensive period of time.

Third, the respondent's exculpatory testimony was not believable. Accordingly, there was no evidence to mitigate the circumstances under which the various offenses occurred.

Fourth, the respondent committed his most recent offense on December 9, 1982, approximately three years ago.

Fifth, the respondent was 28 years of age at the time of the offense. It was evident that his misconduct was not the result of immaturity.

Sixth, as indicated, the respondent has an extensive criminal record history. Significantly, the respondent's most recent offense was committed during a period of incarceration.

Seventh, there were no social conditions which contributed to the offense.

Eight, the respondent has demonstrated some rehabilitation. Essentially, he has not repeated his misconduct and is no longer a user of drugs. Nevertheless, the respondent admitted use of controlled dangerous substances subsequent to his most recent release from incarceration. In addition, the respondent has married, which appears to have had a substantial settling effect upon his behavior. Also, the respondent has secured permanent employment.

I am not persuaded that the respondent has met his statutory burden to establish his rehabilitation. Essentially, and in consideration of the recent nature of the respondent's rehabilitative efforts and marriage, substantially more time is required to pass in order to assess accurately the effectiveness of the respondent's rehabilitative efforts.

I CONCLUDE that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

#### (D) PENALTY

Sections 129 and 130 provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee registration.

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 correction action taken by the licensee to prevent future misconduct of a like nature from occurring.

Although Mr. Caiazzo did not establish completely his rehabilitation, there is reason to believe that he will not return to criminal mischief. Nevertheless, his misconduct was extremely serious in nature and occurred during a period of incarceration. The period in which the respondent has been free of misconduct is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be **REVOKED**. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Vincent R. Caiazzo be **GRANTED**, and that the registration be **REVOKED**.

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

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

March 6, 1986  
DATE

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

Receipt Acknowledged:

March 7, 1986  
DATE

M. Benczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 11 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/e

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Pleasantville Police Department - Investigation Report, December 7, 1981; Arrest Report, December 7, 1981; Complaint, filed in the Pleasantville Municipal Court on December 7, 1981; Judgment of Conviction, March 12, 1982 (9 pages)
- P-2 Atlantic County Sheriff's Department - Arrest Report, Vincent R. Caiazzo, November 12, 1982
- P-3 Atlantic County Sheriff's Department - Voluntary Statement, Vince Caiazzo, November 9, 1982 (4 pages)
- P-4 Atlantic County Sheriff's Department - Voluntary Statement, Herbert Adderly, November 9, 1982 (4 pages)
- P-5 The State of New Jersey v. Vincent R. Caiazzo, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment Number 12-686-82-A, filed on December 9, 1982 (4 pages)
- P-6 The State of New Jersey v. Vincent R. Caiazzo, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Judgment of Conviction in Order for Commitment, February 10, 1983 (3 pages)
- R-1 Letter to Christopher Dietz, Chairman, from Eugene King, September 10, 1979
- R-2 Letter to Christopher Dietz, Chairman, from Max A. Wendler, May 13, 1980
- R-3 The State of New Jersey, Department of Education - High School Equivalent Diploma, Vincent R. Caiazzo, June 12, 1979
- R-4 State of New Jersey, Garden State School District - Certificate of Recognition, Vincent Caiazzo, June 17, 1979
- R-5 State of New Jersey, Behavior Modification Program In Self-Control Techniques - Certificate of Completion, Vincent Caiazzo, February 8, 1979

WITNESSES

**For the petitioner:**

**Samuel D. Felice  
Kennth Groblewsky  
Salvatore Rodio**

**For the respondent:**

**Marci Caiazzo  
Vincent R. Caiazzo**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-223  
OAL DOCKET NO. CCC 5984-84  
LICENSE NO. 20225-21

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

Complainant, :

V. :

JOHN J. CARPENTER, :

Respondent. :

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FINAL ORDER

An initial decision of the Office of Administrative Law referring this matter to the New Jersey Casino Control Commission (Commission) for appropriate disposition of the complaint having been filed; and the respondent having expressly waived his right to a hearing on the complaint; and the Commission having considered the entire record of the proceedings at its public meeting of January 16, 1985,

IT IS on this 4<sup>th</sup> day of MARCH 1986, ORDERED that the casino employee license of John J. Carpenter is revoked based upon his constructive admission, pursuant to N.J.S.A. 5:12-108(d), of the matters and facts contained in complaint, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for any license, registration, qualification

or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon John J. Carpenter, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5984-84

AGENCY DKT. NO. 84-223

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

Petitioner,

v.

**JOHN J. CARPENTER,**

Respondent.

---

**Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**No appearance by or on behalf of respondent**

**Record Closed: October 25, 1984**

**Decided: December 5, 1984**

**BEFORE VALERIE H. ARMSTRONG, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By complaint filed on June 11, 1984, the Division of Gaming Enforcement (Division) sought to revoke respondent's casino employee license (No. 20225-21) alleging that the following conduct by respondent was inimical to the policy of the Casino Control Act and Casino Operations:

1. Respondent was indicted on or about April 5, 1984, by the Atlantic County Grand Jury charging him with violations of New Jersey Criminal

Statutes relating to firearms, specifically, N.J.S.A. 2C:39-10 and N.J.S.A. 2C:58-3(a) (unlawful purchase of firearms). At the time of the filing of the complaint, the matter was awaiting a trial date.

2. On or about February 12, 1984, respondent was arrested and charged with possession of a controlled dangerous substance (marijuana under 25 grams), in violation of N.J.S.A. 24:21-20(4)(c), and possession of narcotic paraphernalia, in violation of N.J.S.A. 24:21-47. At the time of the filing of the complaint, the matter was awaiting presentation to the grand jury.
3. On or about March 1, 1984, respondent was indicted by the Atlantic County Grand Jury charging him with possession of a rifle without an identification card in violation of N.J.S.A. 2C:39-5(c)(1). At the time of the filing of the complaint, that matter was awaiting a trial date.
3. On or about March 27, 1984, respondent was indicted by the Atlantic County Grand Jury charging him with burglary and terroristic threats in violation of N.J.S.A. 2C:18-2 and 2C:12-3. At the time of the filing of the complaint, that matter was awaiting a trial date.

The complaint further alleges that a violation of N.J.S.A. 2C:18-12 is per se a disqualifying offense pursuant to N.J.S.A. 5:12-86(c) and that N.J.S.A. 5:12-86(g) permits the Casino Control Commission to deny a license to an applicant based on the commission of certain offenses which have not or may not be prosecuted under the criminal laws of this state.

By letter dated July 13, 1984, Sal B. Daidone, Esquire, requested a hearing on the charges set forth in the complaint.

On July 11, 1984, the Division filed an application before the Casino Control Commission to suspend respondent's casino employee license. By order dated August 6, 1984, the Casino Control Commission granted a request by the Division to withdraw the application for suspension, without prejudice. The matter was thereafter transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

By notice dated September 10, 1984, respondent and Mr. Daidone, as well as the Division of Gaming Enforcement, were notified that the matter was being scheduled for a prehearing conference for October 10, 1984, at 10:30 a.m., at the Office of Administrative Law, Trenton, New Jersey. On October 9, 1984, this administrative law judge was notified by the judges' transmittal sheet that this matter had been withdrawn prior to the prehearing date. Nevertheless, Deputy Attorney General Paul Vagianos appeared on behalf of the Division on October 10, 1984, unaware that a request to withdraw the matter had been made. Mr. Vagianos had not consented to the withdrawal of the matter and telephoned Mr. Daidone's office and was informed that Mr. Daidone was in trial and respondent was in California. Deputy Attorney General Vagianos left a message with Mr. Daidone's secretary that the matter would be listed as abandoned.

By letter, dated October 15, 1984 (copy attached), respondent and his attorney were informed that respondent's request for a hearing would be abandoned unless he submitted in writing within ten days of the date of the letter, verification of illness or unforeseen emergency on the prehearing date. On October 29, 1984, the Office of Administrative Law received a letter from respondent, which enclosed a notice, dated October 9, 1984, from the Office of Administrative Law addressed to John J. Carpenter stating that the Office of Administrative Law was notified by Fern Iannettoni, Esquire, that the matter had been withdrawn (copy of respondent's letter and October 9, 1984 notice are attached). No copy of this Notice of Withdrawal had been provided to the administrative law judge prior to the prehearing date.

I **CONCLUDE** that respondent's failure to appear was justified since he received notification that the matter was withdrawn and that there would be no further hearings related to this case.

It is **ORDERED** that this matter shall be referred to the Casino Control Commission for such administrative disposition as the Casino Control Commission deems appropriate based upon the circumstances of this case.

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

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

December 5, 1984  
DATE

Valerie H. Armstrong, ALJ  
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

Dec 6, 1984  
DATE

Harriet Counsel  
CASINO CONTROL COMMISSION  
Harriet Counsel

Mailed to Parties:

DEC 10 1984  
DATE

Ronald J. Parker/pho  
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS

None

OFFICE OF  
ADMINISTRATIVE  
FILE

OCT 29 5 52 PM '84

October 23, 1984

RE: John J. Carpenter  
OAL DKT/ NO # C.C.C. 5984.84  
84-223

Dear Sir:

Enclosed is copy of letter dated October 9, 1984

received before hearing on October 10th.

State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW  
185 WASHINGTON ST.  
NEWARK, NEW JERSEY 07102



OAL DOCKET NO.: CCC 5004-00  
AGENCY REF NO.: 00-723  
NAME OF AGENCY: CASINO CONTROL COMMISSION  
JUDGE: WASTR, JEFF

**NOTICE OF WITHDRAWAL**

.....  
(CASE TITLE)  
STATE VS.  
CARPENTER, JOHN J.  
.....

JOHN J. CARPENTER  
• 1109 EAST SHORE DRIVE  
• BRIGANTINE, N.J. 08203

THE OFFICE OF ADMINISTRATIVE LAW HAS BEEN NOTIFIED BY  
FERN IANNITTONY (ATTORNEY)  
THAT THE ABOVE CASE HAS BEEN WITHDRAWN.  
THEREFORE, THERE WILL BE NO FURTHER HEARINGS RELATED TO THIS CASE.

DATE: 10/09/94

*Ronald I. Parker*  
RONALD I. PARKER, DEPUTY DIRECTOR AND  
ADMINISTRATIVE LAW JUDGE



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

RONALD L. PARKER  
ACTING DIRECTOR  
ADMINISTRATIVE LAW JUDGE

185 WASHINGTON STREET  
NEWARK, NEW JERSEY 07102  
(201) 648-6003

CN 09, 88 EAST STATE STREET  
TRENTON, NEW JERSEY 08625  
(609) 292-9104

John J. Carpenter  
1109 East Shore Drive  
Brigantine, N.J. 08203

RE: ABANDONED CASE - OAL DKT. NO.# C.C.C. 5984.84  
84-223

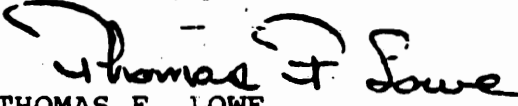
Dear Mr. Carpenter:

Pursuant to your request, a prehearing was scheduled on Oct. 10, 1984, at the Office of Administrative Law in Trenton, New Jersey. The time and place of this prehearing was indicated in our notice to you dated September 10, 1984.

We have been advised that you failed to appear for the scheduled prehearing without prior notice. A representative of the Div. of Gaming was present as arranged, to participate in the prehearing.

We will, therefore, consider your request for a hearing to have been abandoned unless we receive from you, in writing, within the next ten (10) days either verification of the fact that you were ill on the day of the scheduled prehearing or were unable to appear due to an unforeseen emergency. A copy of your response must be filed with your adversary listed below.

Very truly yours,

  
THOMAS F. LOWE  
ASSISTANT DIRECTOR  
JUDICIAL MANAGEMENT  
AND CLERK

DATE: OCT 15 1984

TFL:dh

CC: DENNIS DALY, SENIOR ASST. COUNSEL  
CASINO CONTROL COMMISSION

PAUL VAGIANOS, DAG.

SAL B. DAIDONE, ESQ.

(OAL - A/12 - 1/21/83)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-117, 85-334  
APPLICATION NO. 55283-21  
REGISTRATION NO. 55821-40  
OAL DOCKET NOS. CCC 4522-85,  
CCC 5609-85

---

APPLICATION OF GERALD CASALE :

FOR A CASINO EMPLOYEE LICENSE :

AND :

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

FINAL ORDER

Complainant, :

v. :

GERALD CASALE, :

Respondent. :

---

A hearing in this matter having been conducted in the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and exceptions by the applicant and a reply to the exceptions by the Division of Gaming Enforcement (DGE) having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 19, 1986,

IT IS on this 18<sup>th</sup> day of April 1986, ORDERED that the initial decision is modified as follows:

1. The Commission finds that the applicant's conduct on October 15, 1981, constitutes a \$100 theft from the Lady Luck Casino and is

equivalent to the criminal offense of theft, in violation of N.J.S.A. 2C:20-9 (fourth degree). The Commission finds this conduct renders the applicant's licensure and continued registration inimical to the Casino Control Act and gaming operations and warrants disqualification pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

2. The Commission rejects any findings concerning rehabilitation as unnecessary in light of the finding that the applicant's conduct constitutes an offense which renders his licensure and continued registration inimical, consistent with the Commission's opinion in Application of Donna Davis for a Casino Key Employee License, Docket No. 85-EA-40 (Commission Decision December 27, 1985).
3. The Commission rejects the ALJ's recommendation that the applicant has not shown any reason for waiver of the disqualification as to his casino hotel employee registration pursuant to N.J.S.A. 5:12-91(e) of the Act.

IT IS FURTHER ORDERED that the application of Gerald Casale for a casino employee license is denied based upon the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that, notwithstanding the above, the disqualification of Gerald Casale is waived pursuant to N.J.S.A. 5:12-91(e) in the interests of justice and for good

cause shown in order to permit him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Gerald Casale, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NOS. CCC 5609-85  
and CCC 4522-85 (Consolidated)  
AGENCY DKT. NOS. 85-334  
and 85-EA-117

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

Petitioner,

v.

**GERALD CASALE,**

Respondent,

and

**GERALD CASALE,**

Petitioner,

v.

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

Respondent.

---

**Luther G. Anderson, Esq.,** on behalf of Gerald Casale (Horn, Kaplan, Goldberg,  
Gorny & Daniels, attorneys)

**Joanne Cocchiola,** Deputy Attorney General, on behalf of the Division of Gaming  
Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 27, 1985

Decided: January 9, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 1, 1985, seeking the revocation of the casino hotel employee registration of Gerald Casale (respondent) (CCC 5609-85), and the recommendation of the Division, dated June 3, 1985, that Mr. Casale not be licensed as a casino employee (craps floorperson). Mr. Casale requested hearings regarding both matters and the cases were transmitted to the Office of Administrative Law for determinations as contested cases, pursuant to N.J.S.A. 52:14F-1 et seq.

#### PROCEDURAL HISTORY

At the prehearing conference, which took place on April 20, 1985, the parties agreed that the two matters should be consolidated for the hearing, and I issued a consolidation order on September 30, 1985.

Also, at the prehearing conference, the parties disagreed as to whether rehabilitation, pursuant to the provisions of N.J.S.A. 5:12-90h and/or 5:12-91d, should be listed as an issue in this matter, and I requested that briefs be submitted, prior to the hearing, regarding the applicability of these statutes.

Deputy Attorney General Joanne Cocchiola, on behalf of the Division, both orally at the prehearing conference and in a written memorandum, argued that the rehabilitation statutes are not applicable by law in this matter since the Division has raised only the issues of whether the licensure or registration of Mr. Casale would be inimical pursuant to N.J.S.A. 5:12-86c(4), and whether Mr. Casale can show his reputation for good character, honesty and integrity as required for licensure pursuant to N.J.S.A. 5:12-90b.

Luther G. Anderson, Esq., on behalf of the respondent, argued that he should be given the opportunity to show that Mr. Casale has been rehabilitated and that rehabilitation is a valid issue in the consolidated matter. Mr. Anderson cited a number of similar cases decided by the Commission, which involved an inimical offense and where rehabilitation was recognized to be an appropriate issue; i.e., In the Matter of the Application of Carroll A. Johnson, OAL DKT. CCC 4284-79 (June 2, 1980), State of New Jersey v. Jackson, OAL DKT. CCC 2098-83 (March 30, 1984).

After reviewing the briefs and arguments of the parties, I CONCLUDED that rehabilitation should not be listed as a separate issue; however, I recognized that it has been established by the Commission that the determination of whether or not a criminal offense is inimical encompasses both a consideration of the nature of the offense, including any aggregating factors, and a consideration of mitigating and rehabilitating factors. By letter dated November 6, 1985, I amended the prehearing order and determined that the issues in this matter are:

- A. Whether the respondent's alleged criminal activities would render his continued registration and/or the granting of licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4); specifically,
  - (1) The Division has the burden of proof as to the alleged criminal activities, convictions and any aggregating factors.
  - (2) The respondent has the burden of proof as to any mitigation and/or rehabilitation. Proof of rehabilitation shall include, but is not limited to, the factors set forth in N.J.S.A. 5:12-90h and 5:12-91d.
- B. Whether Mr. Casale can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee pursuant to N.J.S.A. 5:12-90b.
- C. Whether in the interest of justice, the Commission should waive any disqualifications as to registration pursuant to N.J.S.A. 5:12-91e.

The hearing in this matter took place on November 14, 1985, and I agreed to keep the record open for receipt of briefs at Mr. Anderson's request. Thereafter, Mr. Anderson changed his mind regarding the submission of a brief, and the record in this matter closed on November 27, 1985.

FACTUAL FINDINGS

At the hearing, Mr. Casale testified that he was born on October 16, 1954, in Newark, New Jersey, and is a high school graduate. Since Mr. Casale attended a non-recognized New York gaming school, he was not eligible to work as a dealer in Atlantic City. The respondent decided to go to Las Vegas for job experience and then return to New Jersey and get a job in an Atlantic City casino.

In June 1979, Mr. Casale got his first job in Las Vegas as a craps dealer at the Lady Luck Casino. Thereafter, he was promoted to box person and then to pit host. Mr. Casale worked for this casino until October 15, 1981.

Spencer W. Lemmon, security chief of the Lady Luck Casino, stated that he was watching Mr. Casale from the "eye in the sky" observation area on the evening of October 15, 1981, and he saw Mr. Casale palm a \$100 bill and place it into his vest pocket instead of putting the money into the slot after he gave the customer a \$100 chip. When he saw this, Mr. Lemmon called Perry Sackowitz, the craps pit boss, and had him remove Mr. Casale from the craps table and detain him until Mr. Lemmon arrived on the casino floor. Mr. Lemmon then took a rolled \$100 bill from Mr. Casale's vest pocket.

Mr. Casale admitted he took the \$100, and he was questioned by Mr. Lemmon, Thomas M. Murphy, who was the casino manager at the time, and a Las Vegas police officer (P-3). No criminal charges were filed against Mr. Casale.

While he was working for the Lady Luck Casino, Mr. Casale married and had a son. About three months before the October 15, 1981 incident, Mr. Casale and his wife separated. As of October 15, 1981, Mr. Casale was living with a girlfriend and was depressed because of his matrimonial problems and his forthcoming birthday.

After the incident, Mr. Casale's girlfriend tried to cheer him up and they got "married" even though he was not divorced from his first wife. A charge of bigamy was filed against Mr. Casale on December 9, 1981, and the matter was dismissed on November 8, 1982, after Mr. Casale agreed to divorce his first wife (P-8).

Mr. Casale was unemployed for eleven months after the October 15, 1981 incident, and during this time he was arrested for shoplifting, specifically for taking a jacket valued at \$34 on January 4, 1982 (P-4). Mr. Casale was found guilty and fined \$50 on April 20, 1982 (P-5). Also, on March 22, 1982, Mr. Casale took some clothing valued at \$58 and was again arrested for shoplifting (P-6). He entered a plea of guilty and was fined \$75 on August 12, 1982 (P-7).

Due to purchases made by both his wives using his credit cards, Mr. Casale filed for bankruptcy on September 3, 1982, and was granted a discharge of debts on September 13, 1984.

After the period of unemployment, Mr. Casale worked for a brief time at the Hacienda Casino in Las Vegas and was fired on July 10, 1982, when he took a day off for a personal matter. Mr. Casale then worked for Foxy's Firehouse Casino in Las Vegas from September 1982 to June 1983. Initially, he was a craps dealer and was then promoted to a relief floor person. Mr. Casale was terminated by Foxy's Firehouse Casino because of a change in personnel. Thereafter, Mr. Casale worked for the Nevada Palace Casino as a craps dealer and part-time blackjack dealer between July 1983 and May 1984. Mr. Casale quit this position to move back to New Jersey.

At no time while he was in Las Vegas was Mr. Casale's Nevada casino license ever suspended or revoked.

When he returned to New Jersey, Mr. Casale got a job as a parking attendant at the Knife and Fork Restaurant in Atlantic City, and shortly thereafter he got a job as a parking attendant at the Golden Nugget Casino and Hotel (Golden Nugget). Mr. Casale worked at the Golden Nugget for nine months and he received a good work-evaluation (R-3). Mr. Casale was terminated by his supervisor, Robert Levitt in April 1985 for not following Golden Nugget's rules and regulations (P-10). His termination was due to an incident wherein an undercover employee of the casino gave Mr. Casale \$5 for a parking ticket and Mr. Casale's cash register record showed the ticket as a free-parking ticket.

Mr. Casale was not terminated by the Golden Nugget because of theft nor was he accused of stealing by the casino. According to Mr. Casale, it was his practice to accept several parking tickets before entering and placing them into the cash register. He indicated that it was possible that he made an error in identifying which parking ticket was paid for and which was free because the customer had a free-parking identification.

John A. Murphy stated that as the acting manager of the parking department at the Golden Nugget, he was Mr. Casale's supervisor for the first seven months of the respondent's employment. Mr. Murphy considered Mr. Casale to be an excellent worker who had no shortages, and who was a person of good character, honesty and integrity. Mr. Murphy admitted that he was asked to resign because his supervisor blamed him for the parking turmoil that occurred on January 1, 1985. Mr. Murphy was replaced by Mr. Levitt.

As of June 2, 1985, Mr. Casale has been employed by Trump's Castle Hotel and Casino as a valet attendant and on November 6, 1985, he was evaluated to be generally a good employee (R-4).

Mr. Casale, as part of his application for a casino employee license submitted a Personal History Disclosure Form-2A, and in this form he revealed the two shoplifting offenses and the bigamy charge but made no mention of the October 15, 1981 incident at the Lady Luck Casino (P-2).

At the time of the hearing, Mr. Casale was separated from his second wife. Also the respondent stated that he has now straightened out his life and would like to get a casino employee license so that he can get a good job with the casino industry.

Jack D'Innocenzio and Henry Pisano, both of whom are licensed and employed by the Atlantic City casino industry, stated that they have both known Mr. Casale for about 20 years as personal friends and that Mr. Casale is a person of good character, honesty and integrity. Both testified that Mr. Casale's criminal actions in Las Vegas were mistakes and unusual actions by him, which were due, in part, to the fact that it was the first time he was on his own and separated from his family and friends. Mr. Pisano went to Las Vegas to urge Mr. Casale to return to New Jersey and left him there upon the respondent's assurance that he would return to New Jersey when he straightened out his problems.

Nicholas T. Casale, a police officer and the respondent's brother, testified that the respondent is ashamed of what happened in Nevada and described his brother's actions there as uncharacteristic behavior. Mr. Nicholas Casale helped his brother with his application by getting a copy of his police record from Las Vegas.

I FIND that the facts as heretofore stated are not in dispute; however, there are several factual disputes in this matter.

Mr. Casale stated that on October 15, 1981, he admitted to Mr. Lemmon that he had taken the \$100 bill and told him that this was the only time that he had taken money. Although he was aware that it was the Lady Luck Casino's normal practice to fire a person in such a situation, Mr. Casale stated that he was given a break by Mr. Lemmon and Mr. Murphy and was allowed to resign. Mr. Casale stated that he signed a statement admitting that he had taken the \$100 and was resigning from his position but he did not know what happened to this statement. In addition, Mr. Casale denied that he signed a notice acknowledging that he was terminated by the casino (P-1), although he admitted that the signature on the notice looked like his writing. Mr. Casale stated that he talked to a police officer about the incident on October 15, 1981, but denied that he was arrested or charged with any crime.

Mr. Lemmon stated that on October 15, 1981, he told Mr. Casale that he was fired and that he took the respondent's identification card. After the incident, Mr. Lemmon left a note on Gina Brown's desk indicating that he had terminated the employment of Mr. Casale because he was caught stealing and that he spoke to her about the matter on the following day. According to Mr. Lemmon, the signatures on the notice of termination are those of Mr. Casale and Ms. Brown (P-1).

After confronting him regarding the incident, Mr. Lemmon stated that Mr. Casale admitted that he had taken the \$100 on October 15, 1981 and that he had taken money one or two times previously.

Mr. Murphy confirmed the fact that Mr. Casale was fired on October 15, 1981, and he denied that Mr. Casale was given the opportunity to resign. According to Mr. Murphy, the respondent stated to him that it was the only time he had taken any money. Mr. Murphy was aware of a prior complaint made by a customer who had stated that the respondent had taken money and that Mr. Lemmon had conducted an investigation regarding the complaint. No disciplinary action was taken against the respondent as a result of this complaint.

Both Mr. Lemmon and Mr. Murphy recalled hearing about a statement signed by Mr. Casale; however, neither of them recalled seeing the statement or knowing what happened to this statement. Mr. Lemmon stated that it was the normal procedure to try to get the accused employee to sign a statement.

Also, Mr. Lemmon and Mr. Murphy stated that there was no established policy regarding the filing of criminal charges in such cases. Both of them felt that they had given Mr. Casale a break by not filing a criminal charge and Mr. Murphy stated that his boss was upset with him regarding this decision.

In attacking the credibility of Mr. Lemmon and Mr. Murphy, Mr. Anderson pointed out that both had testified that Mr. Casale had been taken to the machine shop located adjacent to the casino on October 15, 1981, and that the Division's summary of an interview with Mr. Lemmon stated that Mr. Casale had been taken to Mr. Murphy's office (R-1). Both Mr. Lemmon and Mr. Murphy, who had been sequestered so that they did not hear each other's testimony, reiterated that Mr. Casale had been taken to the machine shop since it was the closest private office and that this was the place that they normally took an employee accused of a theft. They both indicated that Mr. Casale had not been taken to Mr. Murphy's office since it is located in another building.

During his testimony, Mr. Lemmon admitted that he was convicted in 1977 of federal tax invasion and was put on probation for one year. In the Division's summary of the interview with Mr. Lemmon, it is noted that Mr. Casale told Mr. Lemmon that the October 15, 1981 incident was the first and only time he took any money (R-1). Mr. Anderson stated that this statement was in conflict with Mr. Lemmon's testimony that Mr. Casale had admitted prior incidents.

Mr. Anderson also cross-examined both Mr. Murphy and Mr. Lemmon as to why they had agreed to testify in this matter. Mr. Lemmon indicated that he was aware that he did not have to honor the subpoena issued by the Division but that he was advised by his supervisor to cooperate with the Division. Mr. Murphy indicated that he was not aware that he did not have to appear because of the subpoena, and that his boss was upset that he had to go to New Jersey to testify. It was established that the Division will pay both witnesses' expenses for coming to and staying in New Jersey for the hearing.

In addition, there is a factual dispute as to what Mr. Casale told Augustin Garcia, the Division's employee who was assigned to investigate Mr. Casale's application for a casino employee license, about the October 15, 1981 incident. Mr. Garcia testified that he initially learned about the incident from the Las Vegas Police Department and, when confronted, Mr. Casale stated that he was accused by Mr. Lemmon of the theft but that Mr. Lemmon had no proof. Mr. Casale told Mr. Garcia that he had talked to a police officer regarding the incident but denied that he was arrested or that any criminal charges had been filed. Mr. Casale indicated that he resigned in order to avoid any further problems regarding the matter. Mr. Garcia stated that the respondent denied that he had done anything wrong on October 15, 1981.

It is Mr. Garcia's opinion that Mr. Casale should have revealed the October 15, 1981 incident in Section 16 of his Personal History Disclosure Form - 2A (P-2).

Mr. Casale stated that he did not list the October 15, 1981 incident since he had not been arrested and since no formal charges were brought against him. Mr. Casale denied telling Mr. Garcia that he did not steal anything and he had no recollection of telling him that Mr. Lemmon had no proof. According to Mr. Casale, if he said there was no proof, he meant that he was not arrested.

Based on the testimony of the witnesses as well as my observations of their demeanor, I **FIND** Mr. Lemmon and Mr. Murphy to be credible witnesses and that any ambiguity or inconsistency as to their testimony relates to insignificant facts. Further, I **CONCLUDE** that their testimony cannot be impeached by the summary report prepared by a Division's employee who did not testify at the hearing. Therefore, I **FIND** that Mr. Casale was terminated on October 15, 1981, and was not given the opportunity to resign, notwithstanding the fact that he probably signed a statement admitting that he had taken the \$100. Further, I **FIND** that there was insufficient proof to establish any other incident of taking money by Mr. Casale at the Lady Luck Casino.

In addition, I **FIND** that Mr. Garcia was a credible witness and I accept his testimony that Mr. Casale denied any wrongdoing when initially confronted with the October 15, 1981 incident.

CONCLUSIONS OF LAW

On behalf of Mr. Casale, Mr. Anderson argued that during a short period of time while he was in Las Vegas, Mr. Casale committed a number of minor criminal acts which were uncharacteristic behavior, and in the four-year period thereafter he has not had any other criminal involvement and has taken affirmative steps to rehabilitate himself. Mr. Anderson noted that Mr. Casale accepted whatever jobs were available upon his return to New Jersey and that the evaluation reports of both the Golden Nugget and Trump's Castle Hotel and Casino indicate that he has been a good employee. As to his being fired from the Golden Nugget, Mr. Anderson stated that it was due to an accounting error and that there was no showing of any shortage of funds or any theft by Mr. Casale.

Deputy Attorney General Cocchiola argued that the Division had shown that Mr. Casale's registration and licensure would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). She indicated that the admission of the \$100 theft from the casino, an embezzlement offense in Nevada which is similar to N.J.S.A. 2C:20-9, in itself, is an inimical offense since it occurred in a casino. In addition, Mr. Casale was found guilty twice of shoplifting, which are petty larceny offenses in Nevada and are similar to violations of N.J.S.A. 2C:20-1, and was guilty of a bigamy offense, which is similar to N.J.S.A. 2C:24-1, even though there was no conviction. Further, she argued that based on this prior history there is a good possibility that Mr. Casale was also involved in a theft incident while employed by the Golden Nugget. Although none of these crimes are statutory disqualifiers, Ms. Cocchiola indicated that taken together they clearly establish that Mr. Casale should not be licensed nor registered and, further, that he lacks the necessary good character, honesty and integrity necessary for licensure pursuant to N.J.S.A. 5:12-89b. Lastly, Ms. Cocchiola argued that Mr. Anderson had not shown any reason for waiving any disqualification as to registration pursuant to N.J.S.A. 5:12-91e.

Ms. Cocchiola also noted that Mr. Lemmon and Mr. Murphy were credible witnesses as to the October 15, 1981 incident and that Mr. Casale's witnesses were close relatives and friends who were obviously prejudiced in his favor.

Having reviewed the record and the legal arguments of the parties, I **CONCLUDE** that the registration and licensure of Mr. Casale would be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4). Although Mr. Casale's criminal activities in Las Vegas occurred between three to four years ago, because of the number of offenses and the seriousness of the thief offense, in a casino, I **CONCLUDE** that insufficient time has elapsed to show that Mr. Casale has been rehabilitated. Further, the series of criminal offenses in Las Vegas, as well as Mr. Casale's less than candid statements to Mr. Garcia regarding the October 15, 1981 incident, lead me to **CONCLUDE** that Mr. Casale has not shown by clear and convincing evidence that he is a person of good character, honesty and integrity, as required for licensure pursuant to N.J.S.A. 5:12-90b.

Further, I **CONCLUDE**, based on my reading of Section 16 of the Personal History Disclosure Form - 2A, that Mr. Casale did not have to list the October 15, 1981 incident; however, he should have provided the information when questioned by Mr. Garcia.

Also, I **CONCLUDE** that the respondent has not shown any reason for the waiver of disqualifications, pursuant to N.J.S.A. 5:12-86c(4), as to registration as provided by N.J.S.A. 5:12-91e.

Therefore, I **ORDER** that the registration of Gerald Casale be **REVOKED** and that the casino license application of Gerald Casale 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 Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

January 9, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

January 10, 1986  
DATE

Harvey D. Smith  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 14 1986  
DATE

Ronald S. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ks/E

**EXHIBITS ADMITTED INTO EVIDENCE:  
FOR THE DIVISION OF GAMING ENFORCEMENT:**

- P-1      **Lady Luck Casino Notice of Termination of Employment for Gerald Casale, dated October 15, 1981**
  
- P-2      **Personal History Disclosure Form-2A submitted by Gerald Casale on July 9, 1985, to the Casino Control Commission**
  
- P-3      **Affidavit of Donald R. Dibble, a police officer of the Las Vegas Police Department**
  
- P-4      **Clark County Misdemeanor Complaint filed against Gerald Casale, dated January 4, 1982**
  
- P-5      **Judgment of the Justice Court of Las Vegas Township, Nevada, dated April 20, 1982**
  
- P-6      **Clark County Misdemeanor Complaint filed against Gerald Casale, dated March 6, 1982**
  
- P-7      **Judgment of the Justice Court of Las Vegas Township, Nevada, dated August 12, 1982**
  
- P-8      **Case disposition of a bigamy matter involving Gerald Casale, record closed on November 8, 1982**
  
- P-9      **Letter from Deputy Attorney General Joanne Cocchiola to Spencer Lemmon, dated August 29, 1985**
  
- P-10     **Golden Nugget Casino Hotel Official Notice of Unsatisfactory Performance by Gerald Casale, dated April 19, 1985**

**FOR THE RESPONDENT:**

- R-1        Division of Gaming Enforcement Report of interview with Spencer Lemmon
- R-2        Division of Gaming Enforcement Report of interview with Thomas Murphy
- R-3        Golden Nugget Casino Hotel Performance Report regarding Gerald Casale,  
dated October 24, 1984
- R-4        Trump's Castle Hotel and Casino Employee Performance Evaluation of Gerald  
Casale, dated November 6, 1985

**WITNESSES**

**FOR THE PETITIONER:**

Spencer W. Lemmon  
Thomas M. Murphy  
Augustine Garcia

**FOR THE RESPONDENT:**

Gerald Casale  
John A. Murphy  
Jack D'Innocenzio  
Henry Pisano  
Nicholas T. Casale

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-89  
OAL DOCKET NO. CCC 3766-85  
REGISTRATION NO. 44540-40

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

FINAL ORDER

Complainant,

v.

JOSEPH W. CASHMAN,

Respondent.

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A hearing in this matter having been conducted in the Office of Administrative Law (OAL); and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 30, 1985,

IT IS on this <sup>24</sup> day of APRIL 1986, ORDERED that the initial decision is modified as follows:

1. The respondent's disqualifying conviction on April 16, 1984, was for the offense of distribution of controlled dangerous substance contrary to N.J.S.A. 24:21-19(a)(1), rather than possession with intent to distribute.
2. The statutory basis for the respondent's disqualification is N.J.S.A. 5:12-86(c)(3) rather than N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Joseph W.

Cashman is dismissed based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Joseph W. Cashman, the Division of Gaming Enforcement and the Office of Administrative Law.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3766-85

AGENCY DKT. NO. 85-89

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

Petitioner,

v.

**JOSEPH W. CASHMAN,**

Respondent.

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

**Joseph W. Cashman, respondent, pro se**

Record Closed: September 5, 1985

Decided: September 16, 1985

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Joseph W. Cashman, respondent. The Division alleged that Mr. Cashman had committed various criminal violations, for which the Division seeks revocation of the respondent's casino hotel employee registration, No. 44540-44, pursuant to Section 129 of the Casino Control Act (Act). The respondent contends that he is rehabilitated pursuant to Section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 6, 1985. The respondent requested a hearing on June 10, 1985. On June 13, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 6, 1985, and the matter was scheduled for hearing. The matter was heard on September 5, 1985, at the Galloway Township Municipal Building, Cologne, New Jersey.

FINDINGS OF FACT

Mr. Cashman is 26 years of age and has resided in the New Jersey/Delaware area for his entire life. He is married and resides with his wife in Ventnor, New Jersey.

On January 17, 1983, Mr. Cashman was arrested and charged with a violation of N.J.S.A. 2C:12-1a(3), simple assault; N.J.S.A. 2C:33-2a(1), disorderly conduct, and N.J.S.A. 2C:12-3, terroristic threats. On that day, respondent threatened a cashier in a 7-11 store with a knife. The respondent pled guilty to the charges.

On November 22, 1983, the respondent was arrested and charged with possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19(a)(1), possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1); conspiracy to distribute a controlled dangerous substance in violation of N.J.S.A. 24:21-24, and distribution of a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1). On January 10, 1984, an Atlantic County Grand Jury returned an indictment as to all counts. On January 24, 1984, defendant entered a plea of not guilty to the indictment. On April 16, 1984, the respondent retracted a plea of not guilty and entered a plea of guilty to distribution of a controlled dangerous substance. On June 8, 1984, the respondent was sentenced to probation for a period of 18 months. In addition, respondent was required to continue drug rehabilitation.

After Mr. Cashman's arrest on November 22, 1983, respondent's employer, Resorts International Casino Hotel, referred respondent to Frederick A. Earle, Ph.D., CAE, Therapeutic Intervention Center, Absecon, New Jersey. The Therapeutic Intervention Center is a licensed psychological service center specializing in compulsive

behavior disorders. Dr. Earle possesses a Ph.D. degree, is a certified alcoholism counselor and was duly qualified to testify as an expert on compulsive behavior disorders. Mr. Cashman was referred to Dr. Earle on December 6, 1983, and on December 8, 1983, Mr. Cashman was admitted to the White Deer Treatment Center in Bushmill, Florida, diagnosed as drug dependent and suffering from alcohol abuse.

On January 22, 1984, the respondent was discharged from the White Deer Treatment Center and advised to attend 90 Narcotics Anonymous (NA)/Alcoholics Anonymous (AA) meetings in 90 days. The respondent attended 130 meetings in 90 days.

After his discharge from White Deer Treatment Center, Dr. Earle treated Mr. Cashman weekly from January through October 1984 and now treats respondent on a monthly basis. Dr. Earle testified that Mr. Cashman attends three NA meetings a week and AA meetings every other week.

Mr. Cashman is currently Narcotics Anonymous shore coastal area service chairperson and has been instrumental in forming NA chapters in both Southern States Correctional Facility and the Cape May County Jail.

Mr. Cashman readily admits to a past dual addiction to narcotics and alcohol. However, the respondent has remained "clean" of narcotic and alcoholic substances for going on two years. The one exception was the ingestion of one drink of alcohol taken in mid-February 1984.

Robert H. Edwards, retired Master Chief Petty Officer (MCPO), NA alternate regional service representative, has observed Mr. Cashman at least twice weekly for approximately one year. Mr. Edwards retired from the Coast Guard as a drug and alcohol abuse counselor in May 1985. It is Mr. Edwards' opinion that Mr. Cashman has remained free of drug and alcohol dependence. He feels that respondent has changed from a sullen, angry man to one with a positive, constructive attitude who has "chosen to work to change himself and structure his own life."

From July 17, 1982 through June 1985, respondent was employed as a food service waiter by Resorts International Casino Hotel. In June 1985 respondent was hired by the Claridge Hotel Casino with the promise of promotion. When the promotion was not forthcoming within two months, respondent resigned his position with the Claridge. The

respondent maintained a positive work record in the casinos. Respondent is currently employed as a limousine driver by Mr. Bernard Somers, a cousin. Mr. Somers related that Mr. Cashman essentially operates the limousine service and is extremely reliable.

William Cashman (father), Annette Cashman (mother), Dorothy Meil (aunt) and Susan Cashman (wife) all remarked about the profound changes they have observed in respondent. They feel that respondent's active participation in NA and AA and respondent's unbounded devotion to helping others "kick the habit" amply demonstrate his rehabilitation.

Mr. Cashman also testified as to his rehabilitation. He admits his sordid past, indicating that his main goal at one point was to become a member of the Pagan motorcycle gang. The program at White Deer Rehabilitation Center was a turning point in his life. Instead of a negative outlook, he currently exhibits more confidence in himself and revels in helping others. Involvement with NA and AA gives purpose and direction to his existence, which apparently has carried over to other members of his family. This confidence was also demonstrated at the hearing. The manner and order in which respondent presented the witnesses and evidence was impressive. It demonstrated thoughtful planning and thoroughness.

Respondent also presented references from his probation officer (R-3), from his NA sponsor, Phillip Vassallo and two other individuals (R-6).

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

#### DISCUSSION OF LAW AND CONCLUSION

##### (A) N.J.S.A. 5:12-86c(1)

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's conviction on April 16, 1984, of a violation of N.J.S.A. 24:21-19a(1), possession of CDS with intent to

distribute, is a statutory disqualifier listed under section 86c(1) of the Act. This contention is accurate.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 24:21-19a(1) disqualifies him from being a registrant, pursuant to Section 86c(1) of the Act.

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

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

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

First, Mr. Cashman is registered as a hotel employee and in the past has been employed as a food service waiter in the casinos. As such, he would have no responsibilities for actual gaming activities and would have limited contact with patrons of the casino.

Second, the respondent was convicted of the following:

1. On April 16, 1984, a violation of N.J.S.A. 24:21-19a(1), possession of CDS with intent to distribute;
2. On April 21, 1983, violations of N.J.S.A. 2C:12-1a(3), N.J.S.A. 2C:33-2a(1) and N.J.S.A. 2C:12-3, simple assault, disorderly conduct and terroristic threats, respectively.

Under Section 86c(1) of the Act, the possession with intent to distribute is a statutory disqualifier. Each of the enumerated incidents involved the use of alcohol and/or drugs by the respondent. Each of the incidences of misconduct was serious.

Third, the respondent readily admits to a long history of drug and alcohol abuse. However, in light of respondent's extensive rehabilitative treatment efforts, I am persuaded that respondent's misconduct has been mitigated to a significant degree.

Fourth, the respondent committed the offenses on January 17, 1983 and November 22, 1983. The last offense occurred approximately two years ago. Respondent's probation terminates in December 1985.

Fifth, the respondent committed the offenses at age 24. It is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of two separate offenses over a period of 10 months. Respondent attributes his misconduct to his extensive use of alcohol and drugs.

Seventh, there were no apparent social conditions which contributed to the offenses.

Eighth, the respondent has demonstrated extensive rehabilitation. He admitted his misconduct and pled guilty to the charges. Further, he is satisfactorily completing the requirements of his probation (R-3, R-4 and R-5). Further, the respondent has undergone continual counseling for treatment of drug and alcohol abuse and his attitude regarding such treatment is remarkable. His significant involvement with

NA and AA lead me to believe that the respondent is truly drug and alcohol-free. The respondent has established a positive work record and has recently married. He appears to have a support group of family and friends that have all testified as to the changes noticeable in respondent. The manner in which respondent conducted the hearing is another indication of respondent's rehabilitation.

I am persuaded that the respondent has met his statutory burden to establish his rehabilitation beyond clear and convincing evidence. It is apparent that respondent has a complete commitment to a total abstinence from misconduct and from the use of alcohol and drugs. Further, the respondent's rehabilitative efforts have been nothing short of amazing. It has been observed that addicts tend to be the greatest "con" artists in the world; however, after observing Mr. Cashman's demeanor, the support received from family and friends and the energy Mr. Cashman devotes to helping others in NA and AA I am persuaded that Mr. Cashman has established, by clear and convincing evidence, his rehabilitation.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation pursuant to Section 91d of the Act.

**ORDER OF DISPOSITION**

It is **ORDERED** that the petition of the Division to revoke the casino employee registration of Joseph W. Cashman be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

9-16-85  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

ml/E

DOCUMENTS IN EVIDENCE

For the petitioner:

- P-1 Evesham Township Police Department Investigation report, dated January 17, 1983
- P-2 Atlantic City Police Department investigation report, dated November 22, 1983
- P-3 Atlantic County Grant Jury Indictment Number 1-23-84-13, dated January 10, 1984
- P-4 Judgment of Conviction, dated February 1, 1985

For the respondent:

- R-1 White Deer Treatment Center discharge summary, dated January 19, 1984
- R-2 Minutes of NA Shore Coastal area service conference, dated August 4, 1985
- R-3 Probation report from Derek L. Hall, Atlantic County Probation officer, dated July 17, 1985
- R-4 Conditions for adults on probation
- R-5 Contract agreement between client and TASC, dated February 7, 1984
- R-6 Reference letters

WITNESS LIST

For the petitioner:

None

For the respondent:

Frederick A. Earle, Ph.D., CAE

Robert H. Edwards, MCPO/RET

Bernard Somers

Dorothy Meil

William Cashman

Annette Cashman

Susan Cashman

Joseph W. Cashman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-76  
OAL DOCKET NO. CCC 1315-85  
LICENSE NO. 23679-21

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

Complainant, : :

v. :

EDWARD P. CATALANO, : :

Respondent. : :

---

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of February 5 and February 11, 1986,

IT IS on this 13<sup>th</sup> day of February 1986, ORDERED that this matter is remanded to the OAL for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated April 23, 1985. Without limiting the scope of the hearing on remand, the Commission desires to have the record expanded to include:

1. The videotape evidence concerning each of the incidents alleged to constitute a violation of N.J.S.A. 5:12-113;

2. The testimony of Detective Richard Loufik with respect to each of the incidents investigated by him which is alleged to constitute a violation of N.J.S.A. 5:12-113;
3. Evidence concerning the disposition of the criminal complaint brought against the respondent for violation of N.J.S.A. 5:12-113;
4. Evidence concerning the respondent's successful completion of a Pre-trial Intervention Program; and
5. Any other evidence concerning the respondent's rehabilitation.

IT IS FURTHER ORDERED that copies of this order of remand be served upon Edward P. Catalano, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1315-85

AGENCY DKT. NO. 84-76

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**EDWARD P. CATALANO,**

Respondent.

---

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

Robert A. Porter, Esq., for respondent (Nathan A. Friedman, attorney)

Record Closed: November 13, 1985

Decided: December 31, 1985

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on March 19, 1984, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 86c and g, 90e and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). This complaint is based upon the respondent's March 6, 1984, arrest on charges of cheating at blackjack, in violation of N.J.S.A. 5:12-113. The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to the allegation that he cheated at blackjack between February 17 and March 6, 1984, h.

committed an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, and his business ability and casino experience, within the meaning of sections 89b(2) and (3) and 90b of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

On April 6, 1984, the respondent filed his Notice of Defense to the complaint of the Division of Gaming Enforcement. By this notice, the respondent requested a hearing and a deferral of the matter pending resolution of the outstanding criminal charges. By order dated April 9, 1984, the Casino Control Commission suspended the respondent's casino employee license pending the final disposition of the complaint.

By letter dated January 25, 1985, counsel for the respondent notified the Casino Control Commission that the criminal charges against the respondent arising from his arrest on March 6, 1984, had been dismissed. On March 8, 1985, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on March 25, 1985. At that time, it was scheduled to be heard on May 9, 1985, but it was necessary to adjourn the matter from that date because of the hospitalization of a witness. The matter was then rescheduled for and heard on September 24, 1985. During the course of the hearing, the parties agreed to submit a stipulation of facts, which stipulation was received on November 13, 1985.

FINDINGS OF FACT

The respondent holds casino employee license no. 23679-21, issued by the Casino Control Commission on February 27, 1981. On March 6, 1984, the respondent was arrested by Detective Richard Loufik, a New Jersey state police detective assigned to the Division of Gaming Enforcement, and charged with cheating at blackjack by setting up winning hands and failing to collect on losing bets, in violation of N.J.S.A. 5:12-113. At the time of his alleged violation, the respondent was engaged in the performance of his duties as a blackjack dealer at Bally's Park Place Hotel and Casino in Atlantic City, New Jersey.

It is undisputed that the respondent applied for admission into the Pre-trial Intervention Program upon the advise of his attorney. Upon the determination of the Division of Criminal Justice that the respondent has not been in collusion with a player, the criminal charges pertaining to the alleged violations were dismissed.

At the hearing in this matter, Detective Loufik testified concerning two video taped incidents which allegedly showed that the respondent did not deal blackjack hands properly on March 2, 1984. At 4:03 p.m. and 5:29 p.m., Patron Louise Marino was playing two hands at the respondent's table. In the opinion of Detective Loufik, the respondent on both occasions improperly dealt a card to the patron's second hand when the card should have been dealt to the first hand.

Patron Louise Marino, a seventy-nine year old resident of Brooklyn, New York, testified at the hearing that she occasionally would sit at the respondent's table because he is very pleasant. She has never met him outside of the casino and she does not know the respondent's last name. She testified in an entirely credible manner that she never had any agreement with the respondent that he would let her win. She also testified credibly that she could not recall the respondent ever dealing her a losing hand and failing to collect her wager.

At the conclusion of the testimony of Detective Loufik and Ms. Marino, the parties agreed that the remainder of the evidence would be presented in the form of a stipulation of facts. Subsequently, the parties submitted the following written stipulation of facts:

1. Edward P. Catalano did violate the rules of the game;
2. There was no compensation or profiteering by Edward P. Catalano in regards to such violations;
3. There was no conspiracy, collaboration, or collusion on the part of Edward P. Catalano to involve anyone else in said violations;
4. There was no solicitation by Edward P. Catalano to involve anyone else in said violation;
5. The violations before the court are isolated incidents, and Edward P. Catalano has an otherwise unblemished record with the casino industry;
6. All criminal charges pertaining to said violations have been dismissed.

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

#### CONCLUSIONS OF LAW

Pursuant to § 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. A licensee who engages in conduct which adversely affects the establishment of his good character, honesty and integrity, and his business ability and casino experience, within the meaning of §§ 89b(2) and (3) and 90b of the Casino Control Act may be subject to revocation of licensure, or some other sanction, pursuant to § 129 of the act. In addition, a licensee who has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, is subject to revocation of licensure, pursuant to §§ 86c(4), 86g and 129 of the act.

It is undisputed that the respondent was arrested on March 6, 1984, and charged with cheating at blackjack, in violation of N.J.S.A. 5:12-113. Section 113 of the act provides that any person who by any trick or sleight of hand performance, or by a fraud or fraudulent scheme, cards, dice or device, for himself or for another wins or attempts to win money or property or a representative of either or reduces a losing wager or attempts to reduce a losing wager in connection with casino gaming is guilty of a crime of the fourth degree and shall be subject to a fine of not more than \$25,000, if the value of such money or property or representative of either is over \$25. The Division of Gaming Enforcement concedes that the Division of Criminal Justice decided not to prosecute the respondent because there was no collusion between the respondent and a patron. In addition, the respondent entered the pretrial intervention program upon the advice of counsel and satisfactorily completed the program.

The Division of Gaming Enforcement and the respondent have agreed by a stipulation of facts that the respondent did violate the rules of blackjack. However, the parties have agreed further that there was no conspiracy, collaboration, or collusion on the part of the respondent to involve anyone else in said violations, and there was no compensation or profiteering by the respondent in regard to the violations. Based upon the foregoing, I **CONCLUDE** that when the respondent misdealt in violation of the rules of blackjack, there was no intent on his part to provide a winning hand or prevent a losing hand within the meaning of § 113 of the Casino Control Act.

The parties have stipulated that the violations in question are isolated incidents and that the respondent has an otherwise unblemished record with the casino industry. Since the respondent is not in violation of § 113 of the act, it is apparent that his continued licensure would not be adverse to the public's confidence in the strict regulation of casinos. Therefore, I further **CONCLUDE** that the respondent has not committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act, within the meaning of § 86c(4) and 86g of the act.

Nevertheless, the respondent did deal hands of blackjack improperly. While I conclude that this conduct does not adversely affect the establishment of the respondent's good character, honesty and integrity, I further **CONCLUDE** that the conduct has a negative impact upon the respondent's establishment of his business ability and casino experience, within the meaning of §§ 89b(2), (3) and 90b of the act. While revocation of

the respondent's license for the violation of the rules of the game would not be appropriate, some penalty is warranted, pursuant to § 129 and 130 of the act. The respondent's casino employee license has been suspended by the Casino Control Commission since April 9, 1984, pending the final disposition of the complaint. In light of the respondent's otherwise unblemished record with the casino industry, and with consideration given to the absence of intent on his part to profit from his violation, I **CONCLUDE** that the appropriate sanction in this matter is a suspension of the respondent's casino employee license for a period of 90 days commencing with the entry of the Casino Control Commission's final order.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Edward P. Catalano be suspended for a period of 90 days, which period shall commence upon the entry of a final order by the Casino Control Commission. The respondent's casino employee license remains suspended pending the final disposition by the Casino Control Commission, pursuant to its order dated April 9, 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 Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

December 31, 1985  
DATE

Joseph F Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/31/85  
DATE

Ruth Hunt  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 6 1986  
DATE

Ronald J. Purkins  
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Not in evidence (original videotape)

P-2 Not in evidence (composite videotape)

For the respondent:

None

WITNESSES

For the petitioner:

Richard Loufik

For the respondent:

Louise Marino

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-212 AND 85-311  
(CONSOLIDATED)  
OAL DOCKET NO. CCC 4406-85 AND  
CCC 5872-85

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
CLARIDGE AT PARK PLACE, INC., :  
PAUL J. BURST, AND THELBERT M. BRADLEY, :  
Respondents, :  
AND : FINAL ORDER  
STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
CLARIDGE AT PARK PLACE, INC., :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 19, 1986;

IT IS on this 6<sup>th</sup> day of June 1986, ORDERED that the respondent Claridge at Park Place, Inc. pay a civil

penalty in the amount of \$17,500, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that the following shall be sealed: (1) portions of Claridge's internal controls submission attached to the Stipulation of Facts and Settlement Agreement as exhibits J1 through J5; and (2) supplemental criminal investigative reports which were attached to the Supplemental Factual Stipulation as exhibit J9; and

IT IS FURTHER ORDERED that, upon payment of the \$17,500 penalty, Count III of the complaint, Docket No. 84-212, containing allegations against Paul J. Burst, and Count IV, containing allegations against Thelbert M. Bradley shall be dismissed with prejudice; and

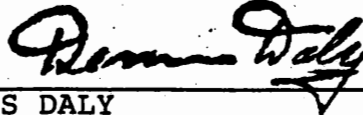
IT IS FURTHER ORDERED that the initial decision which contains the parties' Stipulations of Facts and Settlement Agreement and the Supplemental Factual Stipulations is approved by the Casino Control Commission; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondents, the Division of Gaming

Enforcement, and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NOS. CCC 4406-85

CCC 5872-85

AGENCY DKT. NOS. 84-212, 85-311

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.  
t/a THE CLARIDGE HOTEL AND CASINO,  
PAUL J. BURST AND THELBERT M. BRADLEY,**

Respondents,

and

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.  
t/a THE CLARIDGE HOTEL AND CASINO,**

Respondent.

---

**Kevin F. O'Toole**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

**Charles J. Hanlon, Jr., Esq.**, for the respondents

Record Closed: December 17, 1985

Decided: January 8, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaints filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on June 20, 1984 (CCC 4406-85) and July 8, 1985 (CCC 5872-85), alleging certain violations by the respondents of the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondents requested hearings and the matters were transmitted to the Office of Administrative Law for determination as contested cases, pursuant to N.J.S.A. 52:14F-1 et seq.

Prior to the prehearing conference which was held on September 20, 1985 regarding the matter identified as CCC 4406-85, Kevin F. O'Toole, Deputy Attorney General, appearing on behalf of the petitioner, filed a motion to consolidate the two matters for purposes of the hearing. After Charles J. Hanlon, Jr., Esq. had the opportunity to file a response on behalf of the respondents, I granted the motion of consolidation and issued an appropriate order on October 22, 1985.

On the first day scheduled for the hearing in the consolidated matter, December 3, 1985, the parties agreed to a stipulation of facts and a settlement. A copy of both documents is attached hereto.

I have reviewed the record and the terms of the settlement, and I **FIND:**

- (1) The parties have voluntarily agreed to the settlement as evidenced by their signatures.
- (2) The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this consolidated matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that the proceedings be **CONCLUDED**.

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

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

January 8, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

1/9/86  
DATE

Ruth J. Tait  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 13 1986  
DATE

Ronald J. Parker / s  
OFFICE OF ADMINISTRATIVE LAW

bc/e

EXHIBIT LIST

JOINT EXHIBITS

- J-1 Claridge Limited's Policies and Procedures Manual effective March 1, 1981, pages 131-138 (manual mode procedures), and pages 239-241 (data processing mode procedures).
- J-2 Letter dated May 28, 1981, from Patricia Hetzel, Casino Control Commission, to Clark Cook, Claridge Limited, reporting on review of initial Policies and Procedures Manual.
- J-3 Claridge Limited's revised Policies and Procedures Manual effective June 1, 1981, pages 5 (definitional section), 132-139 (manual mode procedures), and 254-256 (data processing mode procedures).
- J-4 Form description and sample copy of Identification For Customer Deposit Withdrawal and Counter Check Issuance Form utilized by Claridge.
- J-5 Claridge Limited's training manual for Casino Clerks, pages 13-17 (manual mode procedures) and pages 19-24 (data processing mode procedures).
- J-6 Memorandum, dated October 5, 1983, from Thelbert Bradley, casino controller, to Lonetha Russell, casino cage manager, regarding the subject of signature verifications.
- J-7 Memorandum, dated October 5, 1983, from Paul J. Burst, casino administrator, to all pit bosses and shift managers regarding the subject of signature verifications.
- J-8 Counter check No. 38233 and the "redemption" copy with corresponding counter check stub.
- J-9 Identification For Customer Deposit Withdrawal and Counter Check Issuance form pertaining to counter check No. 38233.
- J-10 Statement of assistant casino cage shift manager Judy McCauley.

- J-11 Narrative reports of surveillance employees James Newman and George Tuckey, along with various casino documents and statements of Claridge personnel.
- J-12 Report of Stan Fitrakis pertaining to telephone conversation with David V. Levy on 6/11/84.
- J-13 Two (2) memorandums of chief of investigations Art Fletcher to director of surveillance Stan Fitrakis.
- J-14 Letter, dated July 2, 1984, from Joel P. Kraemer, Esq., to the Princeton Bank, regarding the account of David M. Levy.
- J-15 Release Agreement and supporting documentation regarding the refund to David B. Levy.
- J-16 Counter check No. 38020 and the "issuance" copy along with the corresponding counter check stub.
- J-17 Identification For Safekeeping Deposit Withdrawal and Counter Check Issuance form pertaining to counter check No. 38040.
- J-18 Counter check No. 65150 and the "issuance" copy along with the corresponding counter check stub.
- J-19 Identification For Safekeeping Deposit Withdrawal and Counter Check Issuance form pertaining to counter check No. 65150.
- J-20 June 15, 1984 collection letter to patron Bruce A. Slovin.
- J-21 June 18, 1984 memorandum from Loretta Walker to James McCarthy.
- J-22 Affidavit of Forgery and Affidavit of Specimen Signatures executed by patron Bruce A. Slovin.
- J-23 June 29, 1984 memorandum from Loretta Walker to Stanley Fitrakis.

- J-24 Surveillance Investigator Anne Borger's report, dated July 9, 1984.
- J-25 August 20, 1984 collection letter to patron Bruce A. Slovin.
- J-26 September 27, 1984 memorandum from Thelbert Bradley to Loretta Walker.
- J-27 Counter check No. 38132 and the "acknowledgement" copy along with the corresponding counter check stub.
- J-28 Identification For Safekeeping Deposit Withdrawal and Counter Check Issuance form pertaining to counter check No. 38132.
- J-29 Report of Arthur Fletcher, Chief of Investigations, dated July 26, 1984.
- J-30 Letter of July 27, 1984, from Loretta Walker to patron Howard Zeitz.
- J-31 Affidavit of Forgery and Affidavit of Specimen Signatures executed by patron Howard Zeitz.
- J-32 First National State Bank of South Jersey's "Advice of Charge," dated August 2, 1984.
- J-33 August 6, 1984 collection letter to patron Howard Zeitz.
- J-34 Write-off approval memorandum, dated September 28, 1984, signed by Senior Vice-President of Finance Larry Bertsch.

SUPPLEMENTAL EXHIBITS

- J-1 Claridge Casino Hotel receipt of Jack Berkowitz
- J-2 Customer Incident Report of Kenneth Rosenberger
- J-3 Customer Incident Report of Thomas F. Stewart
- J-4 Customer Incident Report of Jim Bender
- J-5 Claridge Casino Hotel receipt of Jack Berkowitz
- J-6 State Police Investigation Report, dated July 19, 1984
- J-7 Complaint Form, dated July 9, 1984
- J-8 Division of Criminal Justice Case/Trial Tracking System Form E, dated April 12, 1985
- J-9 New Jersey State Police Supplementary Investigation Report, dated July 19, 1984

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-135  
OAL DOCKET NO. CCC 5101-85  
APP. NO. 58329-21

---

APPLICATION OF JENNY CLYBOURN  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 18, 1985,

IT IS on this *21st* day of JANUARY 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jenny Clybourn, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

*Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5101-85

AGENCY DKT. NO. 85-EA-135

**JENNY CLYBOURN,**

Petitioner,

v.

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

Respondent.

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**Jenny Clybourn, pro se**

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

Record Closed: October 23, 1985

Decided: November 22, 1985

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

Jenny Clybourn applied to the Casino Control Commission (Commission) for licensure as a casino employee. The Division of Gaming Enforcement (Division) advised the Commission by letter dated June 25, 1985 that it recommended that Ms. Clybourn's license be denied. The Commission notified Ms. Clybourn of the recommendation and she requested a hearing. 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 on October 1, 1985. A prehearing order was issued on October 7, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin at the Pleasantville Municipal Court on October 23, 1985.

The prehearing order identifies the issues for consideration. The Division objected to Ms. Clybourn's licensure because it contended that she had failed to disclose material information required in connection with the licensing process on her Personal History Disclosure Form and during an interview with a Division investigator, thus requiring denial of licensure pursuant to N.J.S.A. 5:12-86(b). In addition, the Division questioned whether Ms. Clybourn could demonstrate the requisite good character, honesty, and integrity necessary for licensure, pursuant to N.J.S.A. 5:12-89(b).

#### EVIDENCE

As part of the evidence presented during the hearing, the parties introduced Ms. Clybourn's Personal History Disclosure Form - 2, which she had submitted to the Commission. This document contains a question no. 16 which requests the applicant to list any arrests. The term "arrest" is defined, as are other terms such as "offense" and "charge." In response to this question, Ms. Clybourn admits having checked the "No" line, indicating that she had never been arrested. In addition, the form contains the letters "DNA" written across the boxes where one would list the arrests, government agencies involved, dispositions, dates, etc. According to Ms. Clybourn's uncontested testimony, the DNA was placed on the form not by her but by a friend. Ms. Clybourn testified that she filled out the form prior to going to the Commission headquarters in Atlantic City to file the document. At the time she filled out the form she had forgotten that she had been arrested in 1976 in Berlin on a charge of shoplifting from a K-Mart store. Since she did not remember that incident, she did not list it in response to question 16. In addition, as stipulated by the parties, Ms. Clybourn was arrested in 1982 in Ellwood. That arrest resulted from a dispute at a gas station concerning the amount of gas put into Ms. Clybourn's car. Her husband had been involved in the dispute with the attendant and all three were taken into police headquarters. Ms. Clybourn was charged with disorderly conduct, using abusive language and resisting arrest.

According to the applicant, when she went to Commission headquarters in Atlantic City on December 3, 1984 she mentioned the Ellwood arrest to the Commission employee who fingerprinted her. At the time, Ms. Clybourn had not been to court in Ellwood (Mullica Township) to answer the charges which had been filed against her in July 1982. She had received no mail concerning any court appearance. Since she had never been to court and had heard nothing about the matter since her arrest, she asked the Commission employee whether she should list the matter in response to question 16. According to Ms. Clybourn, the Commission employee said that he would check, went back into some other area, and came back and said that the matter "wasn't nothing there." Apparently, the employee had checked some source and found no listing of the arrest. Clybourn asked if she should put the matter down on the PHDF and the employee said it was not necessary. She then handed in the application.

On February 14, 1985, Ms. Clybourn received a phone call from investigator Silvia Miles of the Division. Miles, who had been employed by the Division since January 1985, had been given Clybourn's file to conduct a background investigation. According to Miles' testimony, she followed standard procedure in that she read question 16 to Clybourn and asked her if she understood the question. Clybourn responded affirmatively and then, when asked if she had any arrests, answered in the negative. Miles was aware of the 1976 Berlin arrest and confronted Clybourn with that information. Clybourn admitted that she had indeed been arrested. At this point, Miles, who was unaware of the 1982 Mullica arrest, asked Clybourn if she had anything further to add and Clybourn volunteered information about the 1982 arrest.

Ms. Clybourn recalled that she told the investigator that she had forgotten the 1976 arrest. In addition, Clybourn recalled that she told Ms. Miles about her visit to the Commission offices in Atlantic City.

Ms. Miles confirmed that when she asked Clybourn why she had not put down the 1976 arrest Clybourn told her that she had forgotten it. In connection with the 1982 incident, Miles, who testified that she had been taught to ask for an explanation of why a matter was not put down on the form, did not ask that question. In addition, she did not recall any explanation for the omission being given by Clybourn.

Ms. Clybourn testified that the 1976 shoplifting arrest in Berlin resulted in a fine of "\$100 or something." She could not recall what she had taken, but noted that the letter from the Commission (referring to the Division's allegations) referred to clothing.

The 1982 incident resulted in the imposition of a \$575 total fine on pleas of guilty to disorderly conduct and abusive language. Clybourn finally went to court in connection with the 1982 incident in June of 1985. Apparently, a bench warrant had been issued for her when she did not appear on the original court date. She testified that she had gone to Puerto Rico to take care of a sick family member and had never received any communications from the court concerning the hearing.<sup>1</sup> She has been paying her fine on a monthly basis.

Ms. Clybourn is 28 years old and married. She has one child, who is four years old. She was to begin working at Castleford Manufacturing in Collings Lakes the day following the OAL hearing. She had last been employed from 1978 through 1980 in Kentucky. Ms. Clybourn has successfully completed a blackjack dealers course.

In addition to her own testimony, Ms. Clybourn produced letters from four individuals attesting to her good character. These included church associates, friends, and business acquaintances. Each of the letters attests to her responsibility, concern for others, and positive relationships with her family and friends.

#### DISCUSSION

The uncontested evidence establishes, and I **FIND**, that Jenny Clybourn was arrested in 1976 and 1982 and that she did not disclose either of these arrests on her PHDF - 2 form. With respect to the 1976 arrest, Ms. Clybourn's explanation is one of forgetfulness. There is no evidence of a direct nature to dispute her contention. Having assessed her credibility, the circumstances of that arrest, including its having occurred approximately nine years ago, and the general attitude and demeanor of the witness, I am

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<sup>1</sup> The parties stipulated that the bench warrant has been removed.

convinced by a preponderance of the evidence that she did indeed forget the 1976 arrest. When it was called to her attention by Investigator Miles she promptly admitted the incident. Based on the finding that her failure to disclose the 1976 arrest was not the result of an intentional attempt to deceive the Commission and Division by withholding information of a material nature, I **CONCLUDE** that the failure to list the 1976 arrest should not stand in the way of Ms. Clybourn's licensure.

With respect to the 1982 incident, Ms. Clybourn's explanation is that she did not list the arrest, although she was aware of it, because the matter had never proceeded beyond the arrest itself and she had been advised not to list the arrest by the gentleman at the Commission who fingerprinted her. While it is clear that the arrest should have been listed according to the instructions and definitions contained in question 16, given what I **FIND** to be Ms. Clybourn's honest explanation of why she did not list the arrest, I cannot find that her failure to do so constitutes a violation of section 86(b). The story told by the applicant as to having called the matter to the attention of a Commission representative at Commission headquarters in Atlantic City and following his advice not to list the matter is, under all the circumstances, credible. It would take a considerable amount of gall for one to assert such a story if it were not true. Although such a possibility exists, in the case of this applicant, having given consideration to the admittedly hearsay character references, my observations of her, consideration of the circumstances in general, and the fact that she volunteered the information about the 1982 arrest, I **FIND** that she honestly related what had occurred to her and that she indeed did initially orally advise a Commission representative that she had been arrested in 1982 and only did not list that arrest upon advice, albeit incorrect, of the employee.

With respect to the incidents themselves, I **FIND** nothing in the underlying behavior which should preclude licensure. The 1976 shoplifting arrest, albeit unfortunate, appears to have been a relatively minor matter and occurred many years ago. It should not prevent licensure. As to the 1982 incident, the dispute appears to have been a "commercial" dispute in which Ms. Clybourn became involved perhaps partly out of concern for her husband and although she did let her temper get out of hand, I do not see it as an indication of a character trait which would prevent one from satisfactorily performing as a licensee.

I **FIND** that the applicant has established by clear and convincing evidence the necessary good character, honesty, and integrity required for licensure by section 89(b) of the Act. Although she has had a couple of minor brushes with the law, she had demonstrated by her testimony, as well as the letters from associates and friends, that she is a caring mother, reliable friend and associate, and respectable person.

CONCLUSION

For the reasons expressed, I **CONCLUDE** that Ms. Clybourn has satisfactorily explained the failure to list the arrests on her PHDF - 2. I **CONCLUDE** that she has not violated section 86(b) of the Act as the non-disclosures were not intentional attempts to conceal material information. Further, I **CONCLUDE** that she possesses the requisite good character, honesty, and integrity required by section 89(b). Neither the failure to disclose nor the underlying behavior involved in the two arrests are of such magnitude or involve the type of illicit intentions which would preclude such a finding. Therefore, it is **ORDERED** that the applicant 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.

11/22/85  
DATE

*Jeff S. Masin*  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

11/25/85  
DATE

*Ruth Stout*  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 27 1985  
DATE

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

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EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of October 11, 1985 from John J. Alliano, Sr.

P-2 Letter of October 9, 1985 from Joseph A. Pino

P-3 Letter of October 10, 1985 from Maureen Reilly

P-4 Letter of October 14, 1985 from Karl Burkard

On behalf of respondent:

R-1 Personal History Disclosure Form - 2A

R-2 Mullica Township Municipal Court Complaint SG97570 and 97568, State of New Jersey v. Jenny Clybourn

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-390  
OAL DOCKET NO. CCC 844-85  
REGISTRATION NO. 22336-40

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

Complainant,

FINAL ORDER

v.

RAYMOND J. CRUZ,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 15, 1986,

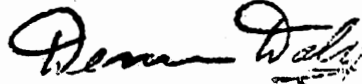
IT IS on this 22<sup>nd</sup> day of JANUARY 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Raymond J. Cruz is dismissed based upon the reasons stated 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 Raymond J. Cruz, the Division of Gaming

Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY: \_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 844-85

AGENCY DKT. NO. 84-390

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**RAYMOND J. CRUZ,**

Respondent.

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

**Seymour Wasserstrum, Esq., for respondent**

Record Closed: October 15, 1985

Decided: December 2, 1985

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on December 3, 1984, seeking judgment revoking the respondent's casino hotel employee registration, or some other sanction, pursuant to sections 86c and g, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's indictment on October 11, 1984, for receiving stolen property, in violation of N.J.S.A. 2C:20-7. The issues to be determined in this matter are as follows:

1. Whether the respondent has been convicted of or has committed an offense which would indicate that his continued registration would be inimical to the policy of the Casino Control Act, pursuant to section

86c(4), or which is an automatic disqualifier, pursuant to section 86c(1) of the Act, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g, thereby requiring revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the Act.

2. Whether the respondent, notwithstanding any commission or conviction of an otherwise automatically disqualifying offense, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d of the Casino Control Act.

#### PROCEDURAL HISTORY

By letter dated December 10, 1984, the respondent filed with the Casino Control Commission his notice of defense. By letter dated January 3, 1985, the respondent requested that a hearing be held. On February 14, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on March 8, 1985, and the hearing was held on August 6, 1985. At the hearing, the respondent requested that the record remain open to permit him an opportunity to submit documentary evidence concerning his completion of the PreTrial Intervention Program and issuance of an order dismissing the indictment against him. This documentation was subsequently submitted by the respondent, and when it was ascertained that the Division of Gaming Enforcement had no response, the record was closed on October 15, 1985.

#### FINDINGS OF FACT

A resident of Vineland, New Jersey, the respondent is employed by Trump's Castle Hotel and Casino as an Assistant Manager for the laundry department. He was hired for this position by the Hilton organization on March 25, 1985. He presently holds casino hotel employee registration number 22336-40, issued by the Casino Control Commission.

The respondent was previously employed in the laundry department of Harrah's Casino Hotel. He began his employment at Harrah's as a lead man on October 23, 1980. He received subsequent promotions to the positions of senior lead man and supervisor. As supervisor, the respondent was responsible for approximately 80 employees in the laundry department.

It is undisputed that the respondent was arrested on the evening of June 10, 1984, in Vineland, New Jersey, and charged with theft by unlawful taking and receiving stolen property, contrary to N.J.S.A. 2C:20-3 and N.J.S.A. 2C:20-7 (exhibit P-5). Thomas Janicky, a New Jersey State Police detective assigned to the Division of Gaming Enforcement, testified that he was the Division's unit supervisor at Harrah's Marina on June 10, 1984, and that he was conducting an investigation at that time concerning a report of thefts of numerous items from the casino hotel laundry. On June 8, 1984, Detective Janicky had applied for and obtained a warrant to search the residence of Wilson Flores at 41 Columbia Avenue in Vineland, New Jersey (exhibit P-4). The application for the search warrant also identified a vehicle which was registered to the respondent and Detective Janicky testified at the hearing that the respondent was a subject of the investigation.

When the warrant to search the residence of Wilson Flores was executed on June 10, 1984, 22 bath towels, 33 wash cloths, 18 pillow cases, 9 hand towels, 6 bathmats, 3 bathrobes, 7 blankets, 1 bedspread and 9 double sheets were confiscated. These items, as well as a number of other items seized, all bore markings which identified them as having been the property of Harrah's Marina Casino Hotel. A photo of the items seized was admitted into evidence as exhibit P-1.

It is undisputed that a call was placed from the residence of Wilson Flores to the respondent while the search was in progress. The respondent then arrived at the Flores residence and spoke to the police. The respondent told Detective Janicky that a lot of the items seized had been purchased at a Harrah's warehouse sale. The respondent stated that he had also purchased some items at a warehouse sale and the respondent consented to a search of his own home. The consent search revealed a number of items which had allegedly belonged to Harrah's Marina Hotel and Casino, including seven blankets, two bedspreads, five bathmats, two bath towels, nine face cloths, and one bathrobe (exhibit P-5). A photograph of the items seized from the respondent's residence was admitted into evidence as exhibit P-2.

The respondent's arrest was processed at the Vineland Police Department. At that time, the respondent stated that several of the items which were seized had been given to him by laundry manager Robert Smith, and that some of the items had been purchased at a Harrah's warehouse sale. On October 11, 1984, the respondent and Wilson Flores were indicted by the Cumberland County Grand Jury on a charge of receiving stolen property with a value of more than \$500, in violation of N.J.S.A. 2C:20-7 (exhibit P-6).

It was the testimony of Detective Janicky that he had testified before the Cumberland County Grand Jury concerning the condition and value of the items which were seized from the respondent's residence. According to the detective, some of the items seized were damaged or torn and others were used, but appeared to be in new condition. It was stipulated between the parties at the hearing that the Division of Gaming Enforcement is unable to prove the value of the property seized, since some of it was damaged or used.

On June 13, 1984, Robert L. Smith, manager of Harrah's laundry, assisted Division of Gaming Enforcement investigators in the inventory and identification of the items which had been seized from the respondent's residence (exhibit P-7). Testifying at the hearing, Mr. Smith stated that he had examined the items seized and determined that they had been the property of Harrah's. However, he also stated that he was unable to tell if an item simply had been taken out of service, or whether it had been sold from the Harrah's warehouse. It was his recollection that most of the items seized from the respondent's residence were damaged, and he stated that none of the items met the standards for re-use in the hotel's rooms. He recalled that the bath mats were stained and frayed and the blankets were all damaged by burn marks. He believed that the two bedspreads also had burn marks. The bathrobe which was seized was not of the heavy duty variety, but rather, was the type which the hotel gave to its guests as an amenity. It was Mr. Smith's recollection that bathrobes of this type had been given to the hotel employees who had been snowed in one evening and had not been prepared to stay overnight. He specifically recalled that the respondent had been given one of the bathrobes.

According to the testimony of Mr. Smith, the hotel warehouse had conducted two sales and he had been told by the respondent that most of the items seized had been purchased at the warehouse sales. Mr. Smith also recalled that he had allowed some

employees to take home bathmats which had become greasy when used for moving items at the laundry. Finally, Mr. Smith testified that he had not given out towels, bedspreads, blankets or robes to laundry employees.

Testifying on his own behalf, the respondent stated that he had willingly consented to a search of his home because he had nothing to hide. The five bath mats seized had been given to him by laundry manager Smith because they had been ripped and were greasy. According to the respondent, he had them at his home for approximately a year and a half and his wife had been able to get them fairly clean looking. It was his testimony that five blankets which had been ripped, burned, or faded had been purchased at a warehouse sale at prices ranging from \$1.25 to \$5.00. The respondent also purchased bedspreads and sheets at the warehouse sale.

Two of the blankets seized from the respondent's residence had been given to the respondent and his wife by the hotel when they had been snowed in at work. At the same time, his wife had been given a robe to wear so that she could keep warm. According to the respondent, no one said that the items had to be returned and many other employees kept the items which they had used to keep warm.

The respondent explained that the two bath towels seized from his residence had been left in his car when it was used to carry laundry. They were greasy and foul smelling, so his wife cleaned them after they were brought home in the respondent's car. The respondent also explained that in his four years of employment at Harrah's, he would occasionally bring home a face cloth accidentally because he always kept one on his belt at work to keep his hands dry. Nine face cloths were seized when his residence was searched.

The respondent's wife, Magdalene Cruz, continues to work at Harrah's Casino Hotel, in the uniform department. She corroborated the respondent's testimony concerning items which had been purchased from warehouse sales. She and several other witnesses also corroborated the respondent's testimony concerning blankets and robes being given to Harrah's employees on the night of a snowstorm. Robert L. Smith and several other witnesses also testified that the respondent enjoys a favorable reputation for honesty.

It is undisputed that the respondent sought admission and was accepted into the PreTrial Intervention Program in Cumberland County on February 5, 1985 (exhibit P-6). Pursuant to this program, the respondent performed 24 hours of community service at the Vineland Soldiers Home and 17 hours of community service at the YMCA. On September 9, 1985, following the satisfactory completion by the respondent of the PreTrial Intervention Program, the outstanding indictment against the respondent was dismissed.

The testimony of Detective Janicky concerning the execution of the search warrant and the subsequent consent search of the respondent's home is undisputed. However, this testimony is not contrary to that of the respondent and his witnesses concerning how various items which had once been the property of Harrah's Casino Hotel came to be in the respondent's home. Since the preceding evidence is essentially undisputed and believable, it is thus **FOUND AS FACT**.

#### CONCLUSIONS OF LAW

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

Pursuant to sections 91b, 86c(4) and 86g of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant who has committed an act constituting an offense which would render licensure inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. The respondent was charged with and indicted for receiving stolen property, contrary to N.J.S.A. 2C:20-7. It is undisputed that the indictment against the respondent was dismissed upon his satisfactory completion of the PreTrial Intervention Program. Thus, there was no adjudication concerning this charge and, of course, no conviction.

N.J.S.A. 2C:20-7 provides that a person is guilty of theft if he knowingly receives or brings into this state movable property of another knowing that it has been stolen, or believing that it is probably stolen. I **CONCLUDE** that the respondent has not committed the offense of receiving stolen property for two reasons. In the first place, the credible evidence in the record does not establish that the property in question, which concededly belonged to Harrah's Casino Hotel at one time, was stolen. Second, the credible evidence in the record establishes that the respondent acquired the property in question in a lawful manner. Therefore, I further **CONCLUDE** that the respondent has not committed an offense which would render his continued registration inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(4) and 86g of the Act, and no sanction concerning his registration is warranted, pursuant to section 91 and 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Raymond J. Cruz be and hereby is **DISMISSED**.

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

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

December 2, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12-4-85  
DATE

J. Dori  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 6 1985  
DATE

Ronald J. Parky/s  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

- P-1 Photo of seized items from Flores residence
- P-2 Photo of seized items from Cruz residence
- P-3 Item Inventory Report
- P-4 Application for Search Warrant and Search Warrant
- P-5 Investigation and Arrest Reports
- P-6 Indictment and PreTrial Intervention acceptance
- P-7 Letter dated July 25, 1984

**FOR THE RESPONDENT:**

- R-1 Order of Dismissal

WITNESSES

**FOR THE PETITIONER:**

Thomas Janicky

**FOR THE RESPONDENT:**

Robert L. Smith  
Raymond J. Cruz  
Dennis Maldonado  
Joan Weinstein  
Mary Greco  
Magdalene Cruz

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-77  
OAL DOCKET NO. CCC 5051-85  
REGISTRATION NO. 17193-40

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

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This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 19, 1986,

IT IS on this 24<sup>th</sup> day of March 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) The offense of theft by unlawful taking to which the respondent entered a retraxit plea of guilty is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) rather than 86(c)(3); and
- (2) The respondent failed to demonstrate that she had been rehabilitated pursuant


to N.J.S.A. 5:12-91(d) rather than  
91(b).

IT IS FURTHER ORDERED that the casino hotel employee registration of Sonia A. Dabney is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Sonia A. Dabney, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5051-85

AGENCY DKT. NO. 83-77

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

Plaintiff,

v.

**SONIA A. DABNEY,  
Respondent.**

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**John S. Sheehy, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Sonia A. Dabney, pro se**

Record Closed: December 5, 1985

Decided: January 7, 1986

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

On March 28, 1983, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking the revocation of Sonia Ann Dabney's casino hotel employee registration no. 17193-40, which had been issued by the Commission in December 1980 and renewed in December 1981. The complaint alleged that Ms. Dabney had been involved in a theft by unlawful taking in violation of N.J.S.A. 2C:20-3 and that her involvement therein indicated that she was not qualified to be registered as a casino hotel employee.

Following the issuance of the complaint, the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 4, 1984, by telephone, and a prehearing order was issued on October 8, 1985. The prehearing order identified issues with respect to Ms. Dabney's continued licensure, specifically (1) whether she had been convicted of a statutory disqualifying offense under N.J.S.A. 5:12-86(c)3; (2) whether her continued registration would be inimical to the policies of the Act and the interests of the casino industry, N.J.S.A. 5:12-86(c)4; and whether the respondent had rehabilitated herself from prior misconduct so as to be permitted to retain registration, pursuant to N.J.S.A. 5:12-91(b).

A hearing on the case was held before Administrative Law Judge Jeff S. Masin at the Pleasantville Municipal Court on December 5, 1985.

#### EVIDENCE

As noted, the central issue concerning Ms. Dabney's continued registration is her involvement in a theft which occurred at Caesars Boardwalk Regency Hotel on February 19, 1983. Ms. Dabney was then employed as a maid. Her assignment was to clean rooms in the hotel portion of the hotel/casino. Police reports entered in evidence indicate that Ms. Dabney and a fellow maid were assigned to clean room 4523 which was occupied by a Dr. John F. Hull. Dr. Hull reported that he was in his room and had placed his wallet containing approximately \$1,395 on a shelf in the bathroom. Hull then laid down and dozed off. He was awakened by someone in the room and when he looked up he saw the two maids talking to each other. He spoke out and they left. Thereafter, he went into the bathroom and found that the wallet was missing.

The police reports further indicate that both maids denied having taken the wallet. In fact, Ms. Dabney not only denied taking the money, but told the state police officers that the theft must have been by the other maid.

Subsequent to her original denial, Ms. Dabney admitted her guilt. She was ultimately indicted on charges of theft by unlawful taking, a violation of N.J.S.A. 2C:20-3, and theft by receiving stolen property, N.J.S.A. 2C:20-7. On June 27, 1983, she entered a retraxit plea of guilty to the theft by unlawful taking charge. On July 15, 1983,

she was sentenced to one year probation and the payment of a \$25 penalty to the Violent Crimes Compensation Board. The remaining count of the indictment was dismissed.

Ms. Dabney testified during the hearing and admitted that the police reports were accurate concerning her involvement in the theft. She explained that at the time of the incident her mind was "unclear" and acknowledged that what she had done was wrong. Since the incident, she has been on unemployment.

Ms. Dabney has an eight month old daughter. She is a member of the New Hope Baptist Church. She expects to begin a cosmetology course at Atlantic County Vocational Technical School in January 1986.

Ms. Dabney's probation ended in June of 1984. The \$1,400 which she stole was completely recovered.

Ms. Dabney's employment history indicates that she was employed for six months at Caesars prior to the theft and eight months at the Golden Nugget and one year at the Sands before working at Caesars. She admitted that she had received instructions during her training not to touch any personal items in rooms which she was cleaning and had been given written material to this effect.

#### DISCUSSION

The facts in this case are quite simple. Ms. Dabney, while employed as a maid at Caesars, admittedly stole a wallet containing \$1,400 from the room of a hotel patron. She initially denied responsibility, admittedly attempted to pin the theft on her fellow worker, and then acknowledged her responsibility. She pled guilty to a charge of theft by unlawful taking, a crime of the third degree, N.J.S.A. 2C:20-2b(2). Her probation was successfully completed in June 1984.

What is particularly troubling about this matter is that Ms. Dabney's crime was committed while she was an employee of a casino hotel and a registrant under the regulatory system. She had been working in the industry for slightly over two years. Apparently, the temptation to snatch the considerable sum in Dr. Hull's wallet was too much for her to overcome.

Given the nature of Ms. Dabney's offense, and especially the circumstances under which it occurred, there is little to recommend Ms. Dabney's continued registration. Her only explanation for the incident was that her mind was "unclear." This hardly suffices to give any basis for determining mitigation of the severity of the incident.

I **FIND** that the respondent committed an act of theft by unlawful taking, a crime of the third degree, while employed as a casino hotel registrant serving in the capacity of maid at Caesars Boardwalk Regency Hotel. I **FIND** that the incident indicates a lack of trust on the part of the respondent. The offense for which Ms. Dabney was convicted is a disqualifying offense, pursuant to N.J.S.A. 5:12-86(c)3. Thus, in the absence of a showing of rehabilitation, Ms. Dabney is ineligible for registration and her present registration must therefore be revoked. Based on the evidence, I **FIND** no basis for determining that Ms. Dabney has rehabilitated herself to the point where she should be permitted to again serve as a casino hotel registrant. Although her probation ended approximately one and a half years ago, this is not a substantial period of time. Ms. Dabney was approximately twenty-four when the incident occurred and should have known better. In addition, her attempt to lay the blame upon her fellow maid indicates some lack of character which is significant.<sup>1</sup> On the whole, I **FIND** no evidence to indicate that Ms. Dabney has, as of yet, reached the stage where she could be considered rehabilitated. While I do not venture a guess as to whether rehabilitation may be shown in the future, perhaps a lengthy period of employment without further difficulty (in other industries) may overcome the stigma attached to the respondent at this time.

For the reasons expressed, I **FIND** that Ms. Dabney's registration must be **REVOKED**. It is so **ORDERED**.

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

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<sup>1</sup>While good character is not specifically in issue, the attempted shifting of the blame serves to indicate the heightened severity of the offense.

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

January 7, 1986  
DATE

Jeff Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/9/86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 10 1986  
DATE

Ronald L. Parker, Jr. S.  
OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

On behalf of petitioner:

- DGE-1 New Jersey State Police Investigation Report, consisting of four pages
- DGE-2 New Jersey State Police Property Report
- DGE-3 New Jersey State Police Arrest Report
- DGE-4 Municipal Court Complaint, Atlantic City Municipal Court
- DGE-5 Certified copy of Judgment of Conviction, with attached Sentence Work Sheet and Statement of Reasons

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-416  
OAL DOCKET NO. CCC 7287-85  
LICENSE NO. 24324-21

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

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 21, 1986,

IT IS on this 26<sup>th</sup> day of June 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Linda C. Dade is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Linda C. Dade is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, pursuant to N.J.A.C.

19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Linda C. Dade, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



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

**INITIAL DECISION**

OAL DKT. NO. CCC 7287-85

AGENCY DKT. NO. 85-416

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

Petitioner,

v.

**LINDA C. DADE,**  
Respondent.

---

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

**Linda C. Dade, respondent, pro se**

Record Closed: February 21, 1986

Decided: April 7, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Linda C. Dade, respondent and the holder of a casino employee license, had committed a criminal offense which constitutes violations of sections 86c(1) and 90 of the Casino Control Act (Act), for which the Division seeks revocation of her casino license, pursuant to sections and 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint together with an application for immediate suspension of the respondent's license with the Casino Control Commission (Commission) on October 9, 1985. By letter dated October 15, 1985, the Commission advised the respondent of the pending action and of her right to a hearing. By letter dated October 30, 1985, the respondent requested a hearing. On November 8, 1985, the Commission issued an order of suspension of the respondent's license pending disposition of the complaint. On November 14, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 3, 1986. The matter was heard on February 21, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

The respondent is 30 years of age. She is the mother of two minor children and has custody of a minor nephew. The respondent and these children reside with the respondent's foster mother. The respondent does not currently receive support from the fathers of the children. She previously received some support from the father of her children; however, this ceased in early 1985.

The respondent's name at birth was Linda Magobet. However, the respondent used the surname Dade, which was the name of her foster parents.

On July 24, 1972, the respondent, age 16, married Julius E. McClendon. The respondent was separated in 1973 when she was age 17 and pregnant. She is now divorced.

On June 11, 1973, the respondent applied for and was granted welfare assistance by Atlantic County. This application was made under the name of Dade and under social security number 138-50-0107.

During the early 1970's, the respondent moved in and out of her foster parents' home on several occasions. The respondent has resided continuously with her foster mother for the past 11 years.

When the respondent was 18 years of age, she pled guilty to a charge of prostitution.

In January 1974, the respondent appeared at the Atlantic County Welfare Board for a redetermination interview. At that time, she used the name McClendon and social security number 145-52-1286, which social security number she received through the welfare board. Both she and the welfare board used this name and social security number until 1985.

From May 24, 1979 until October 4, 1980, the respondent was employed by Wheaton Industries as a production operator. She was employed under the name of Dade and social security number 138-50-0107. The respondent earned \$6.86 per hour.

From October 1980 through July 1981, the respondent, under the name of Dade and social security number 138-50-0107, received unemployment benefits.

During the period when the respondent received unemployment benefits, she also received financial assistance from the Comprehensive Employment Training Act (CETA), which was used by her to attend gaming school at Atlantic County College. This application for benefits was made under the name of Dade and with social security number 138-50-0107. On her application for CETA benefits, the respondent did not disclose that she was a recipient of welfare benefits. The respondent testified that she did not make this disclosure because she gave all of her welfare benefits to her foster mother.

In June 1981, the respondent received her casino employee license, number 24324-21, from the Commission.

From June 15, 1981 until April 26, 1985, the respondent was employed as a dealer by the Claridge Hotel and Hi Ho Casino (Claridge). She earned a positive employment record at the Claridge (R-1). Upon commencement of this employment, the respondent earned approximately \$20,000 per year and, at the time her employment ceased, her annual salary was approximately \$25,000 per year.

At all times from May 24, 1979 until January 1985, during which period the respondent was employed at Wheaton and Claridge, as well as received unemployment benefits, the respondent continued to receive welfare benefits. In addition, on 17 separate occasions between October 20, 1980 and July 16, 1984, the respondent either completed redetermination questionnaires for the welfare board or participated in interviews with representatives of the welfare board concerning her continued eligibility to receive benefits. On each and every occasion the respondent failed to disclose her employment and income therefrom or her receipt of UIB benefits, and stated affirmatively that she was not employed. Further, on each occasion the respondent certified that her answers were true and acknowledged her obligation to provide information to the welfare board with regard to any change in income. At the subject hearing, the respondent admitted that she was aware of her obligation to report her income to the welfare board and that she knowingly did not comply. Based upon the information provided by the respondent during the period in question, the welfare board continued benefits to the household. This resulted in an overpayment of benefits in the amount of \$24,377, \$15,935 of which was received during the period the respondent was employed at the Claridge. The respondent testified that she first got the idea to collect benefits to which she was not entitled at the time of her initial redetermination interview in 1974 when the welfare board first began to use the name McClendon and social security number 145-52-1286.

In early 1985, the welfare board learned of the apparent overpayment from a communication from the Division of Public Welfare, Department of Human Services. This communication advised that a person using the names Dade and McClendon might be the same person. Thereafter, the welfare board conducted an investigation. On April 8, 1985, the respondent was interviewed during the investigation (P-2). The respondent was given Miranda warnings and made statements. Although she initially denied the allegations, upon confrontation with a detailed account of the failures to disclose, the respondent admitted her actions (P-2). On the same date, the respondent signed a reimbursement agreement, in which she admitted her misconduct and agreed to repay the sum of \$24,377 at a rate of \$100 per month, commencing on April 29, 1985 (P-3).

On April 25, 1985, the respondent was indicted by an Atlantic County Grand Jury and charged with a violation of N.J.S.A. 2C:20-4, theft by deception - welfare, in excess of \$500, and of N.J.S.A. 2C:21-4a, falsifying records (P-4). On May 28, 1985, the

respondent pled not guilty (P-5). On June 24, 1985, and with benefit of counsel, the respondent retracted her plea and pled guilty to the indictment. More specifically, the respondent pled guilty to a violation of N.J.S.A. 2C:20-4, theft by deception - welfare, third degree; and of N.J.S.A. 2C:21-4a, falsifying records, fourth degree. On August 5, 1985, the respondent was sentenced on count one to 180 days in the Atlantic County Jail and probation for five years; the sentence on count two was the same as count one, to run concurrently, and \$25 payable to the Violent Crimes Compensation Board for each count. The only mitigating factor cited by the sentencing judge was that "defendant has compensated or will compensate the victim of [her] conduct for the damage or injury that he sustained, or will participate in a program of community service."

As of February 20, 1986, the respondent had paid \$50 to the Violent Crimes Compensation Board and had paid \$40 to the welfare board as reimbursement, which payment had been made by December 1985. The respondent served 30 days in the Atlantic County Jail and was released in September 1985.

The respondent's probation status is currently medium supervision, which requires one appearance per month and an occasional phone call. She has not yet made restitution and is unable to because of the absence of employment. In the event that she does not make full restitution within five years, her probationary period will be extended. The respondent's probation officer testified that, in his opinion, she has made a good faith effort to make restitution. The probation officer further testified that there are few employment opportunities available to the respondent because she resides in a remote area and has no means of transportation. Although employment is available with the Atlantic County Supported Work Program, the respondent has no means of transportation.

The respondent owns a 1980 Toyota, which she is not able to operate because the vehicle is in need of repair, has no current registration and is not insured.

The respondent has current debts to her foster mother for rent, utility bills, tuition for her children in parochial school and various loans, for which the total monthly payments are in excess of \$1,400. The respondent testified that her boyfriend occasionally provides financial assistance.

The respondent frequently attends church. Her children attend the parish school. In May or June 1985, after her indictment, the respondent visited her parish

priest and expressed a desire that her children be able to remain in the school although the respondent had no means to make tuition payments. Previously, the respondent had made all tuition payments. The respondent did not seek counsel or advice concerning her misconduct.

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

**(B) DISPUTED FACTS**

In dispute were the circumstances underlying the respondent's criminal offense, her rehabilitative efforts and her reputation for good character, honesty and integrity.

Ms. Dade testified to the circumstances underlying her misconduct. Although the respondent admitted knowingly receiving welfare benefits to which she was not entitled, she attempted to mitigate the seriousness of her misconduct. More specifically, the respondent stated that her foster mother charged an outrageous amount of rent. The respondent used all of her welfare benefits to pay rent and used her earned income to support herself and the three children. As a result, the respondent had no means with which to find alternative housing.

This testimony was not persuasive in the least. Although I do not doubt that the respondent paid rent to her foster mother which might have been excessive, it is abundantly evident that the respondent had more than sufficient resources available with which to relocate. It was apparent that the respondent made no sincere effort to relocate.

The respondent testified to her rehabilitative efforts. She has learned her lessons, will not repeat her misconduct, wants a fresh start and intends to make restitution in full. Further, the respondent testified that in order for her rehabilitation to be successful, she must relocate from her foster mother's residence. However, in order to relocate, she needs financial resources which, in turn, require employment. However, employment with the Atlantic County Supported Work Program or otherwise, except for the casino industry, does not pay substantial enough wages to enable the respondent to relocate and, in addition, she does not have any means of transportation. However, the

respondent testified that if she reacquired her license, she could obtain a position with a casino. This would provide sufficient income for the respondent to relocate. Considering transportation to a casino employer, the respondent testified "if there's a will, there's a way."

The respondent's testimony that she does not intend to repeat her misconduct was persuasive. However, it appears that the respondent has not made a sincere effort to seek employment and has no intention of pursuing employment other than in the casino industry. Under the circumstances described by the respondent, this attitude is not encouraging.

Louis Carrasquillo, the respondent's probation officer, is of the opinion that the respondent is making an effort to rehabilitate herself. The respondent also called Father Edward Lipinski, her parish priest. Father Lipinski testified that the respondent has expressed remorse, beginning with her incarceration, and is now a more mature person and recognizes her responsibility to her children.

The respondent also offered a letter from Kathleen Salisbury, a family service specialist with Atlantic County (R-2). Ms. Salisbury stated that the respondent is seeking assistance with money management and budgeting in order to cure her current financial difficulties and manage her family finances better in the future.

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

1. Although the respondent's foster mother may have charged excessive rent, the respondent had more than sufficient resources available from her earned income, let alone the welfare benefits to which she was not entitled, with which to relocate.
2. The respondent's mitigating explanation for her misconduct was not persuasive.
3. There is a strong probability that the respondent will not repeat her misconduct.

4. The respondent has not made a reasonable work search since her release from incarceration.
5. In consideration of the within action and in consideration of the respondent's need to relocate, she has effectively and unreasonably restricted herself to seeking employment in the casino industry.
6. The respondent has complied with the requirements of her probation to date.
7. The respondent is seeking assistance in order to better manage her finances.
8. The respondent is well regarded by her parish priest.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee. . ." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license. . ." The Division contends that the violations of N.J.S.A. 2C:20-4 and of N.J.S.A. 2C:21-4a by the respondent constitute violations of section 86c(1), and that, accordingly, she is disqualified from continuing to hold a license.

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The respondent's convictions for violations of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:21-4a are both disqualifying offenses under section 86c(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed violations of N.J.S.A. 2C:20-4 and of N.J.S.A. 2C:21-4a, which are disqualifying offenses under section 86c(1).

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

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

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

First, Ms. Dade is a licensee and was employed as a dealer; as such, she had direct responsibilities for actual gaming activities and had substantial contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud, in an amount in excess of \$24,000 over a period of six years, and committed a violation of N.J.S.A. 2C:21-4a, falsification of records. Because the offenses are included as disqualifiers under section 86c(1), they are serious. In addition,

the amount of thefts over an extended period and the means by which the thefts were effected enhance substantially the seriousness of the misconduct.

Third, the offenses were committed knowingly by a licensee prior to and during the four years in which she was employed in the casino industry. The fact that the respondent may have endured pressure from her foster mother does not serve to mitigate her misconduct in the least.

Fourth, the misconduct occurred continually from May 24, 1979 through January 1985, a period of approximately six years, and ceased approximately one year ago.

Fifth, the misconduct occurred between the respondent's ages of 23 and 29. There was no indication that her misconduct was due to immaturity.

Sixth, the respondent's criminal misconduct was isolated in nature; however, it continued over a period of six consecutive years. The respondent was convicted for prostitution in 1974.

Seventh, despite the respondent's attempt to mitigate the seriousness of her misconduct, there were no social conditions which contributed to the offense.

Eighth, the respondent has made some rehabilitative efforts. She has acknowledged her misconduct and pled guilty. Currently she is on probation. However, the respondent has not made a serious attempt to make restitution. Her positive employment record within the casino industry prior to the offense is impaired by reason of her criminal misconduct during that period. In addition, the respondent has not seriously sought employment since her release from incarceration. The respondent has effectively and unreasonably restricted herself to employment within the casino industry. Further, the respondent has expressed remorse for her misconduct and has no intention of repeating the misconduct. Accordingly, there is a minimal likelihood of a repetition of such misconduct.

Since the inception of criminal proceedings against the respondent and her loss of employment within the casino industry, she has made no sincere effort to effectively and practically reorganize her life and to eliminate the cause to which she attributed her

problems. In consideration of this absence of real effort, together with the fact that the misconduct occurred during the entire time in which the respondent held a casino employee license and was employed in the gaming industry in New Jersey, and in consideration of the fact that the respondent has been released recently from prison and commenced a substantial period of probation, the respondent has failed to establish her rehabilitation. Accordingly, the respondent has not met her statutory burden to establish rehabilitation.

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

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

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

Together, the inability of the respondent to prove rehabilitation and her recent and extensive criminal conduct, preclude her ability to establish that she continues to possess the degree of good character, honesty and integrity required to maintain licensure. The respondent's explanation of the circumstances underlying her misconduct was not persuasive and did not serve to mitigate the seriousness thereof. Accordingly, it

is clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that she continues to possess the requisite degree of character, honesty and integrity, pursuant to section 89b(2).

**(D) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;
- d. the prior history of the particular licensee involved with respect to gaming activity;
- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. . .

For the reasons previously expressed, it is clear that the respondent's convictions constitute a disqualifying offense under section 86c(1) and that she no longer possesses the qualifications for licensure. Accordingly, the respondent's license must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the casino employee license (number 24324-21) held by Linda C. Dade be **REVOKED** for a period of five years, effective November 8, 1985.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 7, 1986  
DATE

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

4/8/86  
DATE

Receipt Acknowledged:

Ruth Stout  
CASINO CONTROL COMMISSION

APR 10 1986  
DATE

Mailed to Parties:

Ronald L. Parke / s  
OFFICE OF ADMINISTRATIVE LAW

bc/ee

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Atlantic County Department of Social Services, Division of Welfare - Investigation Report, prepared by Edwin W. Wagner, March 27, 1985 (11 pages)
- P-2 Statement of Linda McClendon, April 8, 1985 (4 pages)
- P-3 Restitution Agreement, April 8, 1985
- P-4 The State of New Jersey v. Linda McClendon a/k/a Linda Dade a/k/a Linda Magobet, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, number 85-04-0700-A, Indictment, filed April 25, 1985 (4 pages)
- P-5 State of New Jersey v. Linda McClendon a/k/a Linda Dade a/k/a Linda Magobet, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Number 85-04-0700-A, Judgment of Conviction and Order for Commitment, August 5, 1985 (5 pages)
- R-1 Letter from Paul J. Burst, Executive Director of Gaming Operations, Claridge Casino Hotel, February 6, 1986
- R-2 Letter from Kathleen Salisbury, February 13, 1986

WITNESS LIST

For the petitioner:

Edwin Wagner

For the respondent:

Louis Carrasquillo

Linda C. Dade

Father Edward Lipinski

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-431  
OAL DOCKET NO. CCC 4926-85  
LICENSE NO. 26036-21  
REGISTRATION NO. 16552-40

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

v.

FINAL ORDER

BARRY EDWARD DESHER, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 14, 1986.

IT IS on this 6<sup>th</sup> day of June, 1986 ORDERED that the initial decision in this matter is modified as follows:

- (1) The respondent's act of concealing merchandise valued at \$58.22 on his person is equivalent to the statutory offense of shoplifting in violation of N.J.S.A. 2C:20-11; and
- (2) The respondent's offense of shoplifting from the gift shop located in the Resorts International Hotel and Casino and his conviction for possession of methamphetamine on the premises of

the casino hotel are inimical offenses which require his disqualification from licensure and registration pursuant to N.J.S.A. 5:12-86(c)(4) and 86(g).

IT IS FURTHER ORDERED that the casino employee license and the casino hotel employee registration held by Barry Edward Desher are revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Barry Edward Desher the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4926-85

AGENCY DKT. NO. 84-431

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

Petitioner,

v.

**BARRY E. DESHER,**

Respondent.

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

**Frederick S. Schofield, Esq.**, for respondent (Murray and Schofield, attorneys)

Record Closed: March 27, 1986

Decided: April 2, 1986

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

On November 8, 1984, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of Barry E. Desher's casino employee license no. 26036-21 and casino hotel employee registration no. 16552-40. The complaint alleged that Desher had been arrested and charged for shoplifting on February 25, 1983 and May 1, 1984, and that these incidents reflected adversely on his good character, honesty and integrity and indicated that his continued licensure and registration would be improper.<sup>1</sup>

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<sup>1</sup>An amended complaint was filed in October 1985.

Mr. Desher requested a hearing on the proposed revocations and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 24, 1985, and a prehearing order was issued on October 4, 1985. The prehearing order listed as issues for consideration at the hearing the question of Mr. Desher's good character, honesty and integrity, required for casino employee licensure pursuant to N.J.S.A. 5:12-90(b), and whether his continued licensure and registration would be inimical to the policies of the Casino Control Act and the interests of the casino industry, thus requiring revocation pursuant to N.J.S.A. 5:12-86(c)4. The Division also asserted that Mr. Desher had been charged with possession of a controlled dangerous substance and possession of a weapon arising out of an incident which occurred at Resorts International Hotel on January 27, 1985. The Division contended that Desher's involvement in this incident, which involved violations of N.J.S.A. 24:21-20 and N.J.S.A. 2C:39-5, also indicated that his continued registration and licensure would be inimical. The Division indicated its intention to proceed in attempting to prove that Mr. Desher had been guilty of the weapons charge despite the fact that it was dismissed during the criminal process.

Subsequent to the prehearing conference and the issuance of the prehearing order, counsel for the parties conferred and determined to submit the case for determination based upon documentation representing each side's position. Therefore, on February 5, 1986, the Division submitted to the administrative law judge a series of 12 exhibits constituting its case against Mr. Desher and thereafter on February 11, 1986, Mr. Desher advised the judge that he would rely upon several documents which had been submitted as part of his Answer and Separate Defenses which had been filed on August 5, 1985, in response with the Division's complaint. In addition to the submission of such documents, the parties stipulated that the respondent's testimony "shall be as follows":

I admit that the incidents unfortunately occurred as I stated in my Answer and Separate Defenses; however I was under the influence and subject to the after affects of massive doses of prescribed medications at the time.

After Mr. Schofield's letter of February 11, 1986, the administrative law judge took the matter under advisement in order to review the documentation. It was understood between the judge and counsel that after the judge had reviewed the documents he would contact counsel in order to obtain closing remarks from them concerning the evidence and conclusions to be drawn therefrom. However, at the time

that attempts were made to contact Mr. Schofield he was on vacation and returned approximately March 25. Thereafter, he indicated that he was going to submit written closing remarks. These were not received and further contacts with his office on March 27 indicated that they would not be forthcoming. Therefore, the record was closed on March 27, 1986.

### THE OFFENSES

The documentation presented by the Division establishes that on February 25, 1983, Mr. Desher was arrested for shoplifting at a Pathmark supermarket in Egg Harbor Township. He was charged with concealing and carrying away merchandise valued at \$45.33. He was convicted upon his plea of guilty to the charge, constituting a violation of N.J.S.A. 2C:20-11, in the Municipal Court of Egg Harbor Township on March 7, 1983, and he was sentenced to a \$175 fine and \$25 costs.

On May 1, 1984, Mr. Desher was charged with shoplifting from a K-Mart store in the Pleasantville Center in Pleasantville. He was charged with stealing three pairs of leather gloves valued at \$8.59 and \$8.97, one pair of cuticle scissors valued at \$5.47 and two packs of Super II razors valued at \$4.33. Mr. Desher pled guilty on May 3, 1984, and was sentenced to ten days in the County Jail, which was apparently suspended. He was also fined \$25 and given one year probation. It is unclear from the complaint whether the probation was suspended or not.

As indicated above, Mr. Desher, in his stipulated response, admits that he did commit these offenses.

On January 27, 1985, Mr. Desher was in the gift shop of Resorts International Hotel in Atlantic City. He was identified by a cashier as having placed a sweat shirt under his jacket. He was approached by the security officer and, when asked, he produced a sweat shirt with a Resorts's price tag for \$21. Further examination revealed another sweat shirt, which was also concealed. The total price of the two sweat shirts was \$42 and Desher offered to pay for the items, an offer which the gift shop supervisor accepted. At this point, Desher, after using a Visa Card to pay for the sweat shirts, was told that he was being evicted from the premises for attempted theft. He was taken to the holding room for identification purposes and was asked if he had any other items that belonged to the gift shop. He then produced ten key rings valued at a total price of \$12.50. At this

point, security was again notified and the Atlantic City Police were requested to intervene. When Officer Rothman of the Police Department arrived on the scene he searched Desher, found three more key rings, each valued at \$1.25, and then found a small plastic bag containing an unknown substance in Desher's right pants pocket. Analysis of this substance determined that it was methamphetamine. Possession of methamphetamine is a violation of N.J.S.A. 24:21-20(a)1.

A search of Mr. Desher's automobile, which was parked outside the premises and occupied at the time by his girlfriend, produced a bowie knife with a nine and a half inch blade.

Mr. Desher, who as noted, admits having committed these offenses, was indicted by the Atlantic County Grand Jury for possession of a weapon and possession of a controlled dangerous substance. The weapons charge was dismissed upon his plea of guilty to the controlled dangerous substance count. On May 24, 1985, Desher was granted a conditional discharge and was advised as a condition thereof that he must remain arrest and conviction free for one year.

Respondent Desher admits the actions attributed to him in the police investigation reports produced in evidence. By way of defense, or in mitigation, he states that the actions were committed while he was "under the influence and subject to the after affects of massive doses of prescribed medications at the time." Mr. Desher presents no evidence whatsoever as to the actual amounts of drugs ingested at or about the time of the criminal incidents involved nor does he present any evidence as to the way the drugs actually affected him, if at all, at the time that he engaged in these actions. The only evidence which he chooses to present is documentary in nature, consisting of affidavits and summaries of oral reports received from purported experts in pharmacology and medicine which were apparently produced in the context of a civil suit filed by Desher against doctors and pharmacies. It appears that Desher contends in that suit that he was over-medicated in violation of the professional responsibilities of the various professionals charged as defendants.

The summary of an oral report rendered by G. John DiGregorio, M.D., a licensed pharmacist and medical doctor of New Jersey, indicates that the pharmacies sued by Desher had breached legal duties and professional standards in connection with the filling of prescriptions for such drugs as "Amitriptyline, Butazolidin, Dalmane, Darvocet,

Percocet, Percodan, Placidyle, Valium, Vicoden, Vistaril, and Zomax." Dr. DiGregorio concluded that the "wrongful conduct of the Defendant-Pharmacies" caused Desher to suffer "mental and emotional anguish," physical illness, despondency and depression, conditions that will continue in the future. Desher was "prevented from attending to his duties and chores and from assuming employment and was in other ways damaged and injured to his great detriment. His earning power has been materially and adversely affected and he has suffered damages and losses."

A letter, dated April 23, 1985, from Dr. DiGregorio, identifying him as a professor of pharmacology and medicine at Hahnemann University in Philadelphia, which letter was forwarded to Mr. Schofield, counsel for respondent, indicates that Desher was under treatment by a Dr. George Godfrey from the ages of eight and a half to the present time. In 1977, Godfrey began treating Desher with Valium for nerves. Valium and Percodan were prescribed over an "extended period of time." DiGregorio reports that from July 30, 1981 to October 26, 1983, a period of approximately 27 months, Godfrey prescribed 5,100 Valium tablets in 10 milligram doses or approximately 6 tablets (60 milligrams) per day, for 30 days, for 110 days. DiGregorio concludes that this constituted improper prescribing of Valium which is not recommended for use over long periods of time. The doctor concludes that he feels:

Very strongly that Dr. Godfrey caused Mr. Desher to become dependant on Valium and caused him to have psychological problems.

In addition to Dr. DiGregorio's reports, Mr. Desher relies upon a letter of June 26, 1985, from Gerard A. Ruch, a registered pharmacist, who reviewed pharmacy records concerning prescriptions for Valium filled for Desher. He concludes that there was excessive provision of Valium tablets to Desher in excess of recommended amounts in 1981 and 1983.

#### DISCUSSION

A review of Mr. Desher's recent history indicates arrests for shoplifting offenses in February 1983 and May 1984. In addition, Desher was involved in a January 27, 1985 shoplifting incident on the premises of Resorts International Hotel and during the investigation of that incident was found in possession of methamphetamine.

Based upon the determination that Mr. Desher was involved in and convicted of three shoplifting incidents over the period of approximately two years, the last of which occurred a year and a quarter ago, I **FIND** that Mr. Desher's good character, honesty, and integrity has been severely affected and that the evidence presented does not establish Mr. Desher's good character, honesty, and integrity in a clear and convincing fashion as required for licensure pursuant to N.J.S.A. 5:12-90(b). In addition, although Mr. Desher's offenses, consisting of shoplifting and drug possession, do not constitute automatic disqualifications from licensure pursuant to section 86(c)1, the continued licensure and registration of a person who has, over recent times, on a regular basis engaged in illegal acts of thievery aimed at merchants, one of whom was operating in a casino hotel, indicates strongly that continued licensure and registration of Mr. Desher would be against the interests of the casino industry and the policies of the Casino Control Act. Licensing or registering a person demonstrating continued defiance of the laws against thievery can hardly be consistent with the goal of eliminating from the casino industry those with a demonstrated propensity for criminal conduct. Although one incident of this type might not indicate an inimical situation, repetitious involvement in such activities clearly does.

With respect to the evidence presented by the respondent concerning his purported problems with prescription drugs, the nature of the evidence and the method of its presentation presents absolutely no basis upon which to either mitigate the guilt or the punishment. All the evidence indicates is the professional opinion of a doctor and a pharmacist concerning the prescription of drugs to Desher. There is no actual evidence concerning what mental or physical conditions required such medication, whether or not Desher was indeed under the influence of such drugs or had taken such drugs at or near the time of these criminal incidents, what the relationship of his use of methamphetamines may have been to his prescription drug problems, or whether the drugs, even if taken to excess, could have caused Desher to engage in criminal activities. Indeed, there is no legal argument presented as to what the affect of this "expert" evidence is on the question of continued licensing or registration. The defense, such as it is, falls woefully short of anything which would reasonably cause one charged with deciding Desher's fate to consider anything less than the severest penalty.

For the reasons expressed, I **CONCLUDE** that Barry E. Desher's registration as a casino hotel employee and his licensure as a casino employee should be revoked. It is so **ORDERED**.

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

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

April 2, 1986  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 4, 1986  
DATE

Bernadette T. Frigeno  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Complaint, dated February 25, 1983
- P-2 Egg Harbor Township Police Department Arrest Report, dated February 25, 1983
- P-3 Pleasantville Police Department Incident Report, dated May 1, 1984
- P-4 Pleasantville Police Department Arrest Report, dated May 1, 1984
- P-5 Resorts International Hotel, Inc., Security Incident Report, dated January 27, 1985, 2 pages
- P-6 Resorts International Hotel, Inc., Eviction Form, dated January 27, 1985
- P-7 Atlantic City Police Department Investigation Report, Re: January 27, 1985 incident, 2 pages
- P-8 Atlantic City Police Department Arrest Report, dated January 27, 1985
- P-9 Request for Examination of Evidence, dated January 27, 1985
- P-10 Laboratory Report, dated March 13, 1985
- P-11 Indictment 85-04-0510-D
- P-12 Superior Court Criminal Record

On behalf of respondent:

- R-1 Letter of April 23, 1985, from G. John DiGregorio, Ph.D., M.D., 2 pages, with attached medical references, 4 pages
- R-2 Letter of June 26, 1985, from Gerard A. Ruch, Registered Pharmacist, 4 pages

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APPLICATION OF CYNTHIA DIMATTEO  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 5, 1986,

IT IS on this 8<sup>th</sup> day of April 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Cynthia DiMatteo, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6714-85

AGENCY DKT. NO. 85-EA-168

**CYNTHIA DiMATTEO,**

Petitioner,

v.

**STATE OF NEW JERSEY,**

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**Cynthia DiMatteo, petitioner, pro se**

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

Record Closed: January 9, 1986

Decided: January 21, 1986

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

This matter arises out of objections filed by respondent with the Casino Control Commission to the issuance of an employee license to petitioner, pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq. Petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The issue presented is whether petitioner intentionally withheld information which she might reasonably have known she was obliged to disclose on her Personal History Disclosure Form (PHDF) or during the course of a personal interview, in violation of N.J.S.A. 5:12-86b.

It has been stipulated that on January 11, 1979 petitioner was convicted of an offense involving the issuance of a forged instrument, arising out of 18 U.S.C. § 1002 and § 1003, and that this conviction was "set aside." A document entitled "Certificate of Vacation of Conviction," issued by the United States District Court was entered into evidence and states:

This is to certify that on February 8, 1980 this Court discharged Cynthia DiMatteo from probation prior to the expiration of the maximum period of her probation and therefore the judgment of conviction entered by this Court . . . has been set aside . . . .

When answering question 16 on the PHDF, which asks whether an applicant has ever been arrested or convicted of an offense, petitioner responded in the negative. She testified that she read the note at the bottom of the question which states, "You need not disclose any arrest or charge which has been the subject of a lawful court order or expungement or sealing if such order entitles you to answer "no" to such inquiry," and believed that the "Certificate of Vacation of Conviction" qualified under this exception. She then contacted her brother-in-law, Detective Russell Kovda of the Winslow Township Police Department and asked if he would check to see whether a record of her offense existed. He found no record and subsequently the Winslow Township Police Department wrote to her indicating that:

As of this date there are [sic] no arrest or action pending on Cynthia DiMatteo of 1213 Albertson Road, Winslow, N.J.

Petitioner testified that with this letter she felt justified in her answer on the PHDF and in withholding the information from respondent's investigator during their telephone interview. When he eventually revealed that he was aware of the conviction, she acknowledged it.

Russell Kovda was called as a witness by respondent and substantially corroborated petitioner's testimony. He indicated that his check of the Winslow Township computer revealed no prior arrests or convictions. He informed petitioner of this, but also told her that he had not pursued the matter through the FBI, and the possibility that a record did exist had not been entirely eliminated.

Agent Charles Burton of respondent's staff testified to the telephone conversation which he had with petitioner, which is substantially in accord with her testimony noted above.

This is the substance of the record. Petitioner was a credible witness, and I accept that she did not believe she was obliged to disclose her prior conviction. The language of her discharge from the United States District Court, in combination with the note at the bottom of question 16 of the PHDF, gave her some basis for this belief and she then made further reasonable efforts to determine whether a record existed. It appears that her failure to disclose was unintentional, and the incident should not serve to bar her application.

Based on the foregoing, it is my conclusion that petitioner has met respondent's objections with respect to her failure to disclose a prior conviction, and is entitled to the license for which she has applied. It is **ORDERED** that her application be **GRANTED**.

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

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

DATE 1/24/86

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

DATE 1/22/86

Receipt Acknowledged:  
*Nancy D. Smith*  
CASINO CONTROL COMMISSION

DATE JAN 24 1986

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

WITNESSES

Cynthia DiMatteo  
Russell Kovda  
Charles Burton

EXHIBITS

For petitioner:

- P-1 Authorization to release information signed by Cynthia DiMatteo
- P-2 Personal History Disclosure Form - 2A
- P-3 Certificate of Vacation of Conviction, dated February 8, 1980
- P-4 Letter from Cynthia M. DiMatteo to Barbara K. Linde, dated October 8, 1985
- P-5 Conditions of Probation, dated February 14, 1979

For respondent:

- R-1 FBI rap sheet

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-199  
LICENSE NO. 48824-21  
OAL DOCKET NO. CCC 4288-85

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

Complainant, :

FINAL ORDER

v.

CHRISTINA DOUGHERTY, :

Respondent. :

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A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 15, 1986,

IT IS on this 11<sup>th</sup> day of June 1986, ORDERED that the initial decision is modified as follows:

The reference at page three of the initial decision is corrected to reflect that the respondent pled guilty to two, not three, counts of distribution of controlled dangerous substance, in violation of N.J.S.A. 24:21-19a.(1) on June 21, 1985.

IT IS FURTHER ORDERED that the casino employee license of Christina Dougherty is revoked based upon the reasons set

forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Christina Dougherty, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4288-85

AGENCY DKT. NO. 85-199

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

Petitioner,

v.

**CHRISTINA DOUGHERTY,**

Respondent.

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**Norma Plenty, Law Clerk, appearing pursuant to N.J.A.C. 1:1-3.12(a)2, for petitioner**

**Christina Dougherty, respondent, pro se**

Record Closed: November 7, 1985

Decided: November 27, 1985

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

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on May 20, 1985, as amended on October 16, 1985, seeking the revocation of the respondent's license as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Ms. Dougherty requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The prehearing conference was held by way of a telephone conference call on August 22, 1985, and the hearing took place on October 18, 1985. After the parties had time to submit additional exhibits, the record in the matter closed on November 7, 1985.

On May 3, 1982, the respondent was arrested for drunk driving and was charged with the possession of a hypodermic needle and syringe, a violation of N.J.S.A. 24:21-51 (c) (P-8, P-9). On January 28, 1983, the respondent failed to appear in court regarding this charge and a bench warrant was issued (P-9). Thereafter, the respondent was informed that the matter would not be pursued and that she did not have to appear in court. Ms. Dougherty failed to reveal this arrest on the personal liability disclosure form which she filed with the Commission (P-10).

On November 2, 1984, an undercover police officer, Sergeant John Mazzeo and a female informant entered the Florida Pub in Atlantic City where the respondent was employed as a barmaid. The respondent knew the informant and was aware that the informer was a drug user. After the informant asked the respondent if she could buy some methamphetamine, the respondent told her that she could get her some cocaine for \$20. The money was given to the respondent by Sergeant Mazzeo and the respondent went to a woman sitting at the bar and returned with a packet containing some white powder (P-1). The material in the packet was tested by the laboratory of the New Jersey Division of State Police and found to be .52 grams of cocaine (P-2).

On November 5, 1984, Sergeant Mazzeo and the same female informant went into the Florida Pub and again asked the respondent about buying some methamphetamine. The respondent told them that she could take them some place after work where they could purchase the drug. Later, the respondent took Sergeant Mazzeo and the informant to the Town Tavern where the respondent located Donna Ferro. In the respondent's car, Ms. Ferro handed the respondent a small plastic bag in exchange for the \$35 that the respondent had received from Sergeant Mazzeo (P-5). The material in the bag was tested by the laboratory of the New Jersey State Police and found to be .29 grams of methamphetamine (P-11).

The respondent was arrested on April 5, 1985, and charged with the possession of the controlled dangerous substance with intent to sell, the sale of a controlled dangerous substance and conspiracy (P-1, P-5).

Thereafter, as to the November 2, 1984 incident, the respondent was indicted for the possession of cocaine, a violation of N.J.S.A. 24:21-20a(1), possession of cocaine with an intent to distribute, a violation of N.J.S.A. 24:21-19a(1) and distribution of a controlled dangerous substance (cocaine) to a law enforcement officer, a violation of N.J.S.A. 24:21-19a(1) (P-3).

As to the November 5, 1984 incident, the respondent was indicted for the possession of methamphetamine with intent to distribute, a violation of N.J.S.A. 24:21-19a(1), conspiracy to distribute controlled dangerous substances, a violation of N.J.S.A. 24:21-24, and the distribution of methamphetamine to a law enforcement officer, a violation of N.J.S.A. 24:21-19a(1) (P-6).

After entering into a plea bargaining agreement, the respondent pled guilty to three counts of the distribution of a controlled dangerous substance, all violations of N.J.S.A. 24:21-19a(1), and the rest of the charges contained in the two indictments were dismissed (P-4, P-7). The respondent was placed on probation for one year, required to pay a total fine of \$750 and required to pay a total amount of \$50 to the Violent Crime Compensation Board (P-4, P-7). At the time of the hearing, the respondent was still on probation.

As to the two incidents in the Florida Pub, the respondent felt that she had been entrapped since she knew the informant and felt she was doing a favor for a friend. According to the respondent, she has never been involved in any other drug transactions.

At the time of the hearing, Ms. Dougherty was 34 years old and was employed as a parking attendant in Atlantic City. Ms. Dougherty had been employed for one month as a cashier at Harrah's Marine Hotel and Casino but was fired because of the Division's complaint in this matter. Also, for one year, 1979, the respondent was employed as a change person at the Holiday International Casino in Las Vegas.

On behalf of the respondent, Kathleen O'Boyle testified that she has known the respondent as a personal friend for approximately three years. Ms. O'Boyle met the respondent at the Florida Pub, and the respondent got her a job there and trained Ms. O'Boyle to be a barmaid. Ms. O'Boyle left this job prior to the incidents in issue.

According to Ms. O'Boyle, the respondent does not use or sell drugs. Since the incidents in issue, Ms. O'Boyle stated that the respondent is more careful as to what she will do for a friend. Ms. O'Boyle was sure that there would be no repeat of the two incidents.

I **FIND** that the facts as stated above are not in issue. The only factual dispute in this matter relates to the failure to disclose the 1982 arrest. Ms. Dougherty offered no explanation as to why she did not list the 1982 arrest on her personal history disclosure form; however, she stated that she orally told an employee of the Commission about the 1982 arrest and later sent to the Commission a letter from Hamilton Township stating that the matter would not be pursued. The respondent could not identify the person she spoke to, nor did she have a copy of the letter sent to the Commission. After the hearing, I was informed by Deputy Attorney General William Mountford and Ms. Plenty that there was no record of this conversation or the receipt of any letter from Ms. Dougherty regarding the 1982 arrest.

Based on the above, I do not believe Ms. Dougherty's testimony and I **FIND** that Ms. Dougherty intentionally did not list the 1982 arrest. I **CONCLUDE** that the respondent's failure to supply this information is a violation of N.J.S.A. 5:12-86b which requires applicants to reveal material facts pertaining to their qualifications.

Also based on the facts in this matter, I **CONCLUDE** that the Division has shown that the respondent was convicted of violations of N.J.S.A. 24:21-19a(1), involving cocaine or methamphetamine, which are high misdemeanors, and which are statutory disqualifiers pursuant to the provisions of N.J.S.A. 5:12-86c(3). Also, based on this conviction, and the fact that the respondent's conviction occurred approximately one year ago, I **CONCLUDE** that the respondent has not shown by clear and convincing evidence that she is a person of good character, honesty and integrity as required for licensure by N.J.S.A. 5:12-90b nor has she shown that she has been rehabilitated as provided by N.J.S.A. 5:12-90h.

Therefore, I **ORDER** that the casino employee license of Christina Dougherty be **REVOKED**.

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

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

November 27, 1985  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

12/2/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 4 1985  
DATE

Ronald J. Parker/s  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Arrest Report, dated April 5, 1985; Investigation Report, dated November 2, 1984; Supplementary Investigation Report, dated November 3, 1984; Property Report, dated November 2, 1984; Order for Presentence Investigation
- P-2 Request for Examination of Evidence and Laboratory Report, dated February 8, 1985
- P-3 Indictment No. 85-04-0524B entered against Tina Dougherty
- P-4 Judgment of Conviction regarding Indictment No. 85-04-0524B, Sentence Work Sheet and Plea Agreement
- P-5 Investigation Report, dated November 5, 1984; Supplementary Investigation Report, dated November 7, 1984; Supplementary Investigation Report, dated November 5, 1984; Arrest Report dated April 5, 1985
- P-6 Indictment No. 85-04-0525B entered against Tina Dougherty and Donna Ferro
- P-7 Judgment of Conviction regarding Indictment No. 85-04-0525B, Sentence Work Sheet and Plea Agreement
- P-8 Investigation Report, dated May 3, 1982; Arrest Report, dated May 3, 1982; Property Report dated May 3, 1982; Memorandum regarding the drunk driving arrest, Breath Alcohol Determination Test Report, Drinking-Driving Report; Alcohol Influence Report
- P-9 Complaint filed against Christina Dougherty, dated May 3, 1982
- P-10 Part of the History Disclosure Form submitted by Christina Dougherty
- P-11 New Jersey State Police Laboratory Report, dated January 30, 1985

**WITNESSES**

**FOR THE PETITIONER:**

**Sergeant John Mazzeo**

**FOR THE RESPONDENT:**

**Christina Dougherty**

**Kathleen O'Boyle**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-EA-39  
OAL DOCKET NO. CCC 1077-85  
(CCC 2411-84 ON REMAND)  
(CCC 2376-83 ON REMAND)  
LICENSE NO. 01088-11

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APPLICATION OF JAMES E. DUCKSWORTH :  
FOR RENEWAL OF HIS CASINO : FINAL ORDER  
KEY EMPLOYEE LICENSE :

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A hearing in this matter having been held in the Office of Administrative Law following two Commission orders of remand; and the third initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission) on January 23, 1986; and the Division of Gaming Enforcement having filed exceptions to the initial decision on February 25, 1986, and the applicant having filed a reply dated March 10, 1986; and the Commission having resolved to deny the applicant's casino key employee license renewal application at its public meeting of March 19, 1986; and the Commission having granted the applicant's request to reconsider its decision on April 9, 1986; and the Commission having reconsidered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this *19<sup>th</sup>* day of May 1986, ORDERED that the ALJ's recommendation to grant the applicant's application for renewal of his casino key employee license is rejected

for the reasons stated in the May 7, 1986, Commission meeting record and based upon the following factual findings which compel the conclusion that the applicant failed to establish by clear and convincing evidence the requisite good character, honesty and integrity under N.J.S.A.

5:12-89(b)(2) and -90(b):

(1) The record establishes that the applicant took deductions on his original 1981 federal income tax return to which he was not entitled. An amended return for tax year 1981 was subsequently filed. A comparison of the two returns reveals discrepancies as follows:

(a) On the original 1981 tax return exemptions were claimed for a daughter, Regina, and two sons, Anthony and Willie; on the amended return exemptions were claimed for sons, Anthony and Jason.

(b) On the original 1981 tax return deductions were taken for \$3163 in home mortgage payments and \$1050 in real estate taxes; these deductions were not claimed on the amended return.

(c) On the original 1981 tax return no interest income was disclosed; \$17 in interest income was declared on the amended return.

(d) A \$50 credit for political contributions was claimed on the original return; no political contributions were claimed on the amended return.

(e) A \$150 health insurance deduction was claimed on the original return; no health insurance deduction was claimed on the amended return.

(f) A \$950 deduction for automobile sales tax was claimed on the original

return; a \$650 deduction was claimed on the amended return.

(g) A \$625 deduction was claimed for charitable contributions on the original return; only \$205 was claimed on the amended return.

(h) An \$830 deduction for uniforms and cleaning was claimed on the original return; only \$400 was claimed on the amended return.

- (2) With all due deference to the opportunity of the ALJ to observe the witness and obtain a "feel" of the case, the Commission finds the applicant's testimony regarding the responsibility of the tax preparer for the false information in the original 1981 return to be contradictory, implausible and fatally inconsistent with the evidence of his 1975 through 1981 tax returns. The Commission further finds the testimony of the applicant's tax preparer to the effect that his standard procedure was to ask taxpayers to supply the information needed to complete their income tax returns and that the applicant was the source of all information included on his original 1981 tax return to be believable. The applicant knowingly signed his original tax return under the following declaration: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete." Based upon the foregoing, the Commission further finds that the applicant was the source of the errors on his original 1981 tax return.

IT IS FURTHER ORDERED that for the reasons stated above, the application of James E. Ducksworth for renewal of his casino key employee license is denied; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon James E. Ducksworth, the Division of Gaming Enforcement, the Office of Administrative Law and all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-EA-39  
OAL DOCKET NO. CCC 1077-85  
(CCC 2411-84 ON REMAND)  
(CCC 2376-83 ON REMAND)  
LICENSE NO. 01088-11

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IN THE MATTER OF THE APPLICATION :  
OF JAMES E. DUCKSWORTH FOR A STAY : FINAL ORDER  
OF A COMMISSION ORDER :

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The Casino Control Commission having ordered that James E. Ducksworth's application for renewal of his casino key employee license be denied at its public meeting of May 7, 1986; and the applicant immediately thereafter having moved for a stay of that order pending appeal; and the Commission having considered the applicant's motion,

IT IS on this <sup>14<sup>th</sup></sup> day of May 1986, ORDERED that the applicant's motion for stay is denied; and

IT IS FURTHER ORDERED that copies of this final order be served upon James W. Ducksworth and the Division of Gaming Enforcement within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1077-85  
(CCC 2411-84 ON REMAND  
(CCC 2376-83 ON REMAND))  
AGENCY DKT. NO. 83-EA-39

**JAMES E. DUCKSWORTH,**

Applicant,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW AND PUBLIC**

**SAFETY,**

Respondent.

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**Gerald F. Miksis, Esq.,** for the applicant (Lashman and Miksis, attorneys)

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

Record Closed: December 10, 1985

Decided: January 21, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps), pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal based upon the allegation that the applicant had committed an offense in the filing of his federal income tax returns, which rendered

licensure inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) and which established that the applicant lacked the requisite financial stability, integrity and responsibility under section 89b(1), as well as the requisite good character, honesty and integrity under section 89b(2). The applicant disputed these contentions.

PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On December 9, 1983, following a hearing, an initial decision was issued in which it was concluded that the Division had not established any violation of the Act, and that the applicant had established that he possessed financial stability, integrity and responsibility, and that he was a person of good character, honesty and integrity, and it was ordered that his application be granted. However, on April 6, 1984, the Commission, upon consideration of exceptions filed by the Division, ordered that the matter be remanded to the Office of Administrative Law for expansion of the record and for consideration of additional information. On the same date, the matter was retransmitted to the Office of Administrative Law. A second prehearing conference was held on April 26, 1984.

On December 3, 1984, following a hearing, a second initial decision was issued in which it was concluded that the Division had not established any violation of the Act and that the applicant had established that he possessed the qualifications for licensure, and it was ordered that his application be granted. However, by order dated February 25, 1985, the Commission, upon consideration of exceptions filed by the Division, ordered that the matter again be remanded to the Office of Administrative Law for further expansion of the record. On the same date, the matter was retransmitted to the Office of Administrative Law. The matter was heard on June 14, 1985 and December 10, 1985, at which time the record was closed.

FINDINGS OF FACT

The Commission's second order of remand directed that the applicant expand the record by production of:

1. His 1975 and 1980 federal tax returns and any and all amended returns for those years.
2. The testimony of appropriate representatives from H & R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant \$826 (P2 in evidence).

The original initial decision, dated December 9, 1983, together with the second initial decision, dated December 3, 1984, are attached hereto and are incorporated herein as though fully set forth at length.

The course of the hearing concerned updated general evidence; the applicant's 1975 and 1980 federal income tax returns and their impact, if any, upon his prior testimony; as well as information from H & R Block and its impact, if any, upon the applicant's prior testimony.

The applicant testified that he remains employed by Bally's Park Place Casino Hotel (Park Place) as a pit boss. He received one minor disciplinary report because of an administrative error concerning newly established procedures.

The applicant further testified that he has satisfied his obligation to the Internal Revenue Service under the installment agreement (P-3). Also, all payments were made in a timely manner.

The evidence concerning the applicant's continued employment at Park Place and his payments under the installment agreement were undisputed and believable and are thus **FOUND as FACT**.

The applicant produced his 1975 and 1980 federal income tax returns (P-5 and P-8). The information contained on these tax returns is consistent with the applicant's prior testimonies. Accordingly, these and other documents offered during the second remand hearing provide additional corroboration of the applicant's testimonies and do not have any negative affect upon his credibility.

The Division's contention that the applicant's credibility is questionable because the 1980 federal tax return he offered (P-8) was identical with exhibit P-5 offered by the Division during a prior hearing, which the applicant was then unable to identify, is not persuasive. First, the applicant testified that he formed the opinion that the subject exhibit was in fact his tax return only after he had had an opportunity to closely study the exhibit and after he had received assurances from tax preparers that the document was his return; he had not had a sufficient opportunity to do so at the prior hearing. Further, this specific dispute appears to be primarily the result of tactical maneuvers by and between counsel, which should not reflect upon the applicant.

The applicant also produced statements from Dorothy C. Ortutay, district manager of H & R Block, concerning the errors on the applicant's 1980 federal income tax return for which H & R Block reimbursed the applicant for an interest assessment imposed by the Internal Revenue Service (P-3 and P-4). These documents corroborate the applicant's prior testimony and exhibit P-2. More specifically, the errors referred to were identified by H & R Block as attributable to Mr. Behe, the preparer and a former employee of H & R Block, and not the applicant. Accordingly, this evidence enhances the persuasiveness of the prior testimony.

In the final analysis, there was no evidence to establish that the applicant ever willfully or knowingly filed federal income tax returns with false information.

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

1. The applicant's federal income tax returns for 1975 and 1980 corroborated his prior testimonies.
2. Exhibits P-3 and P-4 corroborated the applicant's prior testimonies and other documentary evidence concerning errors on his 1980 federal tax return.
3. The errors identified by H & R Block in the applicant's 1980 federal income tax return were not attributable to the applicant; rather, they were attributable to the tax preparer.

4. The applicant did not willfully or knowingly file federal income tax returns with false information.

#### DISCUSSION OF LAW AND CONCLUSIONS

The Division contended that the applicant should be disqualified from licensure pursuant to section 86c(4), by means of section 86g, section 89b(1) and section 89b(2) because of the circumstances underlying the filing of his 1975 through 1981 federal income tax returns. More specifically, the Division contended that the applicant's 1981 tax return violated several sections of the Internal Revenue Code.

Both prior initial decisions concluded that the Division had not met its burden of proof. As indicated herein, the additional proofs provided by the applicant further supported his exculpatory testimony. Accordingly, the Division has not established a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the Act, pursuant to section 86c(4).

The prior initial decisions also concluded that the applicant had established, by clear and convincing evidence, that he possessed financial stability, integrity and responsibility, as well as good character, honesty and integrity, pursuant to sections 89b(1) and (2) of the Act. The proofs presented at the second remand hearing further support these conclusions. I so **CONCLUDE**.

#### ORDER OF DISPOSITION

It is **ORDERED** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED**.

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

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

January 21, 1986  
DATE

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

Receipt Acknowledged:

January 23, 1986  
DATE

Bernadette J. Frizzo  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 24 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks/e

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1\* U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982  
(5 pages)
- J-2\* Admended U.S. Individual Income Tax Return 1981, James Ducksworth,  
December 27, 1982 (6 pages)
- P-1\* Department of the Treasury, Internal Revenue Service - Installment  
Agreement, James Ducksworth, July 14, 1983
- P-2\* Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H &  
R Block, December 27, 1982
- P-3\*\*\* Affidavit Dorothy C. Ortutay, June 10, 1985 (2 pages)
- P-4\*\*\* Letter to the Casino Control Commission from Dorothy C. Ortutay,  
December 28, 1982
- P-5 U.S. Individual Income Tax Return 1975, James E. Ducksworth, February 17,  
1978 (3 pages)
- P-6\*\*\* Department of the Treasury, Internal Revenue Service - Request for Copy of  
Tax Form or Individual Income Tax Account Information, James Ducksworth
- P-7\*\*\* Letter to James Ducksworth from Shelly Goldenberg, March 21, 1985
- P-8\*\*\* U.S. Individual Income Tax Return 1980, James Ducksworth (4 pages)
- R-5\*\*\* U.S. Individual Income Tax Return 1980, James E. Ducksworth (4 pages)

- R-8\*\* U.S. Individual Income Tax Return 1976, James E. Ducksworth (5 pages)
- R-9\*\* U.S. Individual Income Tax Return 1977, James E. Ducksworth, February 17, 1978 (4 pages)
- R-10\*\* U.S. Individual Income Tax Return 1978, James E. Ducksworth, January 31, 1979 (4 pages)
- R-11\*\* U.S. Individual Income Tax Return 1979, and State of New Jersey Gross Income Tax Resident Return 1979, James E. Ducksworth (5 pages)
- R-12\*\* U.S. Individual Income Tax Return 1982, James Ducksworth (6 pages)

- \* Admitted during initial hearing
- \*\* Admitted during first remand hearing
- \*\*\* Admitted during second remand hearing

EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-1Id. U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-1)
- R-2Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-2)
- R-3Id. Real Estate Settlement Agreement (2 pages)
- R-4Id. U.S. Individual Income Tax Return 1979, James Ducksworth (3 pages) (exhibit withdrawn)
- R-6Id. U.S. Individual Income Tax Return 1978, James E. Ducksworth (4 pages)
- R-7Id. U.S. Individual Income Tax Return 1977, James E. Ducksworth (4 pages)

R-13Id. Affidavit of James E. Ducksworth, July 13, 1983 (not offered)

R-14Id. James E. Ducksworth the Division of Gaming Enforcement, Department of Law and Public Safety, OAL DKT. NO. CCC 2411-84 (CCC 2376-83 On Remand) AGENCY DKT. NO. 83-EA-39, Transcript of Proceedings of hearing held on July 9, 1984 (82 pages) (not offered)

WITNESS LIST

For the applicant:

James E. Ducksworth  
John McCarty\*

For the respondent:

James W. Behe\*\*  
James E. Ducksworth  
Stephen French\*\*  
Robert W. Latimer\* \*\*

\* Testified during initial hearing

\*\* Testified during first remand hearing

NOTE: Mr. Ducksworth testified at all three hearings.



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2411-84

(CCC 2376-83 ON REMAND)

AGENCY DKT. NO. 83-EA-39

**JAMES E. DUCKSWORTH,**

Applicant,

v.

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

Respondent.

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**Gerald F. Miksis, Esq.,** for the applicant (Lashman, Miksis and Stilwell, attorneys)

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

Record Closed: October 17, 1984

Decided: December 3, 1984

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

**STATEMENT OF THE CASE**

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps), pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the allegation that the applicant had committed an offense regarding the filing of his federal income tax returns, which rendered licensure inimical to the Act, which established that the applicant lacked the requisite financial stability, integrity and responsibility, and which established that the

applicant lacked the requisite good character, honesty and integrity. The applicant disputed these contentions.

#### PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Following a hearing and on December 9, 1983, an initial decision was issued in which it was concluded that the Division had not established any violation of the Casino Control Act (Act), and that the applicant had established that he possessed financial stability, integrity and responsibility, and that he was a person of good character, honesty and integrity, and it was ordered that his application be granted. However, on April 6, 1984, the Commission, upon consideration of exceptions filed by the Division, ordered that the matter be remanded to the Office of Administrative Law for expansion of the record and for consideration of additional information. On the same date, the matter was retransmitted to the Office of Administrative Law. A second prehearing conference was held on April 26, 1984. The matter was heard on July 9, 1984 and October 17, 1984, at which time the record was closed.

#### FINDINGS OF FACT

The Commission's Order of Remand directed that the record be expanded to include:

1. The applicant's 1975-1980 federal tax returns and any and all amended returns for those years.
2. The testimony of James Behe, the applicant's tax preparer, concerning, but not limited to, the supplying and receipt of information and figures

used to calculate the deductions on the applicant's 1979, 1980 and 1981 tax returns.

3. The testimony of appropriate representatives from H&R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant \$826 (P-2 in evidence).

The original initial decision, dated December 9, 1983, is attached hereto and is incorporated herein as though fully set forth at length.

The findings of fact in the original initial decision were based substantially upon Mr. Ducksworth's testimony, which consisted of a denial of any wrongdoing. Also, the decision contained a finding that the applicant's testimony was credible and persuasive. The Division took strong exception to this finding. Accordingly, the essential issue on remand is whether the Division's proofs impact upon the prior findings, specifically that the applicant's testimony was credible.

The Division offered the testimony of Mr. Behe and introduced into evidence Mr. Ducksworth's federal tax returns for 1976 (R-8), 1977 (R-9), 1978 (R-10), 1979, including the applicant's New Jersey tax return (R-11), and 1982 (R-12).

Mr. Behe testified that he is currently employed by a savings and loan association, and that he was previously employed by H&R Block. He prepared individual income tax returns for Mr. Ducksworth, as well as for many other persons. Although Mr. Behe had no specific recollection of the preparation of any of the applicant's returns, he stated that the applicant was the source of all information included in the returns. In addition, although Mr. Behe did not claim to be an expert, he did hold himself out to be a person who prepared returns and recognized that people for whom he prepared returns relied upon him for accuracy. Nevertheless, the witness conceded that errors could have been made.

In substance, Mr. Behe's testimony was of no value whatsoever. His testimony was predictable, vague and very weak. Further, he had no specific recollection of the preparation of the applicant's returns. Although the witness's testimony was moderately

inconsistent with a portion of Mr. Ducksworth's prior testimony, it was not substantial enough to impair the credibility thereof.

Nevertheless, Mr. Ducksworth's testimony must also be reexamined in light of the additional tax returns produced by the Division (R-8, R-9, R-10, R-11 and R-12). However, the Division has not contended that the information contained in these tax returns is inconsistent with the applicant's prior testimony. In fact, it appears that many of the errors contained on the applicant's original 1981 return, which were the subject of dispute at the prior hearing, existed on his prior tax returns. Therefore, the applicant's testimony that the errors on his original 1981 return were the result of an inadvertent carry-over of errors on his prior returns was supported directly by exhibits R-8, R-9, R-10 and R-11. I also note that the applicant's 1976, 1977 and 1978 tax returns were prepared by a tax preparer employed by the applicant (R-8, R-9 and R-10). Accordingly, the applicant's additional tax returns only serve to buttress his prior testimony and do not have any negative effect upon his credibility.

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

1. The testimony of Mr. Behe was vague, weak and unpersuasive.
2. Mr. Behe's testimony did not impair the credibility of the applicant nor the believability of the applicant's prior testimony.
3. The exhibits offered by the Division did not impair the credibility of the applicant nor the believability of his prior testimony.
4. The exhibits offered by the Division enhanced the believability of the applicant's prior testimony.

#### DISCUSSION OF LAW AND CONCLUSIONS

The Division contended that the applicant should be disqualified from licensure pursuant to sections 86c(4), through section 86g, 89b(1) and 89b(2) of the Act by reason of the circumstances underlying the filing of his 1975 through 1981 federal income tax returns. More specifically, the Division contended that the applicant's 1981 tax return violated several sections of the Internal Revenue Code.

The original initial decision concluded that the Division had not met its burden of proof. As indicated herein, the additional proofs offered by the Division failed to establish any misconduct by the applicant. Therefore, the Division has failed to establish a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the Act, pursuant to section 86c(4); and I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86g.

The original initial decision also concluded that the applicant had established, by clear and convincing evidence, that he possessed financial stability, integrity and responsibility, as well as good character, honesty and integrity, pursuant to sections 89b(1) and (2) of the Act. The proofs presented at the remand hearing only served to buttress the applicant's qualifications. Therefore, these conclusions are readopted in full.

**ORDER OF DISPOSITION**

It is **ORDERED** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED**.

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

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

December 3, 1984  
DATE

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

Receipt Acknowledged:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (5 pages)
- J-2 Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages)
- P-1 Department of the Treasury - Internal Revenue Service Installment Agreement, James Ducksworth, July 14, 1983
- P-2 Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H&R Block, December 27, 1982
- R-8 U.S. Individual Income Tax Return 1976, James E. Ducksworth (5 pages)
- R-9 U.S. Individual Income Tax Return 1977, James E. Ducksworth (4 pages)
- R-10 U.S. Individual Income Tax Return 1978, James E. Ducksworth (4 pages)
- R-11 U.S. Individual Income Tax Return 1979, and State of New Jersey Gross Income Tax Resident Return 1979, James E. Ducksworth (5 pages)
- R-12 U.S. Individual Income Tax Return 1982, James Ducksworth (6 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-1 Id. U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-1)
- R-2 Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-2)
- R-3 Id. Real Estate Settlement Agreement (2 pages)
- R-4 Id. U.S. Individual Income Tax Return 1979, James Ducksworth (3 pages) (exhibit withdrawn)
- R-5 Id. U.S. Individual Income Tax Return 1980, James E. Ducksworth (4 pages)
- R-6 Id. U.S. Individual Income Tax Return 1978, James E. Ducksworth (4 pages)
- R-7 Id. U.S. Individual Income Tax Return 1977, James E. Ducksworth (4 pages)

WITNESS LIST

AT THE REMAND HEARING

FOR THE APPLICANT:

None

FOR THE RESPONDENT:

James W. Behe

James E. Ducksworth

Stephen French

Robert W. Latimer



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2376-83

AGENCY DKT. NO. 83-EA-39

**JAMES E. DUCKSWORTH,**

Applicant

v.

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

Respondent.

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**APPEARANCES:**

**Gerald F. Miksis, Esq., for the applicant (Wm. Goddard Lashman, attorney)**

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

Record Closed: October 25, 1983

Decided: December 9, 1983

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

**STATEMENT OF THE CASE**

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps) pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the basis that the applicant had committed an offense which rendered licensure inimical to the Act, that the applicant lacked the requisite financial stability, integrity and responsibility, and that the applicant lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 7, 1983, and the matter was scheduled for a hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Ducksworth is 40 years of age. He resides in Mays Landing, New Jersey. The applicant is a high school graduate and has received employment training in the casino industry. The applicant currently holds a casino key employee license.

On December 3, 1979, Mr. Ducksworth commenced employment with Bally's Park Place Casino Hotel (Park Place) as a floorperson. At this time he relocated to New Jersey from Las Vegas, Nevada, where he had been employed by the Sands Hotel and Casino. In September 1980, the applicant was promoted to the position of pit boss. The applicant has been employed in the casino industry for the past 14 years.

During 1975, the applicant purchased a house in Las Vegas, Nevada, for a purchase price of \$44,950. During 1979, he sold the house for \$61,851. The applicant sold the house in order to avoid declaring himself bankrupt. The applicant has never filed an Internal Revenue Service Form 2119 concerning the sale of the house.

The applicant's 1979 and 1980 U.S. Individual Income Tax Returns were prepared by James W. Behe, who was then employed at the Brigantine office of H & R Block. Mr. Behe also prepared the applicant's 1981 return, although Mr. Behe was no longer employed by H & R Block (J-1). The applicant's 1981 return was the primary subject of dispute at the hearing.

The applicant is the father of three sons: Willie, who lives with his mother in Mississippi, Anthony (born in 1981), who lives with his mother in Las Vegas, and Jason, who lives with the applicant (at least during 1981). The applicant provides support for the two children who do not reside in his household. Also, the applicant has provided financial support for his niece, Regina Ducksworth, although no such support was provided during 1981.

Several errors appeared on the applicant's original 1981 return (J-1). More specifically, on line 6c, Anthony, Regina and Willie were listed as dependent children who resided with the applicant and for whom deductions were taken. Further, deductions were taken on line 32b, which emanated from Schedule A - Itemized Deductions, for real estate taxes and home mortgage interest expenses, in the amount of \$4,213, which the applicant did not incur during 1981. The applicant claimed entitlement to and received a \$516 refund as a result of the filing of his 1981 return.

As a result of an Internal Revenue Service inquiry regarding the applicant's 1980 return and as a result of the Division's objections to renewal of his license, the applicant had H & R Block review his 1980 and 1981 returns. Because errors in the returns were noted, amended returns were prepared and submitted for 1980 and 1981. It was determined that the applicant had underpaid his taxes for both years and that he owed the Internal Revenue Service an amount of \$7,404.56, which consisted of principal and interest (P-1). On July 14, 1983, the applicant entered into an Installment Agreement with the Internal Revenue Service, under which he is required to pay \$250 per month until the debt is satisfied (P-1). The applicant has made the required payments on a timely basis. Further, on December 27, 1982, H & R Block reimbursed the applicant in the amount of \$826 for Internal Revenue Service assessments of interest against him which were due to Mr. Behe's errors. The applicant has never had any other difficulties with the filing of his tax returns. Since these difficulties, the applicant has, for the first time, hired an accountant to assist him in tax matters.

On his amended 1981 return, the applicant rectified the previously cited errors (J-2). More specifically, under line 6c the applicant claimed only Jason as his child who lived with him, and under line 6d, the applicant claimed only Anthony as a dependent. Further, the applicant did not claim any deductions for real estate taxes or home mortgage interest expense. In addition, other discrepancies between the two returns were noted. More specifically, on line 8a the applicant declared no interest income on his original return (J-1), but declared \$17 on his amended return (J-2). Also, on line 38 the applicant claimed a \$50 credit for political contributions on his original return (J-1), which was not claimed on his amended return (J-2). Other discrepancies appear in the respective schedule(s) A - Itemized Deductions. More specifically, on line 1 the applicant claimed a \$150 health insurance deduction on his original return (J-1), which was not claimed on his amended return (J-2); on line 13b, the applicant claimed a deduction of \$950 for automobile sales tax on his original return (J-1), but claimed only \$650 on his amended return (J-2); on line 24, contributions, the applicant claimed \$625 on his original return (J-1), but claimed only \$205 on his amended return (J-2); and on line 31, uniforms and cleaning, the applicant claimed \$830 on his original return (J-1), but claimed only \$400 on his amended return (J-2). As a result of the filing of the amended 1981 return, the applicant had a tax liability of \$2,313, or, together with the refund previously received, a total balance due of \$2,829 (J-2).

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

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's failure to file a form 2119 with the Internal Revenue Service concerning the sale of his Las Vegas house, the circumstances surrounding the errors on his original 1981 return and his credibility.

Mr. Ducksworth testified that he did not file or cause to be filed a form 2119 concerning the property he had owned in Las Vegas because he did not believe it was necessary. Although the applicant sold the premises in 1979 for \$16,901 more than he paid for it in 1975, he contended that he did not make a profit. This contention was based upon the existence of a second mortgage on the property and the existence of loans,

the proceeds of which were used to make improvements to the property. Also, the applicant discussed the sale of this residence with Mr. Behe, his tax preparer. Mr. Behe indicated that no form had to be filed.

Similarly, the applicant explained the circumstances surrounding the errors on his original 1981 return. First concerned the deduction taken for Regina on line 6c (J-1). The applicant conceded that, although he had supported Regina in prior years, he did not do so in 1981. However, the applicant advised Mr. Behe of the changes in his tax status during 1981. Nevertheless, Regina's name was included on the return. I also note that the applicant did not claim Jason on his original return, a deduction to which he was entitled. The applicant's tax expert, Mr. McCarty, testified that an error in listing a dependent under line 6c as opposed to line 6d on a return constitutes a procedural error and has no effect upon tax liability.

The applicant further described the circumstances surrounding his claim of entitlement to deductions for real estate taxes and home mortgage interest expense on his original return. Mr. Ducksworth had incurred substantial moving expenses during 1981 and inquired of Mr. Behe as to the deductibility of these expenses. Mr. Behe replied that the expenses could be deducted and, apparently, included them as set forth above.

Although the applicant conceded that he was not entitled to the deductions described herein, he was unaware of their specific inclusion on his original return. The applicant had no specific knowledge of the tax laws. He merely provided Mr. Behe with the information that seemed to be appropriate and relied upon his tax preparer. The applicant did not supply any information to Mr. Behe which comprised the erroneous deductions. Further, the applicant has no idea of the source of the amounts claimed. The applicant did not review the completed original return; rather, he was very glad that he did not have any additional tax liability and merely signed the return and mailed it to the Internal Revenue Service. The applicant stated that this procedure was similar with his past practice and that he relied totally upon his tax preparer, whom the applicant assumed had expert knowledge of the tax laws.

There is no doubt that Mr. Ducksworth is ultimately responsible for the errors on the return. Further, it is apparent that had the applicant reviewed the return he should have recognized the errors because they concerned deductions to which he was simply not entitled. However, the issue is whether the applicant willfully filed the return with false information or whether his explanation is reasonable.

Aside from the return itself, the only evidence of the applicant's conduct at the time the return was filed came from his testimony. Therefore, it is appropriate to consider the applicant's credibility.

Initially, Mr. Ducksworth's position in this matter must be recognized. He is the applicant for continued licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was consistent, believable and persuasive. Further, his testimony comported fully with human experience. In addition, there was no witness offered to refute any fact to which the applicant testified.

Although the applicant is responsible for the errors on the return, which were extremely careless, he did not willfully or knowingly file the return with false information.

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

1. The applicant's reliance upon his tax preparer's advice, to the effect that he was not required to file a Form 2119 with the Internal Revenue Service, was erroneous but reasonable.
2. The applicant failed to review his completed original 1981 return prior to filing it with the Internal Revenue Service. This was very careless.
3. At the time the original 1981 return was filed with the Internal Revenue Service, the applicant was unaware that the return claimed deductions to which he was not entitled.
4. The applicant relied upon his tax preparer, whom he assumed to have expertise concerning the tax laws. This reliance comports fully with human experience and was reasonable.
5. The applicant's explanation of the reasons for the filing of the original 1981 return with false information was reasonable and persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86c(4) that the applicant's conduct in regard to the filing of his original 1981 return is inimical to the policies of the Act.

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

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

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

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

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

The Division contends that certain deductions contained on the applicant's 1981 return constitute violations of various sections of the federal tax law and, as such, establish that his continued licensure would be inimical to the policies of the Act. More specifically, the Division contends that the applicant violated 26 U.S.C.A. § 152, because he was not entitled to claim Regina Ducksworth as a dependent; 26 U.S.C.A. § 164(a), because he was not entitled to a deduction for real estate taxes; and 26 U.S.C.A. § 163(a), because he was not entitled to a deduction for home mortgage interest expense.

Although it was established, and the applicant conceded, that he was not entitled to claim these deductions, the Division did not identify that section of the Internal Revenue Code which would classify the conduct as a criminal act. Nevertheless, it would appear that the Division would argue that the applicant's conduct constitutes a violation of 26 U.S.C.A. § 7201, attempt to evade or defeat tax, which provides as follows:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than five years, or both, together with the costs of prosecution.

Elements of the offense of attempting to evade income tax are: (1) willfulness, (2) the existence of tax deficiency, i.e., a tax due and owing, and (3) an affirmative act constituting evasion or attempted evasion. U.S. v. Buckner, 610 F. 2d 570, cert. den. 100 S. Ct. 1646, 445 U.S. 961, 64 L.Ed. 2d 235 C.A. Cal. 1979, Cf. U.S. v. Wilkins, 385 F. 2d 465, cert. den. 88 S. Ct. 1043, 390 U.S. 951, 19 L.Ed. 2d 1144, C.A. Va. 1967; U.S. v. DeNiro 392 F. 2d 753, cert. den. 89 S. Ct. 89, 393 U.S. 826, 21 L.Ed. 2d 97, C.A. Ohio 1968; U.S. v. Hans, 543 F. Supp. 1119, (D.Ohio 1982).

"Willfulness' as used in this section means a voluntary intentional violation of a known duty." - U.S. v. King, 616 F. 2d 1034, cert. den. 100 S. Ct. 2950, 446 U.S. 969, 64 L.Ed. 2d 829, (C.A. Minn. 1980). Cf. U.S. v. Ruffin, 575 F. 2d 346 (C.A.N.Y. 1978). A concise discussion of willfulness, as applied in this section, is found in U.S. v. Anderson, 535 F. Supp. 1230, new trial denied 541 F. 2d 660 (U.C. Pa. 1982), as follows:

Requisite element of willfulness in a prosecution for criminal income tax evasion requires an awareness on the part of the taxpayer of a tax obligation; that an intentional rather than an inadvertent act or omission was involved; and that the behavior of the taxpayer was motivated by a specific intent to conceal in contrast to a genuine misunderstanding of the requirements of law or a good faith belief that the income was not taxable. Id. at 1239.

In U.S. v. Conforte, 624 F. 2d 869, cert. den. 101 S. Ct. 568, 449 U.S. 1012, 66 L.Ed. 2d 470 (C.A. Nev.1980), the court stated, "[a]lthough direct proof of the taxpayer's intent to evade taxes is rarely available, willfulness may be inferred by the trier of fact and from all the facts and circumstances of the attempted understatement of tax" Id. at 871.

Although the Division established the existence of a tax deficiency, it did not establish that the applicant's conduct was willful, nor that it was an affirmative act constituting evasion or attempted evasion. Therefore, the Division has failed to establish a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the act, pursuant to section 86c(4); and I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86g.

(B) N.J.S.A.5:12-89b(1)

Under Section 89b(1) of the Act, Mr. Ducksworth was required to establish, by clear and convincing evidence, that he possesses financial stability, integrity and responsibility. The Division raised concern regarding the applicant's filing of his original 1981 return.

There was no dispute that the applicant's original return contained deductions to which he was not entitled. However, there was no evidence which would indicate that these claims were knowing, purposeful or intentional acts. Nevertheless, the errors were obvious and should have been recognized by the applicant. However, given his explanation of the circumstances underlying the filing of the return and the manner in which he has conducted his personal financial affairs at all other times, these errors do not reflect adversely upon the applicant. Further, the applicant has clearly and convincingly demonstrated that he continues to possess the requisite degree of financial stability, integrity and responsibility for licensure.

I CONCLUDE that the applicant has established, by clear and convincing evidence, his financial stability, integrity and responsibility.

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

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

The applicant refuted the accusations of misconduct which were raised against him. Although the applicant committed a very careless error in the filing of his original return, such does not reflect adversely upon his character, honesty and integrity. The Division has cited no conduct by the applicant which would establish a diminution of his character, honesty and integrity since original licensure. Therefore, the applicant is entirely suitable for continued licensure to conduct gaming activities in this State.

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

**ORDER OF DISPOSITION**

I **ORDER** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED**.

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

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

December 9, 1983  
DATE

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

Receipt Acknowledged:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CASINO CONTROL COMMISSION

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS

**EXHIBITS ADMITTED INTO EVIDENCE**

- J-1 U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (5 pages)
- J-2 Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages)
- P-1 Department of the Treasury - Internal Revenue Service Installment Agreement, James Ducksworth, July 14, 1983
- P-2 Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H & R Block, December 27, 1982

**EXHIBITS NOT ADMITTED INTO EVIDENCE**

- R-1Id. U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (6 pages)(See J-1)
- R-2Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages) (See J-2)
- R-3Id. Real Estate Settlement Agreement (2 pages)

WITNESS LIST

**FOR THE APPLICANT:**

**James E. Ducksworth**

**John McCarty**

**FOR THE RESPONDENT:**

**Robert W. Latimer**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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IN THE MATTER OF THE APPLICATION :  
OF ELSINORE SHORE ASSOCIATES FOR : OPINION  
A RENEWAL OF ITS CASINO LICENSE. :

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NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chairman  
Valerie H. Armstrong, Vice Chair  
Joel R. Jacobson, Commissioner  
Carl Zeitz, Commissioner  
E. Kenneth Burdge, Commissioner (dissenting)

Appearances:

For Elsinore Shore Associates:

Nicholas F. Moles, Esq.  
Michael R. Griffinger, Esq.

For Elsinore Corporation, Elsub Corporation and  
Elsinore Shore Associates:

David M. Satz, Jr., Esq.

For the Division of Gaming Enforcement:

Anthony J. Parrillo, Director  
James Fogarty, Deputy Attorney General  
Fredric Gushin, Deputy Attorney General  
Eugene Schwartz, Deputy Attorney General

For the Casino Control Commission:

Thomas N. Auriemma, Deputy Director, Legal Division  
Leonard J. DiGiacomo, Assistant Counsel  
Joyoti Fleming, Assistant Counsel

I. Introduction

On January 15, 1986, Elsinore Shore Associates ("ESA") filed an application pursuant to section 88 of the Casino Control Act (N.J.S.A. 5:12-88) seeking a renewal of its casino license. ESA operates the Atlantis Casino Hotel in Atlantic City.

In discharging its responsibilities, the Division of Gaming Enforcement ("Division") conducted an investigation of the casino licensee, its affiliated companies, and those individuals and entities required to qualify for licensure. The Division thereafter filed with the Commission a general report dated March 14, 1986 (D-3), a report on Atlantis Casino Hotel Operations (D-1), a report on the financial stability of ESA and Elsinore Corporation (D-2), and recitals in support of a statement of issues (S-2) as well as a statement of issues.<sup>1</sup>

In an effort to hear this matter expeditiously, three formal prehearing conferences were held which enabled the Commission to conduct this hearing in an orderly fashion.

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1. The Division's recitals in support of its statement of issues was subsequently modified and stipulated to by ESA and the Division. During the course of the hearing, numerous exhibits were admitted into evidence. "S" refers to those exhibits to which the parties have stipulated; "E" refers to exhibits of ESA and its  
(Footnote Continued)

For the first time in the history of the New Jersey gaming experience, this Commission has conducted a casino license renewal hearing involving a licensee which has sought protection under Chapter 11 of the federal Bankruptcy Code. 11 U.S.C. §§1101 et seq. This action has thus focused the Commission's attention upon whether the Casino Control Act's ("Act") requirement of financial stability has been met. See, N.J.S.A. 5:12-84. The case has presented, therefore, novel legal issues for the Commission's determination.

In order to obtain a renewal of its casino license, ESA must demonstrate to this Commission that it has satisfied clearly and convincingly all licensing criteria and requirements demanded by the Act. With particular reference to the issues under consideration by the Commission, the licensee and its affiliates and holding companies must establish by clear and convincing evidence that they continue to meet the affirmative criteria of section 84 of the Act while not suffering any of the disqualifying or negative criteria of section 86 of the Act.

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(Footnote Continued)

affiliated entities; "J" refers to exhibits entered jointly by the Division and ESA; and "D" refers to Division exhibits.

ESA is a general partnership of the State of New Jersey, consisting of Elsub Corporation, a New Jersey corporation, and Elsinore of Atlantic City, a New Jersey limited partnership. Elsub has a 45.7% interest in ESA and Elsinore of Atlantic City has a 54.3% interest in the casino licensee. Elsinore of Atlantic City's general partner is Elsinore of New Jersey, Inc. which has an approximate 85% interest therein. It also has five individual limited partners, comprising what might be called the "Whitner Group," which owns approximately 15% of Elsinore of Atlantic City. Elsinore of New Jersey, Inc. is a wholly-owned subsidiary of Elsub which, in turn, is wholly owned by Elsinore Corporation, a publicly-traded Nevada corporation listed on the American Stock Exchange. In its simplest terms, Elsinore Corporation owns approximately 91.5% of the casino licensee (S-2).

On November 13, 1985, Playboy Enterprises, Inc., as a creditor, petitioned the United States Bankruptcy Court for the District of New Jersey to institute involuntary bankruptcy proceedings against Elsub (S-2). Hearings with respect to this involuntary proceeding have occurred and, while not a certainty, it appears that Elsub's efforts to have such petition dismissed may well be successful (J-4-T).

Nevertheless, on November 14, 1985, ESA filed a voluntary petition in the United States Bankruptcy Court for

the District of New Jersey seeking relief under Chapter 11 of the federal Bankruptcy Code (S-2).

II. Impact of Bankruptcy Filing on the Application for Casino License Renewal

Before turning to the specific facts adduced during the hearing, the Commission must address the impact that a bankruptcy filing has upon a licensee's ability to establish that it satisfies certain license criteria.

Section 84(a) of the Act requires ESA to produce such information, documentation and assurances concerning financial background and resources as may be required to establish by clear and convincing evidence its financial stability, integrity and responsibility. Section 84(b) further requires that the adequacy of financial resources as to the operation of the casino be demonstrated. Lastly, Section 84(d) demands that a licensee show that it has sufficient business ability and casino experience so as to establish the likelihood of the creation and maintenance of a successful, efficient casino operation.

The terms "financial stability, integrity and responsibility" are not defined in the Act. However, in its first casino license hearing in 1979, involving Resorts International Hotel, Inc., the Commission stated:

By its terms, this standard encompasses all financial aspects of the Applicant, the holding company and the other qualifiers. In addition to basic

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. [In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, p. 7.]

As indicated previously, this case is one of first impression because the Commission is faced with applying the Act's criteria of financial stability, integrity and responsibility to a casino license renewal applicant who has filed for protection under the bankruptcy laws of the United States. While the first Resorts decision discussed the Act's tripartite financial requirements which have been applied in every casino license hearing since, the Commission is not without guidance as it endeavors to resolve the issues presented by this case.

Specifically, in two prior Commission decisions there was an interplay between the Act's financial criteria and the provisions of the predecessor statute to the present Bankruptcy Code. 11 U.S.C. §§101 et seq. Those prior decisions, which for convenience will be referred to as the Smith and Taylor cases, were decided respectively in March and May of 1980 and are reported in the volumes of published Commission decisions. See, In the Matter of the Application

of Gilbert L. Smith for Licensure as a Casino Employee, CCC Docket No. 79-EA-10, (March 20, 1980); In the Matter of the Application of John J. Taylor for Licensure as a Casino Key Employee, CCC Docket No. 79-EA-107 (May 8, 1980).

The applicant in both the Smith and Taylor cases had sought an employee license which implicated the provisions of section 89 of the Act. Also, both had filed for some form of Bankruptcy Act protection. While there are differences between section 84 and section 89 of the Act, the operative provisions in sections 84(a) and 89(b)(1) concerning financial stability, integrity and responsibility are essentially the same.

Without going into exhaustive detail here, the Smith and Taylor cases stand for the proposition that, at a minimum, this Commission is concerned with the present and future financial stability, integrity and responsibility of an applicant and will look, among other things, to an applicant's past conduct in an effort to resolve the issue of present and prospective economic well-being. Additionally, this Commission has consistently recognized that the Legislature intended each of the financial criteria - stability, integrity, and responsibility - to be given independent significance.

As for the bankruptcy aspect of the Smith and Taylor cases, it has been recognized, in the Smith case, that the

applicant attempted to extricate himself from his financial difficulties through the filing of a wage earner plan.

Although that plan did not succeed, the Commission concluded that:

...this unsuccessful attempt [was] indicative of the Applicant's effort to regain financial stability, which in turn reflects positively upon the Applicant's financial integrity and responsibility. [Smith, supra at p. 16-17].

In the Taylor case, this Commission, in adopting, without modification, the initial decision of the Office of Administrative Law, held that the applicant's mere exercise of his statutory right to avail himself of the procedures and protections available under bankruptcy was not, in itself, evidence that the applicant lacked financial integrity.

While the foregoing has just touched on what the Commission has enunciated in two prior cases concerning the interplay between our statute and the bankruptcy laws, the present case has brought into sharp focus the philosophies and policies underlying bankruptcy. In this regard, the parties have provided this Commission with extensive legal briefs, along with supporting testimony. These materials have proved to be extremely helpful in analyzing this case.

At the outset, it should be noted that ESA has called this Commission's attention to the fact that people may misconstrue what bankruptcy is all about. To the extent the general public has any such misperception, it may have been that it has been fostered by the image from a popular board game of a man in top hat and tails, with his pants pockets turned inside out, who has gone "bankrupt" while speculating on properties having names distinctly familiar to this Commission. While bankruptcy may have gotten a bad name from this, or other popular impressions, it is not one to which this Commission subscribes for the purposes of resolving the issues of this case.

As noted previously, ESA, on November 14, 1985, filed a voluntary petition for reorganization under Chapter 11. Testimony has been presented that Chapter 11 is one of the chapters under Title 11 of the codified laws of the United States.

As described to this Commission, the general philosophy of the Bankruptcy Code is to give a fresh start to a person who has undergone an economic dislocation (T305)<sup>2</sup>. One of the ways to accomplish that goal is through a Chapter 11 proceeding in which a person, known as the debtor, can have

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2. "T" refers to the transcripts from the renewal hearing.

a plan of reorganization confirmed by the bankruptcy court. Such a plan is to provide for, among other things, a designation of classes of claims and interests, a specification of any class of claims or interests that is not impaired and a specification of how an impaired class of claims or interests will be treated. 11 U.S.C. §1123. A plan is to provide also for the equal treatment of claims or interests within a class, as well as provide adequate means for the plan's execution. Ibid.

There are two crucial aspects that the bankruptcy court must be satisfied exist before it confirms the plan. First, the court must be satisfied that the debtor is going to survive once the bankruptcy protections are removed. 11 U.S.C. §1129(a)(11). Second, each holder of a claim in a class must receive at least the value that his claim would receive if the debtor were in liquidation rather than reorganization, unless the holder agrees to accept the plan. 11 U.S.C. §1129(a)(7)(A).

There has been testimony that FSA, while going through reorganization, will be living in a fish bowl since its activities will be exposed to intense supervision and scrutiny at various levels (T318). For instance, ESA will be subject to scrutiny by the bankruptcy court, the United States Trustee, the Unsecured Creditors Committee

and, where appropriate, the United States District Court (T318-17 to T323-16).

In addition to these levels, there is also a possibility that a specific trustee could be appointed for ESA. Under current bankruptcy law, such a trustee will only be appointed under certain circumstances (T320-16 to T321-14). Until such time, ESA will continue to operate the Atlantis as debtor-in-possession.

To aid a debtor during the reorganization proceeding, the Bankruptcy Code, upon filing a petition, gives the debtor a breathing spell from creditor actions by providing for a general halt against all collection efforts in which creditors might engage in order to recover claims against the debtor's estate which arose prior to filing the reorganization petition. So broad is this protection that it automatically stays the commencement or continuation of certain legal and administrative proceedings against the debtor. 11 U.S.C. §362.

Obviously, the Commission has conducted an administrative proceeding in which ESA has participated. In this regard, the Commission has been told that specific exceptions exist under the automatic stay provision of the Bankruptcy Code which authorize a governmental unit to commence and continue a proceeding in order to enforce its regulatory and police power.

Part of the discussion concerning the Commission's regulatory and police power concerns the bounds beyond which it may not go because of a conflict with the federal Bankruptcy Code. This is not the first time that the Commission been told that portions of the Casino Control Act, and the authority derived therefrom, are subject to the supremacy of overriding federal law. See, e.g., Brown v. Hotel and Restaurant Employees and Bartenders International Union Local 54, \_\_\_ U.S. \_\_\_, 104 S. Ct. 3179 (1984). This Commission has never held, however, that the mere filing for relief in bankruptcy means that an applicant lacks financial stability. Further, there is no reason here why that view should be changed.

On the other hand, the Commission is not powerless to act. While ESA's pre-petition debt has been frozen, that does not answer the question of whether ESA is presently financially stable pursuant to the provisions of the Casino Control Act. The Commission has an obligation to consider whether ESA, in the totality of the circumstances, satisfies the financial criteria set forth in section 84(a). The consideration of that issue may continue unimpeded by the automatic stay. For that matter, if this Commission were to find that ESA, based on an adequate factual record over and above its filing for reorganization, presently lacks financial stability, integrity or responsibility, it would

be fully authorized, under the Bankruptcy Code, to deny ESA a renewal of its casino license. Such governmental authority has been recognized in other cases where the public health and welfare are much less critical than in the intensely regulated and sensitive industry of casino gaming. Cf. Duffey v. Dollison, 734 F. 2d 265 (6 Cir. 1984); In re Alessi, 12 B.R. 96 (Bkrcty. N.D. Ill. 1981). Surely then, the Commission's authority to act would be recognized here, where the primary purpose of section 84(a) is to insure that the economic dislocation of ESA does not render it presently or prospectively subject to the vagaries of untoward influence, nor undermine the essential confidence and trust of the public in casino gaming.

As is readily apparent, the present stability of ESA and its affiliated entities must be satisfactorily demonstrated to the Commission. There has been an intensive hearing (T1 to T1152). The Commission has heard 13 witnesses testify and has evaluated scores of documents admitted into evidence.

### III. Financial Stability Issues

In the autumn of 1985, the Atlantis Casino Hotel was financially troubled. Julian Levi, an outside director of Elsinore Corporation, testified that mistakes had been made and that Robert Maxey, former president thereof, had been unsuccessful in making the Atlantis Casino Hotel competitive

with the other casino hotels in Atlantic City. In short, the policies of Mr. Maxev which were designed to attract the so-called "high-roller" to the facility had been markedly unsuccessful in increasing the profitability of Atlantis (T808-15 to T816-4). Ultimately, Atlantis lost \$35 million last year.

In October 1985, the financial difficulties of Atlantis began to crest and they were having a severe economic impact upon Elsinore Corporation as well. Mr. Maxey departed the company (T815-20 to T816-5). In October, Elsinore Corporation was compelled to issue several press releases (J-5-C) which noted that Atlantis had continued to experience a deteriorating market share and was facing increasing cash flow difficulties. Further, it was announced that negotiation had commenced with representatives of holders of public and private debt in an attempt to restructure all or part of such debt.

As October progressed, however, things grew worse and Elsinore accelerated its efforts to restructure both its public and private debt. Also, Jay Pritzker resigned (T816-5 to 12) as a director of Elsinore and Ronald Azzolina, president of Atlantis, departed. The situation became so serious that it became uncertain whether Atlantis could meet its payroll obligations.

Despite the bleakness of the situation, several positive events were occurring. Jeanne Hood, a director of Elsinore, replaced Mr. Maxey and also became head of the Atlantis. In mid-October a "crisis management team," led by Ms. Hood, traveled to Atlantic City to evaluate the best course of action to undertake. Accompanying her were various specialists who had experience in assisting financially ailing companies, the casino manager of the Four Queens Casino in Nevada which is operated by Elsinore, the marketing director of Elsinore, representatives of Drexel, Burham, Lambert, and Charles Gerber, an Illinois lawyer who succeeded Mr. Pritzker as a director of Elsinore.

In mid-October, the Atlantis was so strapped for operating funds that shutting down operations was an alternative that was considered (T613-1 to 9). Various devices, including the sale of two parking lots of ESA to the parent company, were utilized as a way to infuse cash into the ailing casino while protecting the interests of Elsinore. In fact, \$1 million was transmitted to Atlantis this way. The need for more funds seemed essential. However, as a result of actions taken by the "crisis management team" no additional funds were, in fact, required.

During September, October and November 1985, Elsinore representatives had discussions with Playboy Enterprises,

Inc. and attempted to persuade that entity that emergency funds were needed by the Atlantis and that Elsinore was prepared to advance those funds provided that Playboy would subordinate its interest to that of the new Elsinore funds. Playboy agreed to subordinate its interest but only under terms that were perceived as unacceptable by Elsinore.

On November 13, 1985, a dramatic event occurred when Playboy filed against Elsub, in the United States Bankruptcy Court for the District of New Jersey, an involuntary Chapter 11 petition (S-2). Several witnesses testified that this filing sufficiently unhinged Atlantis' relationships with its creditors so that little choice existed except to have ESA file a voluntary Chapter 11 petition on November 14, 1985, seeking reorganization (T822-11 to 20). Such filing had the positive effect of automatically staying all claims for debts incurred prior to that date.

Stephen Cooper, who specializes in helping troubled companies through their financial difficulties, was hired by Elsinore in October 1985. He testified that Jeanne Hood and the "crisis management team" had done a remarkable job in stanching the bleeding and stabilizing the operation at the Atlantis.

The "crisis management team" made a number of significant decisions. Costs were trimmed; mainly through attrition the number of employees was reduced from 3200 to

2500; the third level of the casino was closed on certain days; restaurants were closed or were reopened with new, less expensive menus; the junket program was scrapped; the former policy of seeking "high rollers" was altered and a new marketing strategy of catering to the average patron budget was implemented; complimentaries were reduced; and hotel rooms were less likely to be given as complimentaries. As a result of cost trimming measures and the protection afforded by the Chapter 11 proceeding, Atlantis has built cash reserves of approximately \$7 million to \$9 million.

Where Atlantis goes from here is of critical importance to the Commission. The renewal of the casino license hinges upon this Commission finding that Atlantis is financially stable today and will be so in the future.

During 1985, Atlantis had a net income loss of \$35 million. In 1986, it is projected that it will have a working capital loss of \$9 million. It is also projected, however, that there will be a positive cash flow of \$14 million from operations, before debt service and taxes on income, for the calendar year 1986 (T638-1 to 5). Most of the financial witnesses who testified, Mr. Cooper, Bruce McKee, Atlantis' Chief Financial Officer, and Saul Leonard of Laventhol and Horwath, all emphasized that the projections were reasonable and that, even if not exactly met, management could compensate for revenue shortfalls by

further expense reductions. The thrust of their testimony and of the evidentiary exhibits is that, while under the favorable operating conditions permitted by the federal Bankruptcy Code, Atlantis could stand on its own and would not need funds from any external source. However, as insurance, Elsinore Corporation has received permission from the bankruptcy court to advance, if necessary, \$5 million to Atlantis which funds will have certain priority over the debt claims of other creditors (E-27; E-28). Thus, the fact that Atlantis has not met revenue projections for the first three months of 1986, is not a decisive matter. Nor is the fact that the State of Nevada has entered into stipulations with the Hyatt Lake Tahoe and Four Queens Casino Hotel concerning funds that can be transferred to the Atlantis (J-8-A; J-8-B) cause for alarm. Pursuant to those stipulations, funds can be transferred under certain circumstances. Moreover, Elsinore Corporation has other assets, principally the Hyatt note (E-28), that is not subject to the stipulations.

Ultimately, of course, a plan of reorganization must be filed with the bankruptcy court concerning pre-petition debt. A plan was originally due to be filed in March, but is now scheduled to be filed in mid-June (J-9-D). Having listened to the testimony of a bankruptcy expert, Frank Vecchione, however, a plan of reorganization may not be

filed for some time and the possibility exists that an approved plan of reorganization will not be confirmed by this time next year. In the meantime, Atlantis will continue to operate.

Director Levi stated before this Commission that Elsinore ought to sell the Atlantis provided that an adequate offer is received and that the sale is suitable to the Commission and to the bankruptcy court. Whether a prospective buyer will materialize is obviously unknown.

Certainly, it cannot be predicted whether every pre-petition creditor will be fully or partially compensated for the debts that are claimed. Whether such is the case is plainly within the parameters of the plan of reorganization, the creditors themselves, and the bankruptcy court's judgment.

One thing is clear though. The bankruptcy court will not permit ESA to emerge from reorganization unless it is firmly convinced that the plan of reorganization will succeed and ESA will be financially stable for some reasonable period of time thereafter.

As for the financial situation described during the hearing, there exist things from which the Commission can draw comfort. The employee payroll, both pre- and post-petition, has been met. Every gaming patron who has legitimately been entitled to a payout has been paid.

Indeed, in recent months, a number of large jackpots have been paid by Atlantis. There is a \$3 million cash balance at the cage. Another \$1.5 million is expressly reserved for progressive slot winnings. Also, as noted previously, other cash reserves now exist.

Post-petition vendors are receiving payment. In fact, some are now providing better credit terms than was initially the case immediately after the bankruptcy filing.

Post-petition fees and taxes owed the Commission are being paid and the projections include future payments to the Commission. The January 15, 1986, quarterly payment to the Casino Reinvestment Development Authority has not been paid nor will the one due on April 15. Nevertheless, a deferral petition is pending before the CRDA and presumably will be dealt with expeditiously. Even if a deferral is not granted though, the projections have made adequate provisions for payments to the CRDA. Real estate taxes have been paid and have been budgeted for in the future.

Some uncertainty exists, however, as to whether certain bondholders can be satisfied. Frequent discussions have occurred in an effort to reach a reasonable solution. Confidence has been expressed that a satisfactory solution can be achieved. Certainly, the failure to reach an accommodation could cause significant financial disruption. For now, however, the outlook is positive. If, in the

future, this optimism dampens, the Commission and the Division will have to evaluate the effect upon the licensee and affiliated companies and take appropriate action. Additionally, the Commission can take assurance from the fact that five months have past since the bankruptcy filing and the casino hotel is operating on a sounder basis than before.

In enacting the Casino Control Act, the Legislature declared that economic stability in casino operations was essential and New Jersey licensees were to be free from any improper influences by persons or entities likely to erode the public's confidence and trust in legalized casino gaming in New Jersey. N.J.S.A. 5:12-1(b). Various management officials testified before this Commission that they knew of no attempts by unsuitable persons to take advantage of Atlantis' financial woes and gain a foothold in the industry. In addition to the usual monitoring of a casino licensee done by the Commission and Division, this licensee has unquestionably been the subject of heightened regulatory scrutiny over the past six months. No evidence was presented at this hearing to suggest that the public should lose faith in this regulated industry or in the sophisticated mechanisms designed to thwart unsavory elements.

At the outset of the hearing the Commission permitted counsel for the Unsecured Creditors Committee, Alan I. Gould, Esq., to be a "participant" herein. See, N.J.A.C. 1:1-12.6(c)(3). In his oral presentation, Mr. Gould stated that he believes that present financial stability exists and that the Commission should give the bankruptcy process a chance. He further stated that, in addition to the monitoring performed by the Commission and Division, that the bankruptcy court and the Unsecured Creditors Committee perform similar tasks. He thus saw no reason to deny licensure (T1094 to T1106).

IV. Financial Integrity and Good Character

Although the primary thrust of this hearing has focused on financial stability, the financial integrity and the good character of the licensee and several of its officials have been placed in issue by virtue of a land transaction involving two parking lots in Atlantic City owned by ESA. In October 1985, Elsinore Corporation was searching for a mechanism to infuse funds into the rapidly weakening Atlantis operation and, at the same time, to protect such funds.

A real estate agreement was signed whereby ESA would convey two tracts of land, commonly called the Georgia Avenue and Bellevue Avenue lots, to Elsinore Corporation (J-6-A). One million dollars was to be paid by Elsinore on

the date of the agreement. This money was transferred and was crucial for ESA to obtain. The agreement further required that at closing another \$4 million was to be paid to ESA and a promissory note in the amount of \$4.4 million payable to ESA was to be delivered. An appraisal of the properties was also contemplated to determine their fair market value in order to set the final sale price (J-6-A).

In mid-October 1985, a deed was written and given to Elsinore Corporation. This deed conveyed the Georgia and Bellevue Avenue lots (J-6-B). The deed was recorded and since that time Elsinore Corporation has paid the mortgage and real estate taxes while permitting ESA to utilize the lots rent-free.

A promissory note in the amount of \$4.4 million was executed and delivered to ESA. The \$4 million cash that was supposed to be transmitted to ESA at closing was not.

The foregoing was a sloppy real estate transaction between a corporate parent and one of its affiliated companies. Plainly, \$4 million should have been conveyed at closing from Elsinore Corporation to ESA. The fact that ESA did not receive this money does not negatively impact upon the licensee or Elsinore officials. The purpose of the transaction was unmistakably to allow money to be given to ESA. However, upon the arrival of the "crisis management team," it became evident that the additional \$4 million in

cash was unnecessary and that the entire transaction was going to be restructured.

We do not perceive anything nefarious about the transaction; nor do we find, on the record before us, that Elsinore Corporation was attempting to remove a valuable asset from ESA for less than full market value. Thus, the Commission draws no negative inference from the land transaction.

Similarly, in the course of this hearing, questions were also raised concerning the application of the proceeds of a \$115 million bond offering in 1984. Based on the evidence presented here, we find no attempt by Elsinore Corporation to improperly extract funds from ESA to the latter's detriment.

#### V. Business Ability

Among the other concerns raised by the Division is the question of whether ESA has the necessary business ability to maintain sufficient casino operations. The current management team, headed by Ms. Hood, has the requisite ability. Specifically, Ms. Hood's experience at the Four Queens Casino Hotel, her recruitment of the able members of the "crisis management team," as well as the experience of Atlantis' current casino manager, provides adequate support for the Commission to conclude that the necessary ability exists. Of course, we are troubled by the fact that the

departure of some of the members of this team, although not imminent, appears to be inevitable. Assuredly, steps must be taken to recruit talented replacements and the Commission will scrutinize carefully any new management personnel.

Another concern seemingly expressed by the Division revolves around the multiple roles in which several individuals are engaged. More specifically, the Division has questioned the allegiance and impartiality of various members of Elsinore Corporation to ESA. We do not believe that any present regulatory concerns exist under these circumstances.

VI. Commission Fees and Taxes

One of the legal issues raised by the filing of the reorganization petition concerns the payment to the Commission of approximately \$1.2 million in fees and taxes. Section 88 of the Act provides in pertinent part as follows:

Subject to the power of the commission to deny, revoke, or suspend licenses, any casino license in force shall be renewed by the commission for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the regulations of the commission. [N.J.S.A. 5:12-88].

There are various categories of fees and taxes for which payment has not been received. As Exhibit J-14

indicates, the unpaid fees amount to \$993,709.99, and the unpaid gross revenue tax amounts to \$146,411. At the third prehearing conference, the Chairman indicated that ESA should be prepared to present testimony on the question of its failure to petition the Bankruptcy Court for permission to pay the pre-petition fees and taxes owed to the Commission. See, Third Pre-Hearing Conference Order filed March 24, 1986. Thereafter, ESA voluntarily sought relief from the Bankruptcy Court and, on April 11, 1986, the Court denied ESA's request without prejudice.

The Act requires fulfillment of these obligations and we find, as an express condition of licensure, that ESA must make roughly equal installment payments on May 15, 1986, June 16, 1986, and June 30, 1986, of the fees and taxes owed. If ESA believes that it requires Bankruptcy Court approval to pay the obligations, it should seek such approval. Regardless of such approval, however, these fees and taxes must be paid. Moreover, interest in an appropriate amount will be assessed.

VII. Playboy Enterprises, Inc. Divestiture Conditions

Another matter which must be addressed involves ESA's petition to amend or suspend paragraphs 161 through 168 of Commission resolution #85-251 relating to conditions of divestiture imposed as a result of the disqualification of Playboy Enterprises, Inc.

In April 1982, PEI was found to be unqualified to hold a casino license, and this ruling was subsequently upheld by the courts. Following the filing of a petition by the Division of Gaming Enforcement seeking to condition the issuance of Playboy Elsinore Associates' 1984 licensure upon the immediate divestiture of the Hugh M. Hefner and PEI interests, Elsub entered into an agreement with PEI in February 1984, to purchase the outstanding common stock of Playboy of New Jersey (now Elsinore of New Jersey), and submitted the agreement to the Commission for approval.

By order dated March 14, 1984, the Commission approved the divestiture agreement subject to certain conditions which have been memorialized in Commission resolution #85-251 (J-4-E). The purpose of the divestiture agreement was to effectuate the separation of the unqualified entity from the licensee; the separation was to take place over a period of time.

In its petition seeking relief from the divestiture conditions, the licensee asserts that due to the involuntary petition filed by PEI against Elsub, and the subsequent filing of the voluntary petition by ESA, both seeking Chapter 11 relief, those entities are prohibited from paying their pre-petition debts, including the April 3, 1986, installment due PEI. Testimony by Mr. Gerber has reinforced this assertion (T261-20). Consequently, by failing to make

that payment, and by failing to establish the required escrow arrangement, Elsub and ESA have seemingly violated the express provisions of the Commission's divestiture order.

When the Commission approved the divestiture agreement, it firmly believed that a rational scheme for the ultimate removal of PEI by 1990 had been effectuated. However, the bankruptcy filings have called into question the entire divestiture scheme.

At this time, we do not believe it is appropriate to remove the conditions of divestiture. To do so would defeat the State's purpose of preventing entanglement between the unqualified entity and Elsinore Shore Associates. However, an indefinite suspension of the operation of those divestiture conditions until the presentation and confirmation of a plan of reorganization, or until further order of the Commission, appears reasonable. In the interim, the State's interest in this matter will be protected by its heightened regulatory oversight of ESA which continues to bar PEI from participation in the New Jersey casino industry, as well as by established bankruptcy procedures.

VIII. Proposed Affirmative Action Condition

A proposed condition has been set forth by the Division of Affirmative Action and Planning (C-5), which requires the

licensee to revise the job specifications for the position of Director of Human Resources/Affirmative Action Officer as well as the position of Affirmative Action Administrator, to include knowledge and experience in the field of EEO/AA. Elsinore Shore Associates has objected to the proposed condition.

Although we are disturbed about Atlantis' achievement during the past year regarding affirmative action matters, we do not find it necessary to impose the proposed condition at this time; rather, we will review Atlantis' progress in affirmative action in six months. Additionally, the Commission staff and the Division are requested to review the recommendation contained in C-5 and make a suggestion to the Commission concerning whether or not uniform regulations are necessary for the entire industry.

#### IX. Conclusion

The Commission is satisfied that ESA and its affiliated entities have met all applicable statutory requirements. Accordingly, a plenary license shall issue to ESA subject to strict compliance with the conditions referenced below and set forth in the formal license Resolution regarding this matter, which is numbered 86-251.

As noted earlier, paragraphs 161 through 168 of Commission Resolution 85-251 shall not be deleted but their operation shall be suspended indefinitely or until further

order of the Commission. Also, it is an express condition of licensure that ESA make roughly equal payments on May 15, 1986, June 16, 1986, and June 30, 1986, of the fees and taxes owed the Commission, together with appropriate interest.

The casino license is also expressly conditioned upon compliance by ESA with the following conditions:

1. ESA shall maintain a casino cash balance of at least \$3 million, as defined in the Commission's Uniform Chart of Accounts as account numbers 1020 and 1021, at all times. This cash balance shall be exclusive of cash held for progressive slot machine jackpots, as defined in the Uniform Chart of Accounts as account number 2480.

2. ESA, with respect to its progressive jackpots, shall maintain a dedicated account equal to 100% of the aggregate amount of progressive jackpots then available, said amount to be certified on a weekly basis by ESA's chief financial officer.

3. ESA shall submit monthly balance sheets, statements of income, statements of cash flow, and changes in components of working capital to the Commission within 15 calendar days of the end of each month.

4. ESA shall prepare, on a daily basis, a Daily Operating Report and a Daily Cash Report (both substantially

in the forms presently used), which reports shall be available to the Commission and Division.

5. ESA and Elsinore each shall immediately notify the Commission and Division of any change in the conditions of, or the use of, any credit lines relating to borrowed money.

6. ESA shall advise the Commission of any significant deviation in its financial plan that was filed with the Commission in February 1986. A significant deviation shall be determined on a monthly basis within 15 calendar days of the end of each month based on the following criteria:

.. a 5.0% or greater variance between actual total operating revenue and the forecasts submitted to the Commission on February 18, 1986;

.. a 5.0% or greater variance between actual total operating costs and expenses and those forecasted;

.. a 2.5% or greater variance between actual net income (loss) and that forecasted;

.. any variance between actual sources and uses of cash and those forecasted.

The information provided to the Commission shall disclose the specific variance and management's analysis of the factors contributing to any such variance.

7. ESA shall maintain in a restricted account an amount estimated to be necessary to satisfy payroll and related employee benefit programs for the ensuing week.

8. ESA shall maintain in a restricted account, in an amount, or pursuant to a formula, approved by the Commission, funds allocated for the specific purpose of satisfying all "Section 88" fees and taxes incurred on or after November 14, 1985.

9. ESA shall not seek or utilize any funds from any new financial source, as defined by Section 84(b), without the express prior approval of the Commission.

10. No settlement shall be entered or implemented in a matter entitled Playboy Enterprises, Inc. v. Elsinore Corporation, Elsinore Finance Corporation and Elsinore Shore Associates (Civil Action No. 85-5344), in the United States District Court unless such settlement is expressly conditioned on obtaining all required approvals of the Commission.

11. With respect to the above referenced civil litigation and the two pending reorganization proceedings:

(a) No plan of reorganization shall be implemented without the express approval of the Commission;

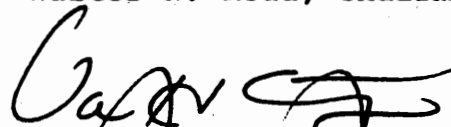
(b) ESA shall cause to be filed with the Commission and Division all pleadings, motions and orders as they are received or filed by the parties or the Court; and

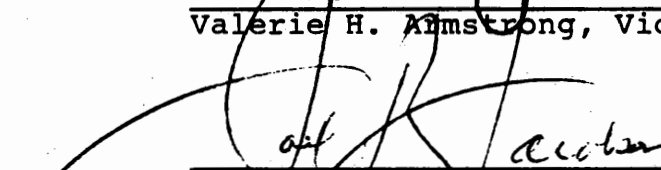
(c) ESA, by the tenth calendar day of each month, shall file a status report with the Commission and Division

listing the significant events and developments of the prior month.

12. If, during ESA's reorganization proceeding, ESA is unable to meet its obligations incurred in the normal and ordinary course of business, then Elsinore Corporation shall immediately make available to ESA, as needed, funding from the \$5 million debtor-in-possession financing approved by the United States Bankruptcy Court on April 11, 1986, which shall be promptly reported to the Commission.

  
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Walter N. Read, Chairman

  
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Valerie H. Armstrong, Vice-Chair

  
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Joel R. Jacobson, Commissioner

  
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Carl Zeitz, Commissioner

X. Separate Opinion of Commissioner Valerie H. Armstrong

At the outset of this proceeding, I was substantially troubled by the critical issue to be addressed during this license renewal hearing, namely, how could a casino licensee which has filed for protection under Chapter 11 of the Federal Bankruptcy Code, possibly demonstrate its financial stability as required by the Casino Control Act? Contemplating that legal issue in a vacuum, without having the benefit of the record which was ultimately presented in this matter, led to the reasonable question of whether Chapter 11 proceedings are inherently irreconcilable with a determination of financial stability.

However, having now had the opportunity to evaluate the record which evolved during the extensive hearings held in this matter, it is apparent to me that the reconciliation of Chapter 11 proceedings with the concept of financial stability, is an issue which I would describe as extremely "fact sensitive."

It is also apparent to me that the mere act of filing a Chapter 11 proceeding on November 14, 1985, does not, in and of itself, tell this Commission whether Atlantis is or is not financially stable. Rather, the circumstances which caused the reorganization proceeding to be filed and the licensee's course of action since the filing, as well as the

reasonableness of its projections for the ensuing year, are the important considerations.

In his testimony, Professor Frank Vecchione analogized a debtor in distress to an individual who has a heart attack, noting that we do not immediately bury a heart attack victim without giving him the opportunity to survive (T307). A heart attack victim who is listed in stable condition has no guarantee that he will live or die. Nevertheless, that stable condition is at least some assurance that, for the short term, the outlook is optimistic. Likewise, the determination that Atlantis is sufficiently financially stable to warrant relicensure for an additional year, does not necessarily guarantee Atlantis' ultimate survival. However, a failure to renew its license would certainly result in its demise. I think we all would like to see Atlantis afforded every opportunity to survive and prosper although, under the Casino Control Act, Atlantis may not be granted that opportunity based on sympathy or artificial optimism. Rather, Atlantis must first affirmatively demonstrate by clear and convincing evidence its financial stability and sufficient business ability and casino experience.

I am convinced, based upon the record in this case, that Atlantis has satisfactorily met its burden of proof. For me, the critical factors were the following: The crisis

management team under the direction of ESA's President, Jeanne Hood, took immediate and practical steps to resuscitate a licensee which unquestionably was experiencing financial difficulty. We are being asked to place a certain amount of faith in the projections and predictions of this management team concerning the revenues, expenses and effectiveness of its marketing techniques over the next year. However, the actions of the crisis management team warrant us placing that faith in those projections. Ms. Hood has clearly reduced costs. Atlantis is meeting its current obligations, albeit with the protection of a Chapter 11 proceeding, and the licensee has not required any infusion of capital for several months. The dedication of the crisis management team to save this property comes through loud and clear. Ms. Hood's experience with the very market which Atlantis is attempting to cultivate, i.e., the middle-line customer, when combined with actual marketing techniques being utilized, including a carefully planned advertising campaign, tends to build confidence that the projections which we have been asked to accept are reasonable. The fact that the entity can satisfy its obligations to its gaming patrons, the fact that it has met its payroll, and that employee morale has improved substantially (an important factor because the employees

must be able to support management's new direction), are important aspects of financial stability.

While the general success rate of Chapter 11 debtors is apparently less than impressive, those bleak statistics should not be generalized to Atlantis' potential for success or failure. What we are looking at is Atlantis' stability for the ensuing year. If, for some reason, Atlantis should fail to continue to meet the affirmative criteria for licensure as to financial stability, or any other issue, for that matter, the Commission obviously can take whatever action is appropriate under the Casino Control Act.

While I sincerely hope that we are never confronted with another licensee in the same circumstances as Atlantis, I note that Nicholas F. Moles, Esq., ESA's General Counsel, commented in his closing remarks on the significance of the precedent which may be set by the decision in this case. I hope that we never have to look to this case as a precedent, but in granting relicensure, the significant precedent to be established is that the mere filing of a Chapter 11 action does not, in and of itself, warrant a conclusion that a licensee is financially unstable. Beyond that, these cases are like fingerprints -- no two are alike. The absence of one or more of the critical positive factors presented in this case, or evidence of unsound or illegal activities related to a licensee's financial troubles, could clearly

tip the balance of the scale in the opposite direction.  
Each such case must be judged strictly on the unique facts  
and circumstances presented in that case.

  
Valerie H. Armstrong, Vice-Chair

XI. Separate Opinion of Commissioner Carl Zeitz

I would like to underscore two points upon which a vote for relicensure revolve. First, a determination of financial stability by the Commission is really a snapshot at the instant it is made. The conditions set out in the opinion would bring Atlantis back before us if the picture changes in the intervening license year.

Second, as to the Casino Control Act's requirements for a showing of financial stability and integrity, it seems to me that the law is not a dry bone. It has flesh on it and the flesh is the body of purpose underlying the statute. In a caption, the chief purpose of the Casino Control Act always is to guard against intrusion in the Atlantic City casino industry by unsuitable persons or their agents. There is no evidence of such here nor is there any contention by the Division of Gaming Enforcement of any such interference or intervention in the business of the Atlantis Casino Hotel by such unsavory individuals. In fact, the Division has noted and the witnesses for the Atlantis have testified that the financial events that began to occur in October 1985 have not produced any such invasion of its control or operations.

Thus, I concur in the Commission's decision in this matter. I would add only these minimum observations concerning the present operation and financial condition, post petition, of the Atlantis.

A hotel room or restaurant service for which a patron pays cash produces income. A hotel room or restaurant service given to a patron and charged back to the casino produces income which is an accounting fiction.

Credit issuance in Atlantic City casinos typically is between 30 and 32 percent of table game drop and is costly to achieve because of complimentary expenses. Atlantis has reduced credit issuance to about 26 percent of table game drop, clearly reducing promotional expense, and thus should continue to realize a greater revenue percentage even if from reduced drop.

Slot machines are, whatever else they are, cost effective casino revenue producers. The Atlantis is adding nearly 100 slot machines. They will produce more revenue with less expense than table games.


The Atlantis revenue projections for 1986 shift 10 percent of income production from the casino to hotel operations. This is an intelligent direction and one which should, through the business strategies designed to achieve it, directly serve the public policy of the Casino Control Act which call for restoration of Atlantic City as a complete resort rather than the purely gambling destination it has become.

The Atlantis has operated until these changes under various managements who adhered to one basic business

strategy which, no matter how long and how often it failed, was not discarded. It was based on the self-deception that what succeeded someplace else at some other time or even for others in the same place and time is guaranteed to work. It is a vanity the Atlantis can no longer afford. However, it has been eliminated and some lessons have been learned. Unlike General Custer, who learned nothing and so did not see 1877, the Atlantis will see 1987.

I believe the financial projections for the Atlantis and the business revisions upon which they are based are reasonable, prudent and may well be exceeded.

It is high time the public, which will continue to descend upon Atlantic City by the tens of millions, has a chance to make that trip without being skewered. If the financial situation of the Atlantis has helped to achieve that, so much the better.

  
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Carl Zeitz, Commissioner

XII. Separate Opinion of Commissioner E. Kenneth Burdge

For the reasons which follow, I cannot join the majority opinion in this case. Accordingly, I respectfully dissent.

I have sat through an entire week of testimony and I have carefully scrutinized the numerous exhibits that have been admitted into evidence. In my opinion, the crucial issue that must be decided in this case is whether or not this licensee is financially stable and should be permitted to operate under the direction of so-called new management.

The financial stability standard in the Casino Control Act is not meaningless. The Legislature obviously envisioned that the economic viability of casino hotels was crucial to the confidence and trust that the public was being asked to place in legalized casino gaming in New Jersey.

The Commission has not had many opportunities to deal with the specific question of financial stability nor issue decisions based solely on that question. In the Resorts International Hotel, Inc. casino license hearing in 1979, the Commission gave some meaning to the standards set forth in section 84 of the Act. Significantly, it was noted that there should be basic financial solvency or soundness. It was also noted that the standard included an evaluation of

the care and prudence exercised by the applicant or licensee in managing, preserving and enhancing its assets.

The unquestionable message that rings loud and clear is that this is a financially weakened casino. The events leading up to the November 1985 bankruptcy filing do not give me the confidence that I need to grant relicensure. In short, the picture that I believe has been presented to the Commission is one of chaos, poor decisions, and a lack of foresight.

Throughout 1985 it should have been evident to both the management of the Atlantis Casino Hotel and its parent, Elsinore Corporation, that things were not going smoothly in Atlantic City. While then President of Elsinore Corporation, Robert R. Maxey, was apparently assuring the management of Elsinore that things would turn around and that they should "have faith," a more active role should have been played much earlier in 1985 than is evident by the testimony and exhibits adduced at the hearing. Moreover, I find it somewhat disturbing that upon the departure of Mr. Maxey, a crisis situation developed and that a need for a "crisis management team" was considered essential. While that may have been a prudent business practice at that point in time, proper management should have foreseen the difficulties on the horizon and should have been able more

adequately to prepare for the economic woes that seemingly lay ahead.

I recognize that a filing for reorganization under Chapter 11 has some positive aspects to it. One negative aspect, of course, is the fact that some pre-petition creditors may not receive their just payment on monies that are owed. That, of course, is the American way since bankruptcy is a constitutional prerogative that has been afforded to the American public.

Nevertheless, I do not fully accept the rationale that bankruptcy has made the licensee more "stable." That may be a truism in the short term, but full financial stability can only be achieved after a plan of reorganization is filed with, and confirmed by, the bankruptcy court. As I have been made aware of during the hearing in this matter, it could well be next year before such an event occurs.

We should not flee from the obvious here. This casino hotel has never been competitive, nor has it been able to successfully emerge from the disqualification of its partner, Playboy Enterprises, Inc. Moreover, ESA's own bankruptcy expert, Frank Vecchione, testified that the majority of his clients who filed for Chapter 11 protection did not survive (T370-18 to T371-2). Whether ESA successfully emerges from this Chapter 11 proceeding is speculative, at best.

We have been told that we should believe in the projections that have been provided to us and which a number of experts claim are reasonable. The facts, in my opinion, demonstrate that we should not place much faith in ESA's projections. Projections were not met in 1985. They have not been met for the first three months of 1986. Yet, ESA asks us to accept that it can quickly adjust to the vagaries of the marketplace and that appropriate cash reserves will be maintained throughout the next license renewal year.

If such were the case, we would not have had the need for a crisis management team in the first place. As I see it, Elsinore Shore Associates sustained a \$35 million loss in calendar year 1985. Indeed, I find it somewhat remarkable that a working capital loss of \$9 million is projected for 1986. Should we approve a licensee that seemingly only knows losses?

The major part of the hearing in this case and of the exhibits that have been introduced attempts to persuade the Commission that a new management group has taken over and that new strategies have been imposed which will turn around this casino hotel. I believe that different strategies definitely have been employed. Whether they ultimately prove successful is certainly questionable. What I do not believe is that the "new management team" is new at all.

Further, I note that Elsinore Corporation asks us to place a great deal of faith in its ability to work out a satisfactory arrangement with its bondholders. In my opinion, a satisfactory solution to that difficulty is crucial because a failure to do so can only result in additional economic turmoil and distress.

Hope may spring eternal, but only hope is what is offered here. I am not so optimistic.

I question whether we would view this matter differently if Elsinore Shore Associates had just completed the construction of a casino hotel and were seeking initial licensure.

Financial stability is not a meaningless standard. While cash flow projections may be met, and while debtor-in-possession financing from Elsinore Corporation may be had, there are no guarantees in my mind that the prospects for 1986 will be bright.

Accordingly, I dissent.

However, since the Commission's determination is to grant relicensure, I would agree that the conditions set forth in the majority opinion, at a minimum, must be imposed.

  
E. Kenneth Burdge, Commissioner

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-107  
OAL DOCKET NO. CCC 5454-85  
REGISTRATION NO. 48754-40

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

FINAL ORDER

Complainant,

v.

OLGA E. GARCIA,

Respondent.

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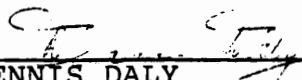
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 5, 1986,

IT IS on this <sup>18<sup>th</sup></sup> day of FEBRUARY 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that paragraph eight of Count I of the complaint for revocation is dismissed without prejudice and the remaining portions of the complaint are dismissed with prejudice based upon the reasons stated 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 Olga E. Garcia, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**ORDER OF DISMISSAL**

OAL DKT. NO. CCC 5454-85

AGENCY DKT. NO. 85-107

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

Petitioner,

v.

**OLGA E. GARCIA,**  
Respondent.

---

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

**Jack Edward Granzow, Esq., for respondent**

**William DeJesus, interpreter, for respondent**

Record Closed: December 20, 1985

Decided: December 31, 1985

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

This matter having been opened to the Office of Administrative Law following transmittal from the Casino Control Commission, and the matter having been pretried on October 25, 1985, and the parties having identified certain issues for consideration at the hearing, which issues included matters involving Ms. Garcia's alleged entry without inspection into the United States in violation of Immigration and Nationality laws, and further having involved consideration of an alleged failure to depart to the United States in violation of an order of a Immigration Judge, and the parties having concluded in accordance with recent decisions of the Casino Control Commission that the question of

the legality of Ms. Garcia's entry into the United States is irrelevant in connection with determination of whether she may retain her casino hotel employee registration, it is hereby **ORDERED** that said issues, which are contained in paragraphs 5, 6 and 7 of the Division's complaint of March 19, 1985, are hereby dismissed with prejudice.

It further appearing that because of new information and evidence provided by the respondent in connection with the allegation that she provided a fraudulent social security number on her Personal History Disclosure form, an alleged violation of N.J.S.A. 5:12-86(b), and that the Division will be required to conduct an additional investigation of undetermined length to determine whether such evidence exonerates Ms. Garcia.

It is hereby **ORDERED** that the charges contained in paragraph 8 of the complaint be **DISMISSED WITHOUT PREJUDICE**.

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

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

December 31, 1985  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

1-2-86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 6 1986  
DATE

Ronald J. Parkey, Esq.  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-147  
OAL DOCKET NO. CCC 5352-85  
APPLICATION NO. 60978-21

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APPLICATION OF ALBERT GARZONE  
FOR A CASINO EMPLOYEE LICENSE  
(JUNKET REPRESENTATIVE)

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions to the decision having been filed by the Division of Gaming Enforcement; and a reply to the exception having been filed by the applicant; and the Commission having considered the entire record of these proceedings at its public meeting of March 19, 1986,

IT IS on this *26<sup>th</sup>* day of MARCH 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Albert Garzone for a casino employee license is granted for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Albert Garzone, the Division of Gaming

Enforcement and the Office of Administrative Law within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ CHAIRMAN

BY:

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

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-148  
OAL DOCKET NO. CCC 5351-85  
APPLICATION NO. 60977-21

---

APPLICATION OF JEAN L. GARZONE  
FOR A CASINO EMPLOYEE LICENSE  
(JUNKET REPRESENTATIVE)

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions to the decision having been filed by the Division of Gaming Enforcement; and a reply to the exception having been filed by the applicant; and the Commission having considered the entire record of these proceedings at its public meeting of March 19, 1986,

IT IS on this 26<sup>th</sup> day of MARCH 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Albert Garzone for a casino employee license is granted for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jean L. Garzone, the Division of Gaming

Enforcement and the Office of Administrative Law within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ CHAIRMAN

BY: *Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NOS. CCC 5351-85  
AND CCC 5352-85  
(CONSOLIDATED)  
AGENCY DKT. NOS. 85-EA-148  
AND 85-EA-147

**JEAN GARZONE AND  
ALBERT GARZONE,**

Petitioners,

v.

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

Respondent

---

**Jean Garzone, pro se**

**Albert Garzone, pro se**

**Stephen Cirillo, Deputy Attorney General, for respondent (W. Cary Edwards, Jr.,  
Attorney General of New Jersey, attorney)**

Record Closed: December 10, 1985

Decided: January 22, 1986

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

Jean and Albert Garzone, who are wife and husband respectively, filed applications with the Casino Control Commission (Commission) for licensure as casino employees with position designations as junket representatives. The Division of Gaming Enforcement (Division) objected to their licensure. 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 on October 4, 1985 and at that time the matters were consolidated for hearing. A prehearing order was issued on October 8, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Mercerville on December 10, 1985.

### ISSUES

The prehearing order outlines the issues for consideration in this case. The Division objects to Mr. and Mrs. Garzone's licensure because it does not believe that they can demonstrate that they have the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)(2). In addition, with respect to petitioner Albert Garzone, the Division claims that he failed to disclose information material to the licensing process, in violation of N.J.S.A. 5:12-86(b). The Division also contends that the Garzones have each been convicted of disqualifying offenses, pursuant to N.J.S.A. 5:12-86(c)3. Further, the Division argues that licensure of either of the petitioners would be inimical to the policies of the Casino Control Act and the interests of the casino industry, thus requiring denial of licensure pursuant to N.J.S.A. 5:12-86(c)4. Finally, the Garzones contend that if their prior actions would otherwise require disqualification from licensure, that they have rehabilitated themselves from the affects of their prior conduct such that their licenses may be granted, pursuant to N.J.S.A. 5:12-90h.

### EVIDENCE

The primary allegation against the Garzones with respect to their fitness for licensure arises from their convictions in the United State District Court for the Western District of New York on charges arising from an insurance fraud scheme. These charges are detailed in an indictment which was produced in evidence as exhibit R-1. The lengthy document details a scheme in which the Garzones and others fraudulently and with intent to deceive and defraud various insurance companies filed false accident claims, staged collisions, filed fraudulent claims concerning the degree of personal bodily injury, amount and cost of medical attention and treatment, employment and wages and lost wages, etc. The indictment charged that the illegal conduct violated 18 U.S.C. Sections 2, 371 and 1341, each of which deal with mail fraud. Various overt acts performed by each of the named defendants are set forth in the indictment and some, although not all of these, relate to conduct of the Garzones.

Ultimately, Albert Garzone entered a plea of guilty to count 1 of the indictment, which charged him with conspiring to commit certain offenses against the United States, in violation of 18 U.S.C. Section 2, 371 and 341. Mrs. Garzone entered a plea to a charge of obstructing and retarding the passage of mail, in violation of 18 U.S.C. Section 1701. Mr. Garzone was sentenced to a term of two years in prison and the remaining counts of the indictment were dismissed. Mrs. Garzone was sentenced to six months in jail, which was suspended, and she was placed on probation for a period of one year.

Mr. Garzone testified that he was incarcerated for 15 months in a federal prison in Virginia and was then on probation for six months after his release from a halfway house in Buffalo, New York. He completed probation on April 27, 1981. Mrs. Garzone completed her probation and was satisfactorily discharged on February 7, 1980.

The offenses alleged in the indictment occurred between 1971 and the filing of the indictment in 1977. The overt acts occurred between 1973 and 1976. According to Mr. Garzone's testimony, he and his wife received \$8,000 to \$9,000 from the proceeds of the conspiracy.

Mrs. Garzone testified that she had not been directly involved in the arrangements for the faked incidents, although she may have talked about the matter with her husband. Mr. Garzone explained that he became involved in the scheme largely as a result of ill-feeling toward insurance companies which grew out of a 1967 automobile accident in which he and his wife had been involved in a head-on collision and almost died. Although he was sketchy about what occurred, Garzone did testify that an attorney who represented two or three insurance companies had somehow been involved in the matter. The Garzones apparently did not receive compensation to the degree which they felt they were entitled to and Mr. Garzone "felt he had been given the business." He explained that he became involved in the conspiracy with a number of other people including his wife and his nephew and that after he stopped his involvement others in the scheme continued theirs. Approximately 12 accidents were "arranged."

In addition to the above-described criminal involvement, Mr. Garzone was arrested on February 18, 1982 on a bench warrant for issuing a bad check in Odessa Village, New York. He did not list this arrest on his Personal History Disclosure Form - 2A, as he did not actually consider that he had been arrested since he was told to come

down to the police station. He appeared before a judge and paid the amount of the check and that was "the end of the matter." He described his failure to list this matter as an "oversight."

In addition to the above, Garzone was arrested in 1964 on a fraudulent check charge. He had paid rent for a garage and the check bounced. The problem was "resolved" and Garzone did not list the matter because he did not think he had to go back "that many years."

Mr. Garzone is 57 years old. His wife is also in her 50's. He had originally been employed as a cab driver from 1952 to 1974 and then became involved in a travel agency, Globe Travel Service, which is located in Fairport, New York. He and his wife still conduct this business. They deal with the general public and have commercial accounts. They are now bonded and have been approved by the airlines.

Mr. Garzone explained that his business has operated as a junket representative for the Imperiale Palace Casino Hotel in Las Vegas for the past six or eight months. He has run a couple of junkets to Atlantic City through Harrah's Marina. He also had one through the Atlantis. These were handled on a temporary license in June and August of 1985.

Mr. and Mrs. Garzone have been married for 24 years. They have five children, including some from previous marriages. None are left at home.

Mr. Garzone mentioned during his testimony that he and his wife had been involved in an organization which for some years held shows, Christmas parties, and picnics for retarded individuals located at a state facility in New York State. This involvement took place until about three years ago.

#### DISCUSSION

The Division of Gaming Enforcement argues that Mr. and Mrs. Garzone should not be licensed because (1) they do not have the requisite good character, honesty and integrity for licensure, (2) they have been convicted of disqualifying offenses and (3) their licensure would be inimical. Indeed, Albert Garzones' conviction for the insurance

fraud scheme does constitute a conviction for a disqualifying offense in that his actions involved theft from the insurance companies by deception in amounts which would qualify the offenses as third degree offenses had the matter occurred in New Jersey and been prosecuted under N.J.S.A. 2C:20-4. Clearly, Mr. Garzone did engage in an offense which requires his automatic disqualification, subject to the rehabilitation provision. As for Mrs. Garzone, who pled guilty to an offense involving the obstruction of the mails as part of a plea bargain which did not lead to her incarceration, while it is quite likely that had she been prosecuted she could have been convicted of the conspiracy and substantive offenses as was her husband, her conviction technically may not be a violation equivalent to any New Jersey disqualifying offense. However, it is clear that her actions, which involved both receipt of the proceeds of the scheme as well as some discussion of it with her husband, constituted conduct which could indicate that her licensure would be inimical. However, in determining whether someone's licensure would be inimical, it is necessary to consider whether the licensure would be presently inimical. In doing so, it is necessary to consider, as part of the inimicality considerations, many of the factors incorporated in the rehabilitation segment of the Act.

Having considered carefully the actions of the Garzones, and having given consideration to the nature of the incident involved, which indicates a willingness on their part to engage in a carefully planned scheme to defraud insurance companies, I have concluded that their licensure should be permitted. In making this decision, I have taken into account, in addition to the scheme, the fact that the incidents involved occurred some thirteen up until about ten years ago and that the Garzones have been off probation, after having served their probationary and, in the case of Mr. Garzone, his prison term, some five to six years ago. As such, and in view of the age of the individuals at this time, and what I suspect is the lesson which they learned from their prior activities, I FIND, in the case of Mr. Garzone, that he has rehabilitated himself from the adverse impact of the disqualifying conviction and in the case of Mrs. Garzone at present it would not be inimical to the policies of the Casino Control Act and the interests of the gaming industry to permit her to be licensed. While the crimes for which Mr. and Mrs. Garzones were convicted were serious ones involving moral turpitude and involved a mental attitude which spoke strongly against their character at the time, I have concluded that as of this date the Garzones are possessed of the necessary good character, honesty and integrity required for licensure. Whatever motivated them to scheme as they did, I strongly believe that they have at this time recognized the error of their ways and that a number of years following their probation, sufficient time has passed to allow them to emerge from under the cloud of their prior mistakes.

In connection with the allegations that Mr. Garzone failed to list arrests on his Personal History Disclosure Form, I do **FIND** that he did not list either the 1982 or 1964 incidents involving bad checks. However, in connection with the 1982 incident, it appears that he was summoned to the police station and whether or not he considered the matter to be an arrest is unclear. In addition, I **FIND** that although the definitions contained on the form might well have alerted him to the fact that he should have listed the incident, I **FIND** that his failure to do so was not in any way an attempt to evade detection of the incident by the authorities or to conceal the truth from them. In addition, in connection with the 1964 incident, I **FIND** that Mr. Garzone's explanation that he did not believe that he had to go so far back in time is not an unreasonable one, particularly involving a matter which apparently was concluded merely by the payment of the check. In sum, I **CONCLUDE** that Mr. Garzone's failure to include these two arrests on the Personal History Disclosure Form was not a willful and intentional attempt on his part to deceive the authorities, as required for a finding of a violation of section 86(b).

#### CONCLUSIONS

For the reasons expressed, I **CONCLUDE** that (1) licensure of the Garzones as casino employees with position designations as junket representatives would not be inimical to the policies of the Casino Control Act or the interests of the casino industry, (2) that Mr. Garzone is neither disqualified from licensure by way of an automatic disqualification nor by way of a violation of the disclosure requirements of Section 86(b). With respect to Mr. Garzone, I **FIND** that he has rehabilitated himself from the adverse affects of his prior disqualifying offense. As for the applicants' good character, honesty and integrity, I **FIND** that they have each proven by clear and convincing evidence that, as of this time, they possess the necessary good character, honesty and integrity required by the Act. I **CONCLUDE** that their prior misdeeds are behind them and they have redeemed themselves.

For the reasons expressed, it is **ORDERED** that Jean and Albert Garzone be licensed as casino employees with the position designation of junket representatives.

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

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

DATE

*January 22, 1986*

JEFF S. MASIN, ALJ

*Jeff S. Masin*

Receipt Acknowledged:

DATE

*January 23, 1986*

CASINO CONTROL COMMISSION

*Bernadette P. Fisher*

Mailed to Parties:

DATE

*JAN 27 1986*

OFFICE OF ADMINISTRATIVE LAW

*Ronald J. Parkes*

ks

EVIDENCE LIST

On behalf of respondent:

- R-1        Indictment: United States of America v. Thiele, et al.
- R-2        Personal History Disclosure Form 2A, filed by Albert Garzone
- R-3        Personal History Disclosure Form 2A, filed by Jean Garzone
- R-4        Judgment of Conviction, United States District Court for the Western District  
of New York, Dkt. No. CR. 78-00145-07
- R-5        Judgment of Conviction, United States District Court for the Western District  
of New York, Dkt. No. CR. 78-00145-08
- R-6        Report of Arrest and Prisoner's Record
- R-7        Prisoner Data Report, Rochester Police Department, dated February 18, 1982
- R-8        City of Rochester, Identification Division, 2 pages
- R-9        Transcript of proceedings on arraignment, United States of America v.  
Albert Garzone
- R-10       Transcript of proceedings on sentence, United States of America v. Albert  
Garzone
- R-11       Transcript of proceedings on arraignment, United States of America v.  
Jean Garzone
- R-13       Transcript of proceedings on sentence, United States of America v. Jean  
Garzone
- R-14       Certified copy of transcript of public meeting of New Jersey Casino Control  
Commission, July 31, 1985

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-287  
OAL DOCKET NO. CCC 4022-85  
REGISTRATION NO. 24845-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
THOMAS A. GIFOLI, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of April 30, 1986,

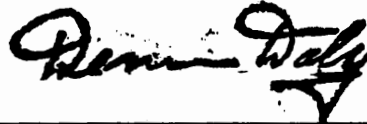
IT IS on this 2<sup>nd</sup> day of May 1986, ORDERED that the initial decision is affirmed;

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

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

IT IS FURTHER ORDERED that copies of this final order be served upon Thomas A. Gifoli, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4022-85

AGENCY DKT. NO. 84-287

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

Petitioner,

v.

**THOMAS A. GIFOLI,**

Respondent.

---

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

**Wayne Partenheimer, Esq., for respondent**

Record Closed: February 13, 1986

Decided: March 17, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

**PROCEDURAL HISTORY**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on September 12, 1984, seeking to revoke respondent's casino employee registration because he was charged with theft and failed to disclose an Article 15 U.C.M.J. violation. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a pretrial conference conducted by telephone on August 15, 1985, and the matter was scheduled for October 21, 1985, rescheduled for October 31, 1985, and rescheduled for January 3, 1986, at which time testimony was taken and the matter continued, and was completed on February 13, 1986.

The pretrial order specified the following issues:

- A. Did respondent commit a theft by deception as alleged in indictment 5-507-83-B despite a jury verdict of not guilty?
- B. If so, is his continued licensure inimical to the act and casino operations?
- C. Did respondent commit a larceny in Honolulu which resulted in Article 15 U.C.M.J. punishment?
- D. Did respondent fail to disclose Article 15 U.C.M.J. punishment?
- E. Is respondent required to disclose Article 15 U.C.M.J. punishment?
- F. If so, is the act of larceny, if proven, inimical to the Act (N.J.A.C. 5:12-1 et seq.) and casino operations?
- G. What penalties, if any, should apply under Sections 129 and 130 of the Act?
- H. Since this complaint followed an expungment motion, is fundamental fairness an issue?

At the hearing, the Division abandoned issues C., D., E., and F. and the respondent abandoned issue H.

UNDISPUTED FACTS

The following narrative is by way of background and none of the facts contained therein are disputed.

Thomas A. Gifoli was employed by Harrah's Marina Hotel and Casino as a risk manager. Lea Ann Armstrong worked for him as an in-house claims adjuster and secretary. John Strohm also worked for Gifoli as a safety coordinator and has succeeded to his position although the job description of risk manager has been altered. David Scibal

was an insurance claims adjuster under contract to Harrah's and worked closely with Gifoli. Both Scibal and Gifoli are Porsche aficionados. Scibal owned a 1976 Porsche 911S Targa which is a convertible. In the summer of 1981, Gifoli began negotiations for the purchase of the Porsche from Scibal. Gifoli had possession of the Porsche before he took title. Gifoli made a down payment to Scibal of \$5,605 on August 27, 1981. Scibal's note was paid at the bank on September 11, 1981. It is unclear when Gifoli registered the vehicle in Pennsylvania. He apparently operated the vehicle for some time with Scibal's plates. Sometime in the late summer or fall of 1981, Gifoli filed an undated Valet Incident Report (P-5, evidence) alleging that the convertible top was cut along the driver's side. Because he had not yet registered the vehicle, he subsequently filed an undated Valet Incident Report in Scibal's name (P-6, evidence). A check was drawn to Scibal by Crawford and Company, insurance agents, for \$1,260. Scibal cashed the check and paid that sum over to Gifoli.

On a later occasion, an undated Valet Incident Report (P-1, evidence) was filed by a Susan Friedman on behalf of a Mr. Oberholtzer alleging water damage to a 1977 Porsche 911S. A mysterious General Incident Report appeared in Gifoli's office. It purports to bear the signature of James Brody, Supervisor. It is not the signature of Brody; it is a forgery. Handwriting experts are unable to determine who wrote the report (P-2, evidence). The General Incident Report conflicts with the Valet Incident Report filed by Susan Friedman. The General Incident Report states that the car's "detachable roof was missing." It refers to a 1977 Porsche 911S Target [sic] and lists the owner as Jay Oberholtzer.

Gifoli asked Scibal to obtain a top for the Oberholtzer car, which Scibal was able to do. Gifoli drafted a letter to Oberholtzer advising him he had a new top for him. The letter was "to confirm our conversation today." The letter was not mailed and Gifoli departed for Las Vegas on business. The letter is (P-3 in evidence).

During Gifoli's absence, Scibal came to the office and reviewed the file, as was his custom. He called Oberholtzer and learned three things. Oberholtzer's first name was not "Jay," his Porsche was not a convertible and no one had communicated with him in any fashion since the Valet Incident Report was filed. He returned the file to Lea Ann Armstrong and said he wanted "nothing to do with this." He returned the Porsche convertible top to its source.

Lea Ann Armstrong reviewed the documents. She gave them to Jack Strohm and reported what Scibal had told her. Strohm called Oberholtzer and confirmed what Scibal had told Armstrong. He recalls that the date of this call was June 18, 1982. He compared the General Incident Report with others and decided the Brody signature was bogus. He reported all this to his supervisor who referred the matter to security. Security called Scibal and learned he had returned the top. They requested that he get it back and bring it to them. He did so. The top was marked for identification. He was instructed to deliver it to Gifoli. He did so. Gifoli put the top on his own Porsche. There is a dispute as to what conversations took place between Gifoli and Scibal at this time. Gifoli was questioned by Detective James C. Leary of the Division of Gaming Enforcement. The top was retrieved and charges were filed. Both the incident involving the \$1,260 claim for the cut top and the Oberholtzer affair were presented to a grand jury. Only the Oberholtzer affair was true billed. That matter was tried to a jury and a verdict of not guilty was rendered. Gifoli has brought a civil action against all parties involved. That matter is pending.

DISPUTED FACTS

The Oberholtzer Affair

Gifoli explained that he had drafted the letter (P-3, in evidence) prior to actually talking to Oberholtzer because he was going away on business. He said he had assumed it would be accurate after Lea Ann Armstrong confirmed it with Oberholtzer. When he returned he found a note from Lea Ann Armstrong in the file explaining that Oberholtzer did not own a convertible. This is disputed by Lea Ann Armstrong. She said she never spoke to Oberholtzer or wrote Gifoli a note. Both Strohm and Scibal report that Oberholtzer told them no one from the casino or anyone else had talked to him concerning his Porsche. This buttresses Lea Ann Armstrong's testimony. Gifoli could not produce the note for Detective Leary when he was confronted by him. Gifoli further claims that, as a result of the note he decided to buy the top for himself, and offered to pay Scibal \$900 for the top when Scibal brought it to him. Scibal says no such offer was ever made. An interesting sidelight appeared during the testimonial development of this issue. Gifoli claims he was distraught when he received the top from Scibal because his girlfriend's father had just passed away. He sent flowers. He deducted them as a business expense on his tax return, despite the fact that no business relationship was realized between himself and the deceased. It further developed that he falsely listed on his resume that he was a graduate of Villanova. These admissions further damage his credibility.

CREDIBILITY FINDINGS

Based upon the demeanor of the witnesses, the evidence or lack of evidence that supports their testimony and facts adduced on the issue of credibility, I FIND that Lea Ann Armstrong, David Scibal, Detective James Leary and John Strohm are credible and believable witnesses and I believe all of their testimony. I FIND that Thomas A. Gifoli is not a credible witness and I do not believe his explanation of the events, particularly the note he alleges Lea Ann Armstrong wrote and the offer he alleges he made to Scibal to purchase the top.

CONCLUSIONS

I CONCLUDE that the Division has proven by a preponderance of the evidence that Thomas A. Gifoli committed a theft by deception in the third degree as alleged in indictment 5-507-83-B, despite a jury verdict of not guilty.

Theft by deception in the third degree is an offense for which conviction is a disqualification pursuant to N.J.S.A. 5:12-86c(1). The Division has proved the commission of this offense pursuant to N.J.S.A. 5:12-86g.

REHABILITATION AND INIMICABILITY

The pretrial order, however, lists the issue as inimicability rather than rehabilitation. These issues are similar, Division of Gaming Enforcement v. Brian K. Worthy, OAL DKT. CCC 7866-84, adopted, Casino Control Commission (May 7, 1985). There is no evidence that Thomas A. Gifoli is rehabilitated. He denies the crime. He lied both to the investigator and on the witness stand. For these reasons, I CONCLUDE that Thomas A. Gifoli is not rehabilitated. I further CONCLUDE that his continued registration would be inimical to the Casino Control Act and casino operations.

THE CUT TOP

The prior incident involving the cut top and the \$1,260 payment was not an issue at the pretrial conference. It was not billed at the grand jury. The Division did not prove by any evidence whatsoever that a theft was involved.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 17 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

March 20, 1986  
DATE

Nancy D. Selt  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 21 1986  
DATE

Ronald J. Parks / s.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESS LIST

For petitioners:

Detective James C. Leary  
David Scibal  
Lea Ann Armstrong  
John Strohm

For respondent:

Thomas A. Gifoli

EXHIBIT LIST

- P-1 Valet Incident Report No. 240  
P-2 General Incident Report  
P-3 Letter, Gifoli to Oberholtzer  
P-4 Scibal check to Gifoli  
P-5 Valet Incident Report No. 126  
P-6 Valet Incident Report No. 132  
P-7 Bank documents consisting of five pages
- R-1 Gifoli check to Scibal, No. 930  
R-2 Gifoli itinerary, 14 June 1982  
R-3 Gifoli itinerary, 8 June 1982  
R-4 Receipt - flower bill
- C-1 Detective Leary's report on handwriting examination  
C-2 Indictment 5-507-83-B  
Unmarked - court minutes

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-121  
OAL DOCKET NO. CCC 6352-85  
LICENSE NO. 25446-21

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

Complainant,

v.

RICHARD E. GILFOR,

Respondent.

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FINAL ORDER  
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This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 16, 1986,

IT IS on this 30<sup>th</sup> day of April, 1986, ORDERED that the initial decision in this matter is rejected for the following reasons:

1. Because the Commission regards the offense of promoting gambling (third degree) in violation of N.J.S.A. 2C:37-2 as a serious offense with the potential for undermining the integrity of the casino industry and in light of the fact that some of the activities involved in this offense took place in a casino hotel, the temporal proximity of the offense and the fact that the respondent is still on probation, the Commission finds that the respondent failed to demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90(h) or that he possesses the good

character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license held by Richard E. Gilfor be revoked; and

IT IS FURTHER ORDERED that Richard E. Gilfor be prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Richard E. Gilfor, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6352-85

AGENCY DKT. NO. 84-121

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

Petitioner,

v.

RICHARD GILFOR,

Respondent.

---

Stephen Cirillo, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Mark Roddy, Esq., for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: February 11, 1986

Decided: February 21, 1986

BEFORE EDGAR R. HOLMES, ALJ:

The respondent was a licensed casino employee on April 27, 1984, when he was suspended by the Casino Control Commission as a result of an indictment filed on the 5th of March 1984, charging the respondent with illegal gambling. The Division of Gaming Enforcement filed a complaint seeking revocation of respondent's license on April 26, 1984. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on November 14, 1985, and a plenary hearing was conducted on February 11, 1986, in the Atlantic County Courthouse, Atlantic City.

At the hearing the parties consented to the admission of the following exhibits in evidence:

- P-1 Judgment of Conviction and Statement of Reasons, SGJ #188-83-7(1)
- P-2 Arrest report
- P-3 Indictment, SGJ #188-83-7(1)

- R-1 Judge Huber package, 21 pages
- R-2 Frank Herman letter, January 15, 1986
- R-3 M.J. Snyder letter, February 3, 1986
- R-4 Receipt for fine, February 10, 1986

The parties stipulated as follows: Richard Gilfor pled guilty to Count Two of Indictment SGJ #188-83-7(1) charging him with a violation of N.J.S.A. 2C:37-2 and N.J.S.A. 2C:2-6, that he was convicted upon his plea of guilty, and that N.J.S.A. 2C:37-2 is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-90e.

The parties further stipulated that the only issue to be determined as a result of the stipulations was whether or not the respondent has been rehabilitated pursuant to N.J.S.A. 5:12-90h.

Based upon the evidence presented, I make the following findings of fact in regard to rehabilitation:

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

The respondent seeks the reissuance of a casino employee gaming license. He was previously a craps box person.

2.&3. The nature and seriousness of the offense; and the circumstances under which the offense occurred:

In conversation, the applicant learned that other dealers and his roommate bet on sports events with local bookmakers. In the casino employees' lounge, these individuals compared the betting lines (odds) of

various bookmakers and decided to make their bets with the bookie offering the best line. The bets were made by telephone, primarily by Richard Gilfor, to one Robert Notaro of Ocean City, New Jersey, the subject of a State Police wiretap investigation. On two occasions during the 1983 football season, Richard Gilfor traveled to Ocean City to settle with Notaro. On other occasions, Gilfor's roommate, Terry, made the trip to settle up. Apparently, Richard Gilfor handled the money for the trio, making and collecting payoffs. Richard Gilfor appeared on the wiretap transcript, was indicted and pled guilty because his bets exceeded \$1,000 and/or five bets on particular days and because he handled the transactions for the other two players. He was fined \$5,000 and placed on probation for five years. The fine is paid. He intends to apply for early release from probation. The sentencing judge determined that Richard Gilfor was a first offender and got involved because he was a gambler. He opined that Gilfor "now knows the difference between legal and illegal gambling." But for Gilfor's involvement with the other two persons and his roommate, he was a mere player and would have had a defense to the statute. This is a crime mala prohibita and not mala in se. There is no hint of fraud or dishonesty in this crime. Part of the seriousness of this matter involves the conversations held during working hours in the casino employees' lounge.

4. The date of the offense:

These transactions occurred in September, October and November 1983, according to the respondent. The indictment refers only to October 21 through November 12, 1983.

5. The age of the applicant when the offense was committed:  
The applicant was born on September 6, 1948, so he was 35 years of age when the offenses occurred; he was old enough to know better.
  
6. Whether the offense was an isolated or repeated incident:  
The offense occurred over a period of three months but it was a first offense and was never repeated.
  
7. Any social conditions which may have contributed to the offense:  
The respondent comes from the casino industry in Las Vegas, where sports betting is legal.
  
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision:  
Because of the respondent's first offender status, he was not incarcerated. There is no evidence that he was addicted to gambling or required treatment. In fact, he only gambled with disposable income and ceased gambling upon his learning that Notaro was arrested. He has been fully employed since his suspension as a tax preparer and floor covering salesman. His employer at Hatboro Floors and Walls recommends him highly as does his employer, Alfred Fiel. He has several letters of recommendation. He has an excellent work record in the casino industry and one can therefore conclude that his gambling did not detract from his performance. His parole officer says he has no problems with adjustment.

**I CONCLUDE that Richard Gilfor is rehabilitated.**

Nevertheless, a sanction pursuant to Section 129(3) of the Casino Control Act and as prayed for in the complaint filed herein is appropriate. Such a sanction was sought by respondent at the hearing in lieu of revocation.

Illegal gambling cannot be condoned by persons licensed to work in the casino industry. There is always the danger of infiltration by gambling interests. This respondent, however, does not appear to have gambling associations other than as a player and he has ceased playing. It would be unjust to revoke his license. A period of suspension would serve to enforce his perception that illegal gambling cannot be condoned and would serve as a warning to others who are similarly inclined.

I therefore **ORDER** that Richard Gilfor's casino employee license be suspended for a period of two years, effective April 27, 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.

February 21, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2/24/86  
DATE

Sue Dore  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 25 1986  
DATE

Chavo Lopez  
OFFICE OF ADMINISTRATIVE LAW

ij

WITNESS LIST

**For respondent:**

**Richard Gilfor**

**Donald Dulaney**

**John Hoover, not heard, cumulative**

**Jerry Langston, not heard, cumulative**

EXHIBIT LIST

**See text of opinion**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-15  
OAL DOCKET NO. CCC 4436-85  
LICENSE NO. 42345-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
ERROL G. GORDON, :  
Respondent. :

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FINAL ORDER

This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 20, 1985,

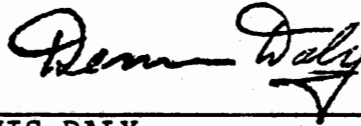
IT IS on this 10<sup>th</sup> day of January, 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) The condition that the respondent provide for a one-year period, at his own expense, monthly urinalysis reports from a laboratory approved by the Commission is deleted; and
- (2) The respondent has established by clear and convincing evidence that he possesses the requisite degree of good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement be dismissed based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Errol G. Gordon, the Division of Gaming Enforcement and the Office of Administrative Law within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4436-85

AGENCY DKT. NO. 85-15

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

Petitioner,

v.

**ERROL G. GORDON,**

Respondent.

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

**Gary Dinenberg, Esq.,** for respondent

Record Closed: November 4, 1985

Decided: November 8, 1985

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Errol G. Gordon, respondent, the holder of casino employee license #4234521. The Division alleged that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal conduct, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Act. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on January 24, 1985. By letter dated July 1, 1985, the Commission notified the respondent of the complaint and advised him of his right to a hearing. By letter received on July 15, 1985, respondent requested a hearing. Thereafter, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 19, 1985, and the matter was scheduled for hearing. On November 4, 1985, the hearing was conducted in the Atlantic County Library, Mays Landing, New Jersey.

FINDINGS OF FACT

Respondent, Errol Gordon, was born in London, England, and was raised in New York. He is 25 years of age and currently resides in Sicklerville, New Jersey.

On February 20, 1984, respondent was arrested and was charged with possession of a controlled dangerous substance (CDS) in violation of N.J.S.A. 24:21-20a(1), and with possession of CDS with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (J-1).

On March 13, 1984, respondent was indicted for possession of CDS and for possession of CDS with intent to distribute (J-3).

On or about June 15, 1984, respondent was admitted to the Atlantic County Pre-Trial Intervention Program. Respondent was required, as a condition of the program, to perform 50 hours of community service and to provide three biweekly urinalysis reports.

On January 8, 1985, the charges against respondent were dismissed, pursuant to rule 3:28, after respondent had successfully completed the terms of the program (J-4).

Mr. Gordon visits weekly with his parents in New York, maintains close family ties with his oldest brother, a policeman, his youngest brother, a computer programmer, and his sister, a college student. Mr. Gordon possesses an associate degree from Taylor

Business Institute. Mr. Gordon has been continually employed in some capacity since age 16. He was laid off from the Tropicana Hotel Casino in April 1985 and has been offered a position as a craps dealer with Trump Plaza Casino Hotel if he maintains licensure.

Mr. Gordon testified that he has ingested cocaine on three or four occasions at private parties. Prior and subsequent to the event on February 20, 1984, respondent asserts that he has never purchased drugs. On the evening of February 20, 1984, respondent was approached in the Florida Pub, Atlantic City, by a fellow Tropicana craps dealer, Edward Delaney. Mr. Delaney offered to sell respondent one-half gram of cocaine for \$50. The transaction was completed in a vehicle and respondent placed the one-half gram of cocaine in his wallet. The vehicle, with respondent sitting on the passenger side, was subsequently stopped for a traffic violation. As the officers approached the vehicle, Mr. Delaney transferred approximately one and one-half grams of cocaine wrapped in a plastic bag to respondent. Upon alighting from the vehicle, Mr. Gordon dropped the plastic bag, which was then observed by the officers. The one-half gram that respondent had purchased was subsequently found in respondent's wallet.

Respondent expressed remorse over the incident and expresses a complete commitment to his total abstinence from drugs.

Respondent's fiancée, Terry Scott, testified that she has never seen Mr. Gordon under the influence of drugs.

The above is uncontroverted, believable and is thus FOUND AS FACT.

#### DISCUSSION OF LAW AND CONCLUSION

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

At the hearing, the Division withdrew its objection to licensure predicated upon N.J.S.A. 5:12-86g.

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

Under Section 89b(2) of the Act, Mr. Gordon was required to demonstrate, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. For a Casino License, Casino Control Commission (February 26, 1979) at 8. When the Division raises objection to casino employee licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company For Casino Licenses, Casino Control Commission (November 13, 1980) at 5.

According to the credible testimony of respondent, his sole purchase of drugs occurred on February 20, 1984. Prior to that time, respondent admits to gratis social use of drugs on three of four separate occasions at private parties. The escalation from social use to the purchasing of drugs is disturbing. It is clear that at the time of respondent's admitted drug use he did not possess the requisite good character, honesty and integrity for licensure. However, the issue before me is whether Mr. Gordon currently possesses good character, honesty and integrity. The lack of any prior criminal record, either juvenile or adult, the demeanor and appearance of respondent, the professed commitment to a total abstinence from drug usage and the positive community service work performed by respondent (R-1) persuade me by the slimmest margin of clear and convincing evidence that respondent possesses the requisite good character, honesty and integrity for licensure. I **CONCLUDE** that the respondent has established by clear and convincing evidence that he possesses the requisite degree of good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2). I further **CONCLUDE** that, as a condition of continued licensure, respondent provide for a one-year period, at his own expense, monthly urinalysis reports from a laboratory approved by the Commission. These reports are to be received by the Commission on or before the tenth of each month. A failure to provide said reports when due or the existence of any positive readings will result in the immediate forfeiture of respondent's casino employee license. While I recognize that this decision imposes an administrative burden upon the Commission, I am convinced that respondent's conduct on February 20, 1984, was an aberration in an otherwise law-abiding existence. The overriding public interest in this

matter demands assurances that the conduct complained of will not be repeated. The urinalysis requirement will also impress upon Mr. Gordon that any further involvement with drugs will not be tolerated. It will also afford Mr. Gordon the opportunity to accept proffered employment with the Trump Plaza Casino Hotel.

ORDER OF DISPOSITION

Subject to the conditions imposed, it is **ORDERED** that the complaint of the Division of Gaming Enforcement be and is hereby **DISMISSED**.

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

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

11-9-85  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

11/12/85  
DATE

Ruth S. Tart  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 13 1985  
DATE

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

DOCUMENTS IN EVIDENCE

- J-1 Atlantic City Police Department Investigation Report, dated February 20, 1984
- J-2 Atlantic City Police Department Incident Report, dated February 20, 1984
- J-3 The State of New Jersey v. Edward Delaney and Errol Gordon, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment No. 714-78-M, dated March 13, 1984
- J-4 Order of Dismissal, dated January 8, 1985
- R-1 Letter from the Institute for Human Development, dated September 18, 1985

WITNESS LIST

For the petitioner: None  
For the respondent: Terry Scott  
Errol Gordon

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-192  
OAL DOCKET NO. CCC 4423-85  
REGISTRATION NO. 03272-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
KENNETH G. GREEN, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this <sup>24<sup>th</sup></sup> day of June 1986, ORDERED that the initial decision is modified as follows:

Page 5, paragraph 2 of the initial decision is corrected to refer to N.J.S.A. 5:12-91(b) rather than to N.J.S.A. 5:12-89(b)(1) and (d).

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

IT IS FURTHER ORDERED that Kenneth G. Green is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Kenneth G. Green, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4423-85

AGENCY DKT. NO. 84-192

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

Petitioner,

v.

**KENNETH G. GREEN,**

Respondent.

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

Kenneth G. Green, respondent, pro se

Record Closed: February 26, 1986

Decided: April 1, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on June 1, 1985, seeking revocation of the respondent's casino hotel registration. The respondent requested a hearing on July 10, 1985, and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing order was entered on September 24, 1985, and the matter was scheduled and rescheduled to January 14, 1986, at which time testimony was taken. The matter was continued to February 26, 1986, at the request of respondent in order to give him an additional opportunity to subpoena witnesses to meet new matters

that resulted from an amendment to the preconference order. The hearing concluded on February 26, 1986, at the Atlantic County Court House, Atlantic City.

ISSUES

The issues identified at the prehearing conference were as follows:

- A. Whether the respondent is disqualified from licensure based on certain criminal activities pursuant to N.J.S.A. 5:12-86c(3) or 5:12-86d.
- B. Whether the respondent's alleged criminal activities would render his continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- C. Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90d.

ADDITIONAL ISSUE

At the hearing on January 14, 1986, the Division moved to amend the prehearing order to raise the issue of whether or not the respondent had been convicted of a statutory disqualifier pursuant to section 86c(1) et seq. of the Casino Control Act. Since it appeared that no additional discovery would be required as a result of this issue being incorporated into the proceedings, the motion was granted and respondent was given additional time to subpoena the witnesses he felt would be required on the new issue. On the return day, however, he elected not to produce them.

FIRST STATUTORY DISQUALIFIER

The Division produced P-6 in evidence, which is a Judgment of Conviction and Statement of Reasons for sentence imposed. In addition, the Division produced un rebutted testimony on the underlying facts supporting the conviction. I **FIND** that the respondent was engaged in the business of selling marijuana for profit. I also **FIND** that based on his plea of guilty on March 14, 1983, the defendant was sentenced on May 11, 1983, to Yardville on one count of possessing a controlled dangerous substance with the intent to distribute, contrary to N.J.S.A. 24:21-19.1a.

I **CONCLUDE** that the respondent was convicted of a crime enumerated in N.J.S.A. 5:12-86c(3) and is disqualified from continued casino registration pursuant to N.J.S.A. 5:12-91b unless he can affirmatively demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-91d.

SECOND STATUTORY DISQUALIFIER

An additional criminal charge against the respondent arose out of a complaint filed in Atlantic City on September 27, 1982. The respondent and others were alleged to have assaulted Atlantic City police officers. An indictment was found and the case tried to a jury. The respondent's codefendants were acquitted and the jury was hung regarding the respondent. This open charge was eventually disposed of by a guilty plea to the disorderly persons offense of simple assault and the respondent received 60-day county jail time to run concurrently with his sentence to Yardville on the drug charge described above.

The Division, pursuant to section 86g, offered evidence on the underlying facts behind this negotiated plea. The respondent contested those facts and asserted that the police had assaulted him. Based on the testimony of Officer Leonard Cohen who was credible, and in my opinion scrupulously so, I **FIND** as follows:

1. On September 7, 1983, the respondent and others attacked, without provocation, two uniformed police officers including Cohen, because the respondent's brother had been arrested and was bitten by a police dog.
2. The officers were injured and in the general melee that followed the respondent shouted, "Get his gun."

I do not believe the testimony of the respondent that he was the victim of a police assault.

I **CONCLUDE** that the respondent violated N.J.S.A. 2C:12-1b(5)(a) in the third degree which is a crime enumerated in section 86 of the Casino Control Act and he is therefore disqualified from continued casino registration, pursuant to N.J.S.A. 5:12-91b, unless he can affirmatively demonstrate his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

REHABILITATION

Since both of the matters upon which a statutory disqualifier was found were disposed of by a sentence served in Yardville beginning on May 20, 1983 (P-6 evidence), the respondent's rehabilitation, if any, dates from his entry into Yardville. The rehabilitation criteria are set forth in section 91d(1) through (8).

1. The registrant is a cook.
2. The drug conviction is extremely serious; the respondent was a marijuana salesman. The assault on a police officer was extremely serious; the officer was not even one of those who arrested the respondent's brother. It was an act directed at the uniform and not the man.
3. The respondent sold drugs for profit, he claimed in his defense that he did it to support his child (P-7 evidence). The respondent assaulted the police officer because he was a police officer.
4. The drug offense was committed prior to January 24, 1983. The assault was committed September 27, 1982.
5. The respondent was born July 31, 1959.
6. The respondent sold drugs over a period of time. The assault was an isolated incident.
7. The respondent was motivated by profit in selling drugs, albeit to support his child. The respondent was reacting to what he perceived to be police brutality practiced on his brother when he assaulted the police officers.
8. While incarcerated, the respondent was placed on work release and obtained his GED and Culinary Arts Certificate. His employer while he was on work release recommends him as a cook. He is presently unemployed. His parole ends in 1988.

Despite the fact that I did not believe the respondent's testimony regarding the assault on a police officer, I was favorably impressed by his demeanor and perceived that he genuinely wants a position in the casino industry in order to be a contributing member of society. He feels that such a position will be a major step in obtaining self-respect. He would undoubtedly benefit by such employment. Such employment might very well lead to his eventual complete rehabilitation. The casino industry, however, is neither an employer of last resort nor a mechanism for the rehabilitation of criminal offenders. The legislature requires that rehabilitation be complete before the issuance of a registration. The respondent is neither employed nor released from parole. I cannot conclude that the respondent is rehabilitated.

I, therefore, **ORDER** that the respondent's casino registration be revoked, pursuant to N.J.S.A. 5:12-89b(1) and d.

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

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

April 1 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

April 5 1986  
DATE

" " " "  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 4 1986  
DATE

Donald L. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

For petitioner:

Detective William McKnight  
Officer Leonard Cohen

For respondent:

Kenneth Green

EXHIBIT LIST

- P-1 Lab report, April 12, 1983
- P-2 Request for examination of evidence
- P-3 Lab report, May 3, 1983
- P-4 Indictment No. 2-165-83C
- P-5 Order for Presentence Investigation and plea bargain agreement
- P-6 Judgment of Conviction (drug)
- P-7 Investigation Report (drug arrest)
- P-8 Investigation Report (assault)
- P-9 Indictment No. 10-494-82C
- P-10 Judgment of Conviction (assault)
- P-11 Criminal record
  
- R-1 GED
- R-2 Culinary Art Diploma
- R-3 Letter of recommendation

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-295  
OAL DOCKET NO. CCC 5788-85  
REGISTRATION NO. 06817-40

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STATE OF NEW JERSEY :  
DEPARTMENT OF LAW & PUBLIC SAFETY :  
DIVISION OF GAMING ENFORCEMENT, :  
  
Complainant, :  
  
v. :  
  
AMY EVERETT GROGAN :  
  
Respondent. :

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FINAL ORDER

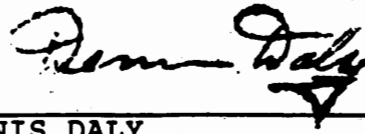
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission) and the Commission having considered the entire record of these proceedings at its public meeting of April 30, 1986.

IT IS on this *23rd* day of JUNE 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Amy Everett Grogan is dismissed substantially based upon the reasons stated 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 Amy Everett Grogan, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY:

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**RECEIVED**

MAR 26 1986

CASINO CONTROL COMMISSION  
LEGAL DIVISION

**INITIAL DECISION**

OAL DKT. NO. CCC 5788-85

AGENCY DKT. NO. 85-295

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

Petitioner,

v.

**AMY EVERETT GROGAN,**

Respondent.

---

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

**Amy Everett Grogan, pro se**

Record Closed: March 11, 1986

Decided: March 19, 1986

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

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking Amy Grogan's casino hotel employee registration no. 6817-40. The Division filed a complaint with the Commission on June 28, 1985, in which it charged that Mrs. Grogan, known in the complaint as Amy Ellen Everett, had been indicted in 1980 on charges of conspiracy to rob and robbery, violations of N.J.S.A. 2C:5-2 and 2C:15-1(a)2, and that she had additionally been charged in April of 1980 with receiving stolen property, a violation of N.J.S.A. 2C:20-7. The complaint alleged that Mrs. Grogan was not qualified to be registered as a casino hotel employee because of the incidents underlying the charges.

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Mrs. Grogan requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on October 30, 1985 and a prehearing order was issued on November 5, 1985. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin on March 11, 1986 at the Atlantic County Court House in Atlantic City.

### ISSUES

The prehearing order sets forth as issues for consideration in the hearing the question of whether Mrs. Grogan's actions in connection with either or both of the above-mentioned incidents constituted conduct of a statutory disqualifying nature even though not prosecuted. N.J.S.A. 5:12-86(c)1. Section 86(g) of the Act permits the Division to establish at a hearing that unprosecuted conduct engaged in by a licensee or registrant would have constituted violations of the disqualifying offenses.

The second issue for consideration set forth in the prehearing order is rehabilitation. Pursuant to N.J.S.A. 5:12-90(h), a registrant otherwise disqualified from licensure because of having engaged in conduct constituting a disqualifying offense may be permitted to retain registration where rehabilitation has been established in accordance with the standards set forth by the Act.

### EVIDENCE

The essential facts surrounding Mrs. Grogan's conduct in 1980 which the Division alleges would have constituted violations of disqualifying offenses, if prosecuted, are not in dispute. The most serious conduct engaged in by the respondent involved an incident which occurred in February 1980. According to police reports presented in evidence by the Division, as well as Mrs. Grogan's testimony at the hearing, I **FIND** that it is undisputed that on February 8, 1980 an armed robbery occurred in Mrs. Grogan's, then Everett's, apartment in Ocean City, New Jersey. The respondent was present during the robbery along with one Joseph Bernert. Two individuals, who were wearing masks, entered the apartment, held Bernert and Everett at gunpoint and took approximately \$9,000 from Bernert. The details of the robbery are set forth in the police reports and I **FIND** that it is undisputed that Bernert was held at gunpoint, forced to remove his pants.

forced to give up his money and keys and that subsequently his automobile was taken by the robbers and recovered later that morning by the police.

Immediately following the incident, Joseph Bernert advised the police that he thought that Amy Everett might have been involved in a "setup" with the robbers. Ms. Everett was questioned by the police and did not reveal any information about her involvement. Her sworn statement, which was entered in evidence, merely indicated that she was a victim along with Bernert and indeed indicated that the robbers had taken a small amount of money from her as well.

Following the robbery, the police began an investigation. They apparently had no great success until April 1980. At that time, Lieutenant James Nickles of the Ocean City Police Department received information from an informant that Ms. Everett was in possession of a stolen Canon AE-1 camera. The police reports, and Mrs. Grogan's testimony, reveal that she had found this camera while at work at the Boardwalk Cafe, a restaurant in the Boardwalk Regency Hotel in Atlantic City where she then worked as a waitress/hostess. When she found the camera she brought it to the attention of her supervisor, a Mr. Maranda, and he advised her to take the camera home. According to the respondent, she did so and held onto the camera for several weeks. When no one claimed it, she attempted to sell the camera and in fact advertised it in the Atlantic City Press. The camera was sold to a local resident. When Lieutenant Nickles received the informant's information (the informant apparently was a roommate of Everett), he investigated and determined that the camera had been reported stolen from the Boardwalk Cafe. The camera was recovered, the purchaser explaining that he had purchased it from Everett. At this point, an arrest warrant was issued for Everett and she was taken into custody, charged with receiving stolen property, in violation of N.J.S.A. 2C:20-7. She admitted having found the camera, taken it home at Maranda's suggestion and sold it after a few weeks. In the course of her discussions with the police on April 4, 1980, Ms. Everett, who the police suspected might have been involved in the armed robbery, admitted her involvement and gave a written statement detailing what had occurred. According to the statement, and the testimony of the respondent during this hearing, I FIND that the essential facts surrounding the robbery were that Ms. Everett, then 19 years old, became involved with one Bernard Bolnick, age 27, and went out with him on a number of dates. She also had met Mr. Bernert, the victim of the robbery, at about the same time. Bernert kept calling her for dates and she eventually did go out with him. Apparently during her date with Bernert, he made disparaging remarks about

Bolnick and, according to the respondent's testimony, he also attempted to become physical with her. She reported his conduct to Bolnick, who advised her that he was aware that Bernert carried a lot of money and suggested that they could get even with Bernert by arranging to have him beaten up and/or robbed. They discussed a number of possible scenarios for the robbery and settled on a plan that involved Ms. Everett's arranging a date with Bernert for February 18, 1980. Two men, supposedly to be hired by Bolnick from out of state, would then rob Bernert. According to the respondent's testimony, she was not filled in on all the details of the planned robbery and was unaware that guns would be involved. However, she did know that something was going to happen to Bernert on the night in question and she cooperated fully in arranging the date with Bernert and advising Bolnick via a telephone signal of Bernert's arrival so that the robbers could carry out their job.

Following the robbery, Ms. Everett met with Bolnick, who gave her \$250 and told her that she would receive another \$250, which she never received. Thereafter, she had very little contact with Bolnick.

On December 17, 1980, the Cape May County Grand Jury indicted Ms. Everett for conspiracy to rob and robbery, violations of N.J.S.A. 2C:5-2 and 15-1 respectively. The receiving stolen property charge was no-billed. On July 8, 1982, Everett was granted Pre-Trial Intervention and an order of dismissal was signed on that date by Honorable Paul R. Porreca, J.S.C. dismissing the indictment. According to the respondent, the terms of the Pre-Trial Intervention required her to make \$4,300 in restitution, which she completed by September of 1982, and also required her to perform 100 hours of volunteer work, which she did at a facility for the handicapped in Atlantic County. After she completed the 100 hours volunteer work she continued to work at the facility on several occasions thereafter, but stopped the volunteer work when she moved to Trenton and obtained other employment.

CONCLUSIONS AS TO DISQUALIFYING OFFENSES

The undisputed evidence and the findings which flow therefrom demonstrate without question that with respect to the February 1980 armed robbery of Joseph Bernert, Ms. Everett was a willing participant therein and, although she may not have understood all of the details of what was to occur, it is quite clear that she was both a co-conspirator in arranging the robbery and a participant therein in that she lured Mr. Bernert to her

home and signaled the robbers as to his presence so that they could carry out their nefarious deeds. Had the respondent been prosecuted by the Cape May County authorities, it is quite apparent that she would have been convicted. I FIND that her conduct in connection with the February 1980 armed robbery constituted, beyond any reasonable doubt, conspiracy to rob Bernert and that she was also guilty of armed robbery. Each of these offenses constitutes a disqualifying offense, pursuant to Section 86(c)1 of the Act and therefore, subject to rehabilitation which will be discussed below, Mrs. Grogan is not qualified for licensure.

I am not persuaded by a preponderance of the evidence that Mrs. Grogan committed the offense of receiving stolen property. The camera was apparently lost by the owner, and her testimony as to how she obtained it is uncontradicted and believable, even though the procedure contravened hotel policy regarding lost items.

#### REHABILITATION

Although Mrs. Grogan readily admitted that at the age of 19 she engaged in serious criminal conduct which had a great potential for perhaps irreparable damage, the evidence presented as to her life since 1980 quite impressively demonstrates that today, at the age of 25, Mrs. Grogan is a quite different individual than she was at 19. Initially, Mrs. Grogan married her husband, Michael Grogan, in 1982 and is now the mother of two children, ages 3 years and 18 months. She lives in Ocean City and is presently unemployed. Her husband works for the Trump Castle Casino/Hotel as an auto fleet maintenance person. Mrs. Grogan described her present existence as that of a homemaker and mother, settled into a happy marriage and a quiet lifestyle.

The respondent explained that in 1980, at the age of 19, she began to live on her own after leaving a home which she described as being a "Christian household" where she had lived an apparently confined existence. She was employed at the Boardwalk Regency Hotel as a waitress/hostess. She began dating Bernard Bolnick, who she described as a "flashy type" employed as a bouncer. The victim of the robbery, Mr. Bernert, was also a "flashy type," who also was employed as a bouncer. Apparently Bolnick knew Bernert prior to their meeting the respondent. When Everett had her unpleasant experience with Bernert and told Bolnick about what had occurred, he began talking about getting back at Bernert and she agreed. She testified that at the time, being on her own for the first time, she felt under a good deal of peer pressure to "do

anything." She was having the opportunity to do things which she had never done before and was not mature enough to handle her freedom.

Following the incident, her indictment and the PTI determination, Everett completed her restitution and volunteer work. She was in a tremendous financial bind, in part because of the restitution, and declared bankruptcy. Thereafter, she met her husband in April 1982 and he helped her to get out of her financial straits. They married in September 1982 and moved to Trenton. She worked at a restaurant in Lawrenceville. The family moved back to Ocean City approximately three years ago. As noted, they have had two children. They now live at Mrs. Grogan's mother's house and pay rent. Respondent worked at the Atlantis Casino/Hotel and then worked at the Point Pub in Somers Point, which recently closed due to bankruptcy. Mr. Grogan goes to school in addition to being employed.

The respondent testified concerning the actual robbery incident. She noted that although she did know to some degree what was going to happen she was scared, confused and bewildered during the incident. She denied that she was involved with drugs at the time. She did however feel that she was depressed.

The respondent produced several witnesses who testified concerning their observations of her both before the 1980 incident and since that time. Although good character, honesty and integrity is not strictly an issue in this case because the registration does not require a showing of these characteristics, the concept of rehabilitation clearly requires some consideration of the nature and character of the individual involved in prior disqualifying events in order to determine whether rehabilitation has occurred.

Mrs. Theresa Young testified that she and her then boyfriend, now husband, moved to Ocean City in 1981 and she became a hostess at the Boardwalk Cafe where Ms. Everett was also employed. She became friendly with Everett and when Everett needed a place to live at a cheaper rent than she was paying, the Youngs permitted Ms. Everett to move in with them. Everett spoke of the criminal incident and was quite upset and ashamed about her involvement. Young described her at the time as being "unsure, depressed," however, as time went on and Everett met Michael Grogan her life changed. After Young left the area, she kept in contact with Everett and the contact has continued. She has noted a "dramatic" change over the years and feels that the

respondent has fully "reformed." Mrs. Grogan is a "good mother, patient, loving and respectful."

Mrs. Young is now employed at Trumps Casino/Hotel as a travel and tour sales representative and holds a hotel employee registration.

Sandy Robinson testified that he met Mrs. Grogan in March 1985 when they served as bus attendants at a casino/hotel. The respondent is a "good mother and wife and a good worker." Robinson described her as honest and recalled a couple of occasions when she found money and a wallet and turned them in. She "never lies." Mr. Robinson was aware of Mrs. Grogan's previous problems. She had told him about them some time ago.

Mary E. Palermo met Amy Everett in October 1976. At the time, Palermo was having problems at home with her family and had no friends. Amy came from a "good home" and took Palermo "under her wing." In November 1977, Everett and her mother invited Palermo to move into their home. Palermo and Everett became "like sisters."

Mrs. Palermo testified that prior to the February 1980 incident she had met Mr. Bolnick and described him as the type of individual who took control of people around him and "sort of overwhelmed" the respondent. At the time, Everett was "confused" and she "didn't know what she wanted." In addition, during her teenage years Everett had been quite heavy and had had no real social life. In her late teens she lost a drastic amount of weight and became attractive. As a result, she suddenly developed a social life and seemed unable to handle the demands thereof since her social maturity was lacking.

Mrs. Palermo learned of the February 1980 robbery incident when the police, in the course of their investigation, spoke with her. She could not believe that Everett was involved in such activity. Eventually, at the time of her confession, Everett explained her involvement to the Palermo family who "accepted her for her mistake." Everett lived with Palermo and her parents for a while thereafter. The witness described Everett as thoroughly rehabilitated, "good with children" and "always a worker."

Michael E. Grogan, the respondent's husband, testified that he met her in April 1982 and immediately developed a good relationship with her. She told him what had happened in 1980. At the time of their initial contacts, Grogan described his future wife as "insecure, unsure, confused and upset." As the relationship developed, she moved to

Trenton and they married. She is a "responsible, loving wife" and there is "no chance of her doing this kind of thing ever again."

CONCLUSIONS AS TO REHABILITATION

Having considered the evidence with respect to rehabilitation, I am thoroughly convinced that Amy Grogan is totally rehabilitated from the life style and conditions that led to her involvement in the armed robbery. Mrs. Grogan is not now the person that she was in 1980 and it is quite inconceivable that she would ever again allow herself to become involved in any such untoward activity.

The Casino Control Act provides in Section 91d considerations to be reviewed in determining whether an individual has achieved rehabilitation. With respect to those factors, it is quite clear that the offense involved was very serious. However, it occurred over six years ago at a time when the respondent was in her late teens and apparently quite immature. The offense appears to have been an isolated aberration which has not been repeated. The circumstances surrounding the offense seem to indicate that the respondent was an easily led, socially immature, perhaps naive young lady who was to some degree swept along by the older, "flashy" Bolnick. The respondent has been punished for her offense, has made restitution, completed PTI successfully, undergone the financial embarrassment of bankruptcy and more importantly the social embarrassment of having to admit her involvement to her friends' family and co-workers and has had to live with the knowledge of her guilt. It is quite apparent from hearing Mrs. Grogan today that she still suffers from the consequences of her actions and that she is completely remorseful about what she did.

Given the above, I confidentially **CONCLUDE** that Mrs. Grogan has rehabilitated herself from the adverse affects of her disqualifying conduct and I therefore **CONCLUDE** that she should be permitted to retain her casino hotel employee registration. The complaint against her is therefore **DISMISSED**.

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

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

March 19, 1986  
DATE

*Jeff S. Masin*  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 21, 1986  
DATE

*M. Buczyk*  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 24 1986  
DATE

*Ronald J. Parkey*  
OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

On behalf of petitioner:

- P-1 Police Reports: Ocean City Police Department, April 4, 1980, 2 pages; Photocopy of Atlantic City Press ad; Statement of Amy E. Everett, dated April 4, 1980; Statement of Amy Everett, dated February 18, 1980; Police Report, dated February 18, 1980; Police Report, dated February 19, 1980, 2 pages; Police report of Detective Nesgoda, dated February 19, 1980; Uniform Arrest Report, Re: Amy Everett; Uniform Arrest Report, Re: Bernard Bolnick; Police Report, dated April 6, 1980, 2 pages; Police Report, dated April 12, 1980, 1 page; Uniform Arrest Report, Re: Amy Everett; Statement of Joseph P. Bernert, dated February 18, 1980; Police Report of February 19, 1980, from Sergeant Tarves; Police Report of April 14, 1980, from Lieutenant Nickles, 2 pages; Consent to Search, dated April 1980
- P-2 Cape May County Indictment No. 178-80, with attached Order of Dismissal and County Clerk Criminal Disposition Report, all certified

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-146  
OAL DOCKET NO. CCC 5610-85  
APPLICATION NO. 48507-21

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APPLICATION OF LOIS J. HAMMER :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER  
(JUNKET REPRESENTATIVE-SOLE :  
OWNER/OPERATOR) :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 16, 1986,

IT IS on this 12<sup>th</sup> day of MAY 1986, ORDERED that the initial decision is modified as follows:

The Commission rejects the finding that the applicant has violated N.J.A.C. 19:49-2.3(b)(1) by sharing junket trips with other licensed junket enterprises from January to April 1985, because there is insufficient evidence to support the violation.

IT IS FURTHER ORDERED that the application of Lois J. Hammer for a casino employee license is granted substantially for the reasons stated in the initial

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

IT IS FURTHER ORDERED that copies of this final order be served upon Lois J. Hammer, the Office of Administrative Law and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5610-85

AGENCY DKT. NO. 85-EA-146

**LOIS J. HAMMER,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY,**

Respondent.

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**Anthony J. Riposta, Esq.,** for the petitioner

**Blair L. Magaziner, Esq.,** appearing pro hac vice, for the petitioner

**Anthony V. D'Elia, Deputy Attorney General,** for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: February 5, 1986

Decided: March 6, 1986

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

This matter concerns the application filed by Lois J. Hammer for licensure as a junket representative, sole owner/operator of a junket enterprise, pursuant to the provisions of N.J.S.A. 5:12-102. By letter dated July 9, 1985, the Division of Gaming Enforcement (Division) objected to the petitioner's licensure based on questions regarding her business ability and casino experience, and relating to whether she was a person of good character, honesty and integrity. Ms. Hammer requested a hearing and the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference took place on October 22, 1985, at which time the parties agreed that the issues in this matter are:

- A. Whether the petitioner can establish her reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2). The Division's concern is related specifically to:
  - (1) The junket activities of Ms. Hammer just before and after the expiration of the temporary license of Marvin Magaziner.
- B. Whether Ms. Hammer shared the profits from the junket enterprise with other persons in violation of N.J.A.C. 19:49-2.3(b)(1).

Anthony J. Riposta, Esq., on behalf of the petitioner, filed a motion to permit Blair L. Magaziner, an attorney licensed to practice law in the states of Kentucky, Ohio and Florida, to appear pro hac vice in this matter. Mr. Magaziner having represented that he has met the requirements as set forth in R. 1:21-1(a) and N.J.A.C. 1:1-3.7(b), and Deputy Attorney General Anthony V. D'Elia, on behalf of the respondent, having objections, I **ORDERED** on December 12, 1985, that Mr. Magaziner be permitted to appear pro hac vice in this matter.

The hearing took place on December 20, 1985, and after receipt of additional documents, the record in the matter closed on February 5, 1986.

FACTUAL FINDINGS

At the hearing, the parties entered into evidence stipulations (J-1), which set forth the following facts:

- (1) Ms. Hammer applied for a casino employee license for the position of junket representative, sole owner/operator on August 23, 1983.
- (2) On October 12, 1983, Ms. Hammer was temporarily licensed as a junket representative, sole owner/operator. That temporary license was renewed in October 1984, and expired in April 1985.

- (3) Marvin Magaziner received temporary licensure as a junket representative, sole owner/operator junket enterprise on February 29, 1984. Renewal of that temporary license was denied by the Casino Control Commission (Commission) on February 27, 1985.
- (4) At all times relevant hereto, Marvin Magaziner and Ms. Hammer were co-owners of International Leisure Club, Inc., an applicant for licensure as a junket enterprise, license #953-70.
- (5) It was at the direction of Marvin Magaziner that Ms. Hammer applied for her casino employee license in August 1983.
- (6) Marvin Magaziner began running junket trips to Atlantic City in early 1982.
- (7) Marvin Magaziner "split" those junket trips with a number of other junket representatives, including, but not limited to, Marvin Pickett, Nick Mesre, and Richard Slyk.
- (8) deleted
- (9) Between February and April 1985, Ms. Hammer ran three junket trips to the Atlantis Casino and Hotel (Atlantis).
- (10) Ms. Hammer "split" the junket trips mentioned in #9 above with Mr. Pickett, and shared any and all compensation received for those trips with Mr. Pickett on a fifty-fifty basis.
- (11) Ms. Hammer also ran three or four junket trips to Atlantic City casinos between February and April 1985 with Nick Mesre.
- (12) Ms. Hammer "split" any compensation received from the junkets mentioned in #11 with Mr. Mesre on a fifty-fifty basis.
- (13) Ms. Hammer also "split" a junket trip with Richard Slyk in February 1985.

- (14) Ms. Hammer "split" any and all compensation received for the junket trip mentioned in #13 with Mr. Slyk on a fifty-fifty basis.
- (15) deleted
- (16) deleted
- (17) When Marvin Magaziner's temporary license expired in February 1985, he asked Ms. Hammer to run a junket trip into Harrah's Marina Hotel and Casino (Harrah's Marina) which he had previously arranged.
- (18) Ms. Hammer refused to run the junket trip mentioned in #17.
- (19) On all Atlantic City junket trips mentioned in #9, #11, and #13, Ms. Hammer utilized the players' list of International Leisure Club, Inc. and Marvin Magaziner.

Ms. Hammer, who was 34 years old at the time of the hearing, testified that she first met Marvin Magaziner in 1972 and that she initially worked for him as secretary. At that time, Marvin Magaziner was organizing junket trips to Las Vegas. After a while, Ms. Hammer got involved with the actual operation of the junket business and she went on casino trips as the junket representative. Sometime after 1974, Ms. Hammer moved to Las Vegas and was employed as a casino dealer for approximately six months. Thereafter, the petitioner went to Chicago and became a junket representative for the Las Vegas Hilton.

In 1977, Ms. Hammer and Marvin Magaziner formed a company known as the International Leisure Club, Inc., and this company ran junket trips to Las Vegas and out-of-the-country locations. Ms. Hammer was responsible for all out-of-the-country trips, approximately six trips a year. When Marvin Magaziner started operating junket trips to Atlantic City in 1982, the petitioner was not initially involved in the planning or operation of such trips.

In 1983, Ms. Hammer was out of work for a period of time due to the birth of her daughter, and Marvin Magaziner had several operations and was out ill for most of that year. When Ms. Hammer received a temporary license as a junket representative,

sole owner/operator in 1983, she was not aware of the distinctions between the types of junket licenses available in New Jersey.

Although Marvin Magaziner was the junket representative for Harrah's Marina, Ms. Hammer helped organize the first trip to this casino, which took place on May 14-15, 1984. Ms. Hammer went on this trip as the junket representative and not as a gambler (P-1). She also was the junket representative for the trip to Harrah's Marina on April 16-17, 1984 (P-3). The fact that Ms. Hammer acted as the junket representative on several trips to Harrah's Marina in 1984 was affirmed by Tim Dougall, the former manager of special casino programs, by an affidavit dated January 6, 1986 (P-2).

In January 1985, Ms. Hammer became the junket representative for the Atlantis. Ms. Hammer organized and operated several trips to the Atlantis in 1985 prior to the expiration of her temporary license and several of these trips occurred after the expiration of Marvin Magaziner's temporary license (P-3). After his license expired, Marvin Magaziner did not personally receive any profits from the trips to Atlantis organized by Ms. Hammer; however, the monies from these trips were deposited in the account of International Leisure, Inc., and this account was used to pay the expenses of the corporation. At the time, Ms. Hammer did not think that there was anything wrong with using the corporation's account, but at the hearing, she stated that she now realizes that she should have opened her own account.

The profits from the 1985 trips to Atlantis were split between Ms. Hammer and other New Jersey licensed junket representatives. These other representatives each had their own customers from their own areas, and shared a plane and the profits with Ms. Hammer. At the time of these trips, Ms. Hammer was not aware that this type of arrangement was in violation of the Commission's regulations.

I **FIND** that Ms. Hammer is a credible witness and that the Division did not present any witnesses or documents to challenge her factual representations. Therefore, I **FIND** the facts as stated above are not in dispute.

Deputy Attorney General D'Elia stated that the Division was under the impression that Ms. Hammer had initiated her activities as a junket representative after

Marvin Magaziner's license was not renewed based on statements made by her during an interview conducted by the Division's representative. The Division assumed that the petitioner was acting as a "front" for Mr. Magaziner. In addition, Mr. D'Elia noted that the petitioner has admitted that she has engaged in activities which are in violation of the regulations regarding junket activities.

On behalf of the petitioner, Blair L. Magaziner argued that Ms. Hammer did not intentionally breach any regulations and that her violations were technical in nature, and that she should not be deprived of a license. Mr. Magaziner stated that the petitioner was confused regarding the different types of junket licenses and that her errors were due to sloppy business practices.

Based on the facts in this matter, I **CONCLUDE** that Ms. Hammer acted as a junket representative prior to the expiration of Marvin Magaziner's license and that she was not acting as a "front" for him.

Also based on the facts, I **CONCLUDE** that Ms. Hammer's activities in 1985 violated the provisions of N.J.A.C. 19:49-2.3(b)(1). This subsection provides that a junket representative who is the sole owner/operator of a junket enterprise cannot "hold an equity interest in, or share in the profits or losses of, the junket activities of the junket enterprise" and cannot "employ any other junket representative." By allowing the monies from her trips to Atlantis to be deposited in the account of International Leisure Club, Inc., Ms. Hammer violated this regulation by allowing Marvin Magaziner, a major stockholder of that corporation, to receive an indirect financial benefit from the trips. In addition, Ms. Hammer violated this regulation by sharing planes and profits with other licensed junket representatives.

Although Ms. Hammer has violated N.J.A.C. 19:49-2.3(b)(1), I **CONCLUDE** that the violations are technical ones which were not done intentionally and which do not adversely affect Ms. Hammer's qualifications for licensure or her reputation for good character, honesty and integrity. Therefore, I **CONCLUDE** that Ms. Hammer has established by clear and convincing evidence her reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

DISPOSITION

Therefore, I **ORDER** that the application of Lois J. Hammer for licensure as a junket representative, sole owner/operator of a junket enterprise be **APPROVED**.

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

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

March 6, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 7, 1986  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 11 1986  
DATE

Ronald J. Parkey  
OFFICE OF ADMINISTRATIVE LAW

ml/E

**EXHIBITS ADMITTED INTO EVIDENCE:**

**JOINT EXHIBITS:**

J-1 Stipulation of facts

**FOR THE PETITIONER:**

P-1 Harrah's Marina Hotel and Casino Players Rating Report for the junket trip held on May 14-15, 1985

P-2 Affidavit of Tim Dougall

P-3 Junket Player Rating Reports for junket trips to Harrah's Marina Hotel and Casino on April 16-17, 1984, and to Atlantis Hotel and Casino on January 23-24, 1985, February 26-27, 1985, and March 17-18, 1985

**FOR THE RESPONDENT:**

None

**WITNESSES**

**FOR THE PETITIONER:**

Lois J. Hammer

**FOR THE RESPONDENT:**

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-371  
OAL DOCKET NO. CCC 6368-85  
REGISTRATION NO. 14275-40

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

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of June 4, and June 11, 1986,

IT IS on this <sup>20<sup>th</sup></sup> day of June, 1986, ORDERED that the initial decision is modified as follows:

1. The Commission finds that the respondent's conduct on December 30, 1982, constituted the offense of aggravated assault, third degree, in violation of N.J.S.A. 2C:12-1b(2) rather than aggravated assault, second degree, and warrants his disqualification pursuant to N.J.S.A. 5:12-86(c)(1) and (g);
2. The Commission adopts the ALJ's finding that in February 1984, the respondent possessed

controlled dangerous substance (cocaine) with intent to distribute in violation of N.J.S.A. 24:21-19a(1), and concludes that such conduct warrants the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g); and

3. The respondent is disqualified for the foregoing reasons; however, that disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent therefore is permitted to retain a casino hotel employee registration.

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

IT IS FURTHER ORDERED that copies of this final order be served upon David Hannah, the Division of Gaming Enforcement, the Office of Administrative Law, and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6368-85

AGENCY DKT. NO. 85-371

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**DAVID HANNAH,**

Respondent.

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**Paul Vagianos**, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**David Hannah**, respondent, pro se

Record Closed: March 14, 1986

Decided: April 21, 1986

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

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

Petitioner seeks to establish that certain prior convictions and unprosecuted conduct disqualify respondent from continued employment in the casinos. N.J.S.A. 5:12-129. Respondent seeks to establish rehabilitation. N.J.S.A. 5:12-91.d.

Many of the facts are undisputed. On March 1, 1984, respondent was indicted on charges of unlawful possession of a weapon, N.J.S.A. 2C:39-5d, possession of

controlled dangerous substances (CDS), to wit, cocaine, N.J.S.A. 24:21-20a(4), and possession of cocaine with intent to distribute, N.J.S.A. 24:21-19a(1). Respondent pled guilty to possession of cocaine, and the other two counts of the indictment were dismissed. On December 30, 1982, respondent was arrested and was charged with aggravated assault, N.J.S.A. 2C:12-1(b). He was found guilty of simple assault in connection with this incident and was sentenced to 20 days in the Atlantic County Jail. On May 12, 1983, respondent was arrested and was charged with possession of CDS, to wit, methamphetamine and barbiturates, and possession with intent to distribute in violation of N.J.S.A. 24:21-20 and 24:21-19, respectively. Laboratory analysis of these materials proved negative, and the charges were dismissed.

Petitioner presented three witnesses. Officer Gerald Singer is an Atlantic City Police Officer of 13 years' experience. He testified concerning the 1984 incident. On February 10, 1984, he was dispatched to a bar to investigate an individual who was being sought on an outstanding warrant. After identifying respondent as that individual, he patted him down. As he did so, a "folding" knife fell out of his jacket pocket. (Officer Singer's report indicates that it had a ten-inch blade.) A further check of respondent's jacket revealed two plastic bags containing green vegetation and seventeen glassine envelopes (all the same size) containing another material. The green vegetation field-tested positive for marijuana, and the other material field-tested positive for cocaine. It was Officer Singer's opinion that these drugs were intended for sale.

Sergeant James A. Garbutt, an officer of 19 years' experience on the Pleasantville Police Force, also testified. On December 30, 1982, he was called to the scene of a stabbing. He found the victim, Donald Robinson, lying on the ground; he was bleeding from his back. After the ambulance arrived, Sergeant Garbutt went into the house to which Mr. Robinson had directed him and brought respondent out. At that time, Mr. Robinson, who was awaiting transport in the ambulance, hollered: "that's the man that stabbed me."

Officer Bressler Wilkinson is a patrolman of six years' experience on the Atlantic City Police Force. On May 12, 1983, while on routine patrol, he was flagged down by the doorman of a local bar who told him that a black man had just pulled out a knife and threatened him. He came upon respondent and patted him down. He found a folding knife and various envelopes with different types of pills in them. There was a total of 37 pills found on respondent's person and in his knapsack. Although the pills

appeared to be CDS, it develops that they were not and the charges were dismissed. Nevertheless, Officer Wilkinson testified that it was his belief that these were counterfeit CDS and were intended for sale by respondent. Petitioner seeks here to show intent to distribute counterfeit CDS in violation of N.J.S.A. 24:21-19.1.

Though respondent generally acknowledged responsibility for some of the offenses charged by petitioner, when asked specifically about each incident during cross-examination, he denied involvement. He testified that he did not stab Mr. Robinson and that he did not intend to distribute counterfeit CDS. Indeed, he asserted that he had only three pills with him when Officer Wilkinson stopped him and stated that these pills were for back pain.

Respondent testified that he has been employed as a cook for about six years by Resorts International and has had no difficulty with his employer. He submitted character letters from his immediate supervisors, reflecting on his good record and attitude as an employee. He is 32 years old, married, and is the father of three children.

This is the substance of the record. With respect to the most recent incident in 1984, it appears to me that petitioner has established both the distribution and the weapon's charges. The analysis here begins with the guilty plea to possession of cocaine. This, taken together with the equal size and number of bags found, the positive field test, the testimony of an experienced officer that the cocaine was intended for distribution, and the absence of a credible denial, establishes the intent to sell by a preponderance of the evidence. The knife found in respondent's possession had a ten-inch blade, according to Officer Singer's report, and this fact was not denied. N.J.S.A. 2C:39-5d, "Unlawful possession of weapons," provides:

Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

Respondent did not testify to any lawful purpose for the knife and the circumstances under which it was discovered certainly suggests none. See generally, State v. Lee, 96 N.J. 156 (1984).

Petitioner's proofs also establish aggravated assault with regard to the incident in December 1982. N.J.S.A. 2C:12-1b provides that a person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another or causes such injury purposely or knowingly, or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury. . . .

Sergeant Garbutt was entirely credible and his testimony is adopted. He came upon the scene and observed a man bleeding from the back. That man then pointed to respondent as his assailant, and respondent was convicted of simple assault in the matter. While we do not know the extent of Mr. Robinson's injuries, there is a preponderance of evidence that respondent attempted to cause him serious injury with a knife. Respondent simply denied involvement in the incident.

Petitioner has not met its burden with respect to the charge that respondent attempted to pass off placebos as counterfeit drugs. Despite respondent's unconvincing testimony that he had only three pills with him that day, the evidence establishes only that respondent had thirty-seven pills in different envelopes. There is no additional conduct which indicates any intent with respect to the pills.

Though respondent has been a satisfactory employee with Resorts, he committed all of the infractions discussed herein while so employed and cannot establish rehabilitation.

Based on the foregoing, it is my conclusion that petitioner has established the 1984 distribution and weapon's charges, and the 1982 charge of aggravated assault. The statutorily disqualifying offenses, each sufficient for the proposed action, taken together with the remaining offenses and the lack of any substantial evidence of rehabilitation, requires the revocation of respondent's casino hotel employee registration. It is so **ORDERED**.

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

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

4/21/86  
DATE

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

Receipt Acknowledged:

4/22/86  
DATE

*M. Bonczyk*  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 24 1986  
DATE

*Ronald L. Parkes* / s.  
OFFICE OF ADMINISTRATIVE LAW

bc/E

EXHIBITS

For petitioner:

- P-1 Complaint, issued February 11, 1984
- P-2 Complaint, issued February 1, 1984
- P-3 Investigation Report, dated February 11, 1984
- P-4 Property Report, dated February 11, 1984
- P-5 Indictment, dated March 1, 1984
- P-6 Judgment of Conviction
- P-7 Complaint, issued December 30, 1982
- P-8 Investigation Report, dated December 30, 1986
- P-9 Supplementary Investigation Report, dated December 30, 1982
- P-10 Arrest Report, dated December 30, 1982
- P-11 Voluntary Statement
- P-12 Voluntary Statement
- P-13 Order of remand
- P-14 Complaint, issued May 13, 1983
- P-15 Complaint, issued May 13, 1983
- P-16 Investigation Report, dated May 13, 1983
- P-17 Arrest Report, dated May 13, 1983

For respondent:

- R-1 Letter from Raymond Markey, Sous Chef, Resorts International, dated October 2, 1985
- R-2 Letter from Lawrence Hicks, Sr., Chef, Resorts International, dated October 2, 1985
- R-3 Letter from Angelene Hannah, dated March 1, 1986

WITNESSES

Officer Gerald Singer  
Sergeant James A. Garbutt  
Officer Bressler Wilkinson  
David Hannah

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-81  
OAL DOCKET NO. CCC 4883-85  
REGISTRATION NO. 54093-40

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

Complainant,

v.

WAYNE R. HARROD,

Respondent.

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: FINAL ORDER  
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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 26, 1986,

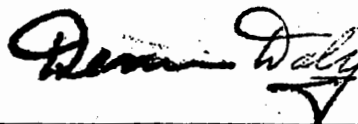
IT IS on this 27<sup>th</sup> of March 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Wayne R. Harrod is dismissed based upon the reasons stated 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 Wayne R. Harrod, the Division of Gaming

Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY: \_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4883-85

AGENCY DKT. NO. 85-81

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

Petitioner,

v.

**WAYNE R. HARROD,**

Respondent.

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

**Russell L. Lichtenstein, Esq. (Cooper, Perskie, April, Niedelman, Wagenheim &  
Weiss, attorneys) for the respondent**

Record Closed: January 17, 1986

Decided: January 28, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division) filed charges against Wayne R. Harrod, respondent, seeking the revocation of Mr. Harrod's casino hotel employee registration no. 54093-40 and 02532-40 based upon Mr. Harrod's arrest on a charge of possession of marijuana. Mr. Harrod opposed the action.

**PROCEDURAL HISTORY**

The Division filed its complaint with the Casino Control Commission (Commission) on February 28, 1985. Mr. Harrod requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case,

pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 3, 1985, and the matter was scheduled for hearing on December 6, 1985. The hearing was adjourned at the request of respondent's attorney and the matter was rescheduled for January 17, 1986. The hearing was held at the Atlantic County Civil Courthouse, Atlantic City, New Jersey, on January 17, 1986.

FINDINGS OF FACT

Wayne R. Harrod is a 25-year-old cook at the Golden Nugget Casino/Hotel. He was arrested on October 25, 1984, for possession of under 25 grams of marijuana. This marijuana was seized at the time of his arrest in the men's employee locker room. A laboratory analysis of the substance revealed a gross weight of 0.15 grams of marijuana (P-1).

Mr. Harrod was charged with possession of marijuana and was granted a conditional discharge by the Atlantic City Municipal Court. He successfully completed his supervised period and the conditional discharge was terminated on May 10, 1985 (R-5).

Michael F. Bailey, a security guard at Golden Nugget Casino/Hotel, entered the employee locker room at approximately 7:45 p.m. on October 25, 1984. Mr. Bailey detected an odor of marijuana. At the time of Mr. Bailey's entrance, Mr. Harrod was taking a puff on a marijuana cigarette belonging to Mr. Carter Levi.

Mr. Harrod presented his casino employee identification to Mr. Bailey and exited the locker room. Mr. Harrod explained that he does not use drugs or alcohol. He further explained that on the night in question he impulsively decided to try some proffered marijuana. He forthrightly admitted that no one forced him into this act and he regards the incident as a serious one which very well might jeopardize his employment with Golden Nugget Casino/Hotel. Mr. Harrod states that his one mistake will never be repeated if allowed to retain his registration.

Mr. Harrod's supervisor, Richard Cobb, has been employed by the Golden Nugget Casino/Hotel since December 8, 1980, as a sous chef. He is responsible for the quality and presentation of the food served in the hotel and the casino/hotel. Mr. Cobb presented a Golden Nugget Casino/Hotel job performance review form for Mr. Harrod

(R-1) and testified that Mr. Harrod has been an excellent employee who started as an intermediate cook and has risen to the position of cook. Mr. Harrod's absentee record is extremely low (R-3) and it appears that the position of cook offers great job satisfaction to Mr. Harrod.

The above is essentially uncontroverted, believable and is thus **FOUND AS FACT.**

DISCUSSION AND CONCLUSION OF LAW

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

Based upon the admissions by Mr. Harrod and the New Jersey State Police laboratory report (P-1), I **CONCLUDE** that the actions of Mr. Harrod, had they been prosecuted, would have likely resulted in his conviction for possession of marijuana under 25 grams. While the amount was de minimis (0.15 grams), the fact that the marijuana was found on the premises of a casino/hotel, in an employee area, is greatly disturbing.

While the term "inimical" is not defined in the Act itself, it has been stated that what is inimical is what would not be in the best interests of the industry because it would tend to bring the industry into discredit in the public eye and to lessen confidence in the integrity of the regulatory system. Since employment in the casino industry is a privilege granted in connection with the establishment of a legal system of gambling within this state, the standards to be applied to those seeking or holding licenses and/or registrations are strict and rightly so. Normally the possession of any controlled dangerous substance within the confines of a casino/hotel would indicate that continued registration would be inimical. However, I am impressed by the forthrightness and demeanor of Mr. Harrod. I am persuaded that Mr. Harrod sampled a de minimis amount of marijuana in the locker room of the Golden Nugget Casino/Hotel. I am further satisfied that with the exception of this incident, he is a credit to the casino industry, and I **CONCLUDE** that Mr. Harrod's continued licensure would not be inimical to the policies of the Casino Control Act. It is important to note that the possession of a controlled dangerous substance within the confines of a casino hotel will not be tolerated. The fact that Mr. Harrod acknowledges the severity of the offense, professes a total commitment to the abstinence of alcohol and drug use, and taking into consideration the de minimis

amounts of marijuana involved, combined with Mr. Harrod's excellent work record, I **CONCLUDE** that Mr. Harrod's registration should not be revoked. In addition, this decision is in keeping with prior Commission rulings on the matter. Div. of Gaming Enforcement v. Brian K. Worthy, OAL DKT. CCC 7866-84, decided March 19, 1985, modified by Casino Control Commission, May 7, 1985.

ORDER OF DISPOSITION

It is **ORDERED** that the Division's complaint of February 28, 1985, be **DISMISSED**.

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

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

1-28-86  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1-29-86  
DATE

*H. Bonczyk*  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 31 1986  
DATE

*Ronald J. Parker* & S.  
OFFICE OF ADMINISTRATIVE LAW

ks/e

DOCUMENTS IN EVIDENCE

- P-1 New Jersey State Police Special and Technical Service Section Forensic Science Bureau Laboratory Report
  
- R-1 Golden Nugget Casino/Hotel job performance review
  
- R-2 Letter from James A. Campbell, Sous Chef, Golden Nugget
  
- R-3 Letter from Carmasita Van Romer, Executive Chef's Office, Golden Nugget
  
- R-4 Letter from James C. Mitchell, M.D., Summit Health and Evaluation Centers
  
- R-5 Letter from Bonita M. Anselmo, Clerk, City of Atlantic City Municipal Court

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-285  
OAL DOCKET NO. CCC 5148-85  
LICENSE NO. 42863-21

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

Complainant, :

v. :

ROBERT J. HARTZELL, JR., :

Respondent. :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 11, 1986,

IT IS on this 24<sup>th</sup> day of April 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) The finding that the respondent's plea of guilty to possession of a controlled dangerous substance renders his continued licensure inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. While an offense involving the possession of large quantities of controlled dangerous substance may, in some circumstances, warrant a finding that an applicant or licensee is disqualified pursuant to section 86(c)(4) of the Act, the Commission does not reach that conclusion here when the evidence established that the respondent possessed approximately 11 grams

of cocaine and five grams of methamphetamine. The absence of any other arrests either prior or subsequent to the respondent's arrest on January 15, 1983, and his successful employment in the casino industry for approximately two years beginning March 1983, are the principal mitigating factors relied upon by the Commission. Nevertheless, in view of this offense and the respondent's less than credible testimony at the hearing, the Administrative Law Judge's conclusion that the respondent does not possess the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and -90(b) is adopted.

IT IS FURTHER ORDERED that the casino employee license of Robert J. Hartzell, Jr. is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Robert J. Hartzell, Jr., the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 5148-85**

**AGENCY DKT. NO. 85-285**

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

**Petitioner,**

**v.**

**ROBERT J. HARTZELL, JR.,**

**Respondent.**

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

**Mario J. D'Alfonso, Esq., for respondent**

**Record Closed: January 3, 1986**

**Decided: January 3, 1986**

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

**This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Robert J. Hartzell, Jr., respondent, the holder of casino employee license no. 42863-21. The Division alleges that respondent does not possess the requisite degree of good character, honesty and integrity for continued licensure by reason of criminal conduct, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Casino Control Act (Act). The respondent opposes revocation.**

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 25, 1985. By letter dated July 19, 1985, the Commission attempted to notify the respondent of the complaint and to advise him of his right to a hearing. Respondent's attorney, Mario J. D'Alfonso, Esq., requested a hearing on behalf of his client on August 8, 1985. Thereafter, 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 3, 1985, and the matter was scheduled for hearing. On December 13, 1985, the hearing was conducted at the Somers Point Municipal Building, Somers Point, New Jersey. The record remained open until January 3, 1986, at the request of respondent's attorney.

FINDINGS OF FACT

On January 15, 1983, respondent, Robert J. Hartzell, Jr. was stopped for a motor vehicle violation while he was proceeding in his vehicle northbound on State Highway 42 in Gloucester Township, Camden County, New Jersey. A burgundy pouch containing a small folding knife and several plastic bags containing white powder were confiscated. Mr. Hartzell was subsequently charged with violations of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance (CDS) with intent to distribute and N.J.S.A. 24:21-20a, possession of CDS.

On May 16, 1983, a Camden County, New Jersey Grand Jury returned an indictment as to all counts.

On January 30, 1984, respondent retracted his plea of not guilty and entered a plea of guilty to violation of N.J.S.A. 24:21-20a, possession of CDS. All other charges were dismissed as part of the negotiated plea (P-2).

On March 22, 1984, Mr. Hartzell was sentenced to a two-year period of probation and was fined \$2,500.

Mr. Hartzell testified as to the circumstances underlying his arrest and conviction. On December 1, 1982, respondent moved to 9 Primrose, Sicklerville, New Jersey. After retrieving several boxes which had been held in storage for over tw

years, he discovered a pouch containing cocaine and methamphetamine. He placed the pouch by the door, intending to dispose of the drugs. The pouch contains several bags, to wit:

- One (1) plastic bag containing 11.1 grams of cocaine;
- One (1) plastic bag containing 4.7 grams of methamphetamine;
- One (1) plastic bag containing .4 grams of methamphetamine.

On January 15, 1983, respondent placed the drugs in his jacket pocket for eventual disposition. As he headed toward the Oasis Motel, Camden, New Jersey, his place of employment, respondent was stopped by Trooper Sweeney. In addition to the drugs, respondent possessed \$5,350.00 in cash. According to Mr. Hartzell, the bulk of the cash belonged to his parents, who had lent him \$4,300 towards settlement of the house. Mr. Hartzell explained that several thefts had occurred in his new neighborhood and that he carried the cash for safekeeping, intending to repay his parents that day. No explanation was forthcoming as to why the cash had not been deposited since settlement had occurred on December 1, 1982.

Prior to 1981, respondent admits to occasional recreational use of drugs and claims the drugs found on January 15, 1983, were quite old. Respondent has no prior or subsequent arrests and probation expires in March 1986. Anita Nickerson, testified that she has known respondent for eleven years and that she has never observed respondent use drugs.

Mr. Hartzell commenced employment with the Atlantis Casino Hotel in March 1983 and has received two promotions.

The foregoing is essentially uncontroverted and is thus FOUND AS FACT.

#### DISCUSSION OF LAW AND CONCLUSIONS

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

The Division contends that Mr. Hartzell does not possess the requisite good character, honesty and integrity for licensure because of his alleged past criminal conduct rather than specifically seeking disqualification based upon N.J.S.A. 5:12-86c(1) or N.J.S.A. 5:12-86c(4). However, at this juncture, an analysis of N.J.S.A. 5:12-86c(4) is

required. The issue of inimicality substantially requires analysis similar to that of rehabilitation. There is no question that respondent pled guilty to a violation of N.J.S.A. 24:21-20a(1), possession of CDS (P-2). The issue then becomes whether the conviction for that offense is inimical to the policy of the Act and to casino operations.

While inimicality is not defined in the Act, the Commission has offered the following guidelines in determining whether an offense is inimical:

Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses, which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. [In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 28, 1979) at 15]

Mr. Hartzell advances the following mitigating factors:

1. He has no prior or subsequent arrests or convictions with the exception of January 15, 1983.
2. He has been employed satisfactorily at the Atlantis Casino Hotel for approximately two years. In fact, he has received two promotions.
3. He is not likely to repeat such conduct.
4. At the time of his arrest, the drugs in his possession were over two years old.
5. Respondent's conduct has been impeccable since the arrest.

Among the aggravating factors to be considered are:

1. The seriousness of the offense, i.e., possession of CDS — cocaine and methamphetamine.
2. Respondent's position within the casino industry, i.e., security supervisor.
3. The inability to explain many "loose" ends.
4. Respondent is still on probation.
5. Respondent's age at the time of the offense (38).

This decision is a difficult one. However, after weighing the various aggravating and mitigating factors, I must regretfully **CONCLUDE** that respondent's continued licensure would be inimical to the policy of the Casino Control Act. Participation in casino operations as a licensee is a revocable privilege conditioned upon the continued qualification of the individual licensee. While I am extremely sympathetic to the hardship this decision may entail, respondent's testimony and demeanor were not very enlightening.

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

Mr. Hartzell's conviction on March 22, 1984 of a violation of N.J.S.A. 24:21-20(a), possession of CDS (P-2), raises substantial questions concerning character, honesty and integrity that must be addressed by respondent. Under Section 89b(2) of the Act, Mr. Hartzell is required to demonstrate, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., at 8. When the Division raises objection to casino employee licensure under Section 89b(2) of the Act, it is incumbent upon respondent to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corp. and the Gemm Co. for Casino Licenses, Casino Control Commission (November 13, 1980) at 5.

Respondent's explanation concerning the large sums of cash, the number of cocaine bags found, the dates involved, if taken separately, seem plausible. However, when one attempts to explain the combined prevailing factors as coincidence, it strains credibility. Why did Mr. Hartzell continue to carry over \$5,000 in cash on his person after settlement in December 1982? If respondent was concerned about his house being robbed, it would have been relatively easy to return the money to his parents upon completion of settlement rather than to continue to carry large sums of cash for a period of well over one month. Respondent's inability to recall where or how much he paid for the cocaine, his general inability to explain his actions are greatly disturbing.

I admire respondent for his ambition and drive. His promotion to security supervisor in February 1985 attests to his diligence and industry. However, a high degree of integrity, character and honesty is required of casino security supervisors. The salient facts combined with many unanswered questions raise substantial concerns as to respondent's suitability for continued licensure. After considering the totality of the circumstances in this matter and the testimony of respondent, I am not persuaded by clear and convincing evidence that Mr. Hartzell possesses the required degree of good character, honesty and integrity for continued licensure. Mr. Hartzell, as a security supervisor, must maintain an impeccable reputation. I regretfully **CONCLUDE** that Mr. Hartzell has failed to demonstrate by clear and convincing evidence his good character, honesty and integrity.

#### C. Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's casino employee license. Given the nature of respondent's employment, the duties and responsibilities entailed therewith and the high degree of good character, honesty and integrity required of the position, I **CONCLUDE** that respondent's casino employee license must be **REVOKED**.

#### ORDER OF DISPOSITION

It is **ORDERED** that the casino employee license (license no. 42863-21) held by Robert J. Hartzell, Jr., be and is hereby **REVOKED**.

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

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

1 - 3 - 86  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1/6/86  
DATE

*Bonnette P. Frigon*  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 8 1986  
DATE

*Ronald J. Parky, Jr.*  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS

- P-1 New Jersey State Police Investigation Report dated January 15, 1983
- P-2 May, 1982 Superior Court of New Jersey, Law Division, Camden County  
Criminal Indictment No. I1098-5-83

WITNESSES

For the Petitioner:

None

For the Respondent:

Anita Nickerson

Robert J. Hartzell, Jr.

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APPLICATION OF WILLIAM HASKINS  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been conducted in the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions by the applicant and reply to the exceptions by the Division of Gaming Enforcement (DGE) having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 12, 1986,

IT IS on this 8th day of April 1986, ORDERED that the initial decision is modified as follows:

1. The ALJ's analysis concerning the applicant's two disqualifying offenses is at variance with the Commission's construction of N.J.S.A. 5:12-86(c). Having applied for a casino employee license on January 12, 1984, the applicant's criminal record must be evaluated under N.J.S.A. 5:12-86(c)(1). See, In the Matter of the Application of Robert Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (1980). The applicant's conviction in Philadelphia, Pennsylvania in 1974 is

comparable to a conviction for aggravated assault under N.J.S.A. 2C:12-1(b). Further, the applicant's conduct constituting unemployment fraud is equivalent to a violation of N.J.S.A. 2C:20-4 (third degree), rather than N.J.S.A. 2A:111-2.

2. The Commission finds that the respondent has demonstrated by clear and convincing evidence the financial stability and responsibility and good character, honesty and integrity required for licensure under N.J.S.A. 5:12-89(b) and 90(b). The Commission finds that the default judgments and support obligations of the applicant are not so debilitating, in light of his fulfillment of other financial obligations, as to undermine his demonstration of the requisite criteria for licensure.

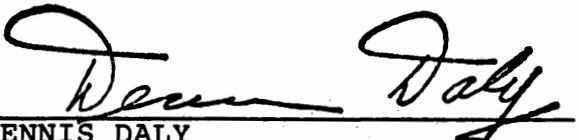
IT IS FURTHER ORDERED that the application of William Haskins for a casino employee license is granted based upon the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon William Haskins, the Division of Gaming

Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4290-85

AGENCY DKT. NO. 85-EA-93

**WILLIAM HASKINS,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY, STATE OF NEW JERSEY,**

Respondent.

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**William Haskins, petitioner, pro se**

**Frances L. Sundheim, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Jr., Attorney General of New Jersey, attorney)**

Record Closed: December 16, 1985

Decided: January 30, 1986

**BEFORE RALPH J. TOLOMEO, ALJ:**

This matter concerns petitioner's application for licensure by the Casino Control Commission as a casino employee and objections filed thereto by respondent pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

On Friday, August 16, 1985, a prehearing conference was conducted and the matter scheduled for hearing on October 24, 1985. Prior to the hearing date petitioner requested an adjournment, in order to obtain certain documents which he intended to present at the hearing, and was unable to obtain. With the consent of respondent, the

matter was adjourned and rescheduled for December 5, 1985, at which time a hearing was conducted. Thereafter, additional documents were received and reviewed by the undersigned on December 16, 1985, at which time the record closed.

FINDINGS OF FACT

Respondent, William Haskins is 33 years of age and presently resides in Camden, New Jersey, where he has lived for most of his life. On January 11, 1984, he filed an application with the Casino Control Commission requesting licensure as a casino employee. Based upon the information provided in his application, an investigation was conducted by the Division of Gaming Enforcement, respondent. This investigation gave rise to objections to licensure, filed by letter report of May 2, 1985, to the Commission by the respondent, recommending denial of licensure; alleging negative information regarding the petitioner's financial stability, integrity and responsibility; negative information as to his good character, honesty and integrity and negative information as to petitioner's criminal record.

At the hearing, documentary evidence was offered through the testimony of Detective Duane Daniels who is employed by the New Jersey State Police and assigned to the Division of Gaming Enforcement. Detective Daniels has been assigned to the Division of Gaming Enforcement for approximately two and one-half years and he conducted an investigation regarding the application of William Haskins.

His investigation revealed that on October 1, 1973, petitioner was arrested for shooting Geneva Avery in Philadelphia, Pennsylvania. He was charged with criminal attempt (murder), aggravated assault, simple assault, recklessly endangering another, possession of an instrument of a crime and possession of a prohibited offensive weapon.

Petitioner subsequently pled guilty to aggravated assault, possessing an instrument of a crime (weapon) and possession of a prohibited offensive weapon. He was sentenced on March 21, 1974, to one year probation on each charge (three years total) and \$1,500 restitution to the victim. At the time of sentencing, the charge of attempted murder was nolle prossed. The police reports (S-2 Evid.) related to this matter indicate that petitioner had been involved with Geneva Avery but had broken up with her. He came to Philadelphia on the date in question, saw her, removed a gun from his pocket and shot her once.

In his statement to police officers taken on the date of the shooting, petitioner indicated he had had the gun for about six months and had shot Ms. Avery because they had broken up and it was bothering him. He stated he was angry with his children and this break up was causing him to be angry with other people. Petitioner told police he "started to shoot her when they first broke up but changed his mind. He then decided to shoot her today (October 1, 1973) because I didn't want to keep the same feeling I had with other people." In his testimony at the hearing on December 5, 1985, petitioner stated that the shooting in Philadelphia was due to a situation that developed between himself and an ex-girlfriend and when they broke up it really got to him. Petitioner stated that he was a lot younger and a lot more foolish. He did not have the intent of killing her and was exonerated from that charge. He testified he had just wanted to hurt her which is what he did. Since then, he has realized it was poor judgment and he has not been involved in anything of a violent nature since that time.

Detective Daniels related that his investigation disclosed four arrests of petitioner in Camden, New Jersey, in 1970, 1972, 1975 and 1979 and which are characterized as domestic complaints wherein petitioner's wives charged him with assault. Petitioner testified that these arrests and charges came about between himself and his two ex-wives when he was younger and had quite a quick temper. He testified that he wasn't tolerant and that whatever upset him caused arguments and fights. He further testified that some of the charges were just brought up for no reason at all and in some situations cross-complaints were filed by him against his ex-wives. His recollection of the disposition of the charges indicates that suspended sentences and fines were imposed. He further indicates that he has been divorced from both women and is no longer involved in any problems with them since the last incident of 1979 (S-5 through 9 Evid.).

Detective Daniels also offered a certified copy of an indictment arising out of Superior Court of Camden County, bearing number 1875-77, charging the defendant with a violation of N.J.S.A. 2A:111-2. The indictment, returned in 1981, charges that defendant between December 14, 1974 and March 22, 1975, did obtain from the Division of Employment Security of the State of New Jersey the amount of \$690 by not disclosing employment. The court documents indicate that defendant pled not guilty to the charge and subsequently entered a plea of guilty to a disorderly offense of a violation of 2A:170-43 under a negotiated plea agreement. The sentence imposed on April 27, 1981, consisted of six months in the Camden County Jail, suspended; three years' probation with

a condition that defendant make restitution, at the completion of which probation would be terminated. The indictment was dismissed.

Petitioner testified at the hearing that he was obtaining unemployment benefits while out of work and obtained a job with the County of Camden as a maintenance worker. But he continued to receive the unemployment benefits for the period in question charged in the indictment because of financial problems and providing for his five children. He remained on probation for three years as he was unable to make restitution. He finally did so in a lump sum when he resigned from county employment and obtained pension monies to pay off the restitution ordered (S-1 Evid.).

Detective Daniels offered additional testimony that his investigation developed petitioner had three separate accounts with Our Lady of Lourdes Hospital in Camden, New Jersey, and that the accounts were listed as no payment made, bad debts (S-10-Evid.). These accounts are in the amounts of \$40, \$43 and \$43 for services rendered in November 1978, June 1979 and February 1980. The accounts are for petitioner's wife, Doris or daughter Dionne. Additionally, Detective Daniels' investigation indicated Cooper Medical Center, Camden, New Jersey, filed a complaint in November 1981 against petitioner and that a default judgment was obtained. The amount alleged owing was \$417.08 plus costs. Another civil suit was filed against petitioner by Holiday Spa, Cherry Hill, New Jersey, which is also defaulted in the amount of \$564.46 plus costs. This complaint was filed on July 15, 1982. Detective Daniels' investigation additionally indicated three complaints from the Domestic Relations Court of Camden County. The first, filed October 1972, listing Gladys Haskins as the plaintiff, in the amount of \$726; the second, filed August 1979, listing Phyllis Kyer as plaintiff in the amount of \$760; the third, filed March 1980, listing Doris Haskins as the plaintiff in the amount of \$505. These suits were filed by probation on behalf of support for children of petitioner.

Petitioner testified that there were several possibilities regarding the Lady of Lourdes' accounts: (1) that there was a lack of funds; (2) that when he and his wife were together she took care of the bills; and (3) that one of the bills was incurred by her after they separated. He further testified that he has paid several bills to Our Lady of Lourdes, including those for the birth of his daughter and a circumcision for himself, plus additional bills for his children when they needed medical attention. The Cooper Medical judgment involves an operation his wife had which he didn't know much about it until a few days before, when he had spoken with Detective Daniels, after receiving a notice in the mail

regarding a foreclosure action to satisfy the judgment. He now recognizes a default judgment is entered of record.

In regard to the health spa suit, petitioner testified that he believed he could "get out of the contract" if he wanted to and, except for the first day, never attended the spa. He had started making payments but let them know that he didn't want to continue anymore. He further objected to never being served with a complaint in the matter and has attempted to reopen the judgment by writing to the judge, but has been unsuccessful (P-5 through 7 Evid.).

In regard to the probation complaints, petitioner indicates that the women whose children he fathered, including his two ex-wives, went to welfare for child support. At that time, welfare brought an action against him in each situation. He would provide needs for his children, as necessary, but would not pay directly to the probation department, recognizing that this would not appear on any account in the welfare department. Petitioner further submitted a letter from his second wife, dated December 3, 1985, so stating (P-8 Evid.).

Petitioner acknowledges that these accounts are still open and he will pay when he is able. He does not have the ability to do so at the present time.

Although stated in its letter of May 2, 1984, recommending denial of licensure, respondent did not choose to offer evidence regarding a vehicle repossession; however, petitioner offered documents and testimony for the purpose of establishing his financial stability (P-9 through 13 Evid.). Petitioner testified that he had obtained credit in the amount of \$6,500 from Chrysler Credit Company with a down payment of only \$310 and, therefore, was found to be responsible by Chrysler Credit Corporation. In regard to the repossession, petitioner indicated that he did not make his payments under the Lemon Law, but placed the money in an escrow account while waiting for his car to be repaired. When that occurred he made his payments. Subsequently his car was set on fire by an ex-lady friend, at which time his insurance company paid Chrysler Credit Corporation (P-14 through 16 Evid.).

Petitioner offered four letters of recommendation on his behalf, two written in 1978 when he obtained a bus driver's license from the Division of Motor Vehicles and

two current letters of recommendation from Mayor Melvin R. Primas, Jr. from Camden City and Sammy Redd for whom he had worked (P-1 through 4 Evid.).

Petitioner further testified that he is presently unemployed but hopes to be employed so that he can take care of his financial obligations and responsibilities. He stated that he hasn't been in any trouble since the seventies, and as he has become older he has tried to be a little more tolerant with situations which in the past he had found intolerable. Petitioner indicates that once he gets on his feet he will take care of his financial obligations, including the hospital bills, judgments against him and outstanding support orders. He indicates that he has tried to get employment but has been unsuccessful and the last job he had in October 1985 terminated when he missed work due to a car problem.

Having reviewed all of the above, which was presented through direct testimony and documents offered by the parties and assessing the credibility of the witnesses, particularly the petitioner who testified in his own behalf, I **FIND** it to be Fact.

#### ISSUES AND LEGAL ARGUMENTS

Respondent, Division of Gaming Enforcement, argues that the facts as presented clearly establish that respondent has carried its burden of showing by a preponderance of the credible evidence that petitioner has been convicted of two statutory disqualifying offenses; namely a conviction in 1974 of aggravated assault involving the use of a firearm and in 1981 by acknowledging that he obtained money under false pretenses in an amount in excess of \$500. Respondent argues that even though this matter was not prosecuted as a crime of the third degree, under N.J.A.C. 5:12-86g, it has been established by a preponderance of the credible evidence as unprosecuted conduct. Respondent additionally argues that petitioner, under the facts presented, does not possess the financial stability, integrity and responsibility required under section 89b(1). He also argues that petitioner has not established, under the facts as found, his requisite good character, honesty and integrity mandated by section 89b(2) and for all of the foregoing urges that licensure be denied.

Petitioner argues that he has demonstrated by clear and convincing evidence that he has been rehabilitated pursuant to section 90h and that he does have the requisite

financial stability, integrity and responsibility required, as well as having demonstrated his good character, honesty and integrity by clear and convincing evidence.

Petitioner indicates that he hasn't been in any trouble since the incidents of 1973 and 1974 and that his financial stability is demonstrated by payment of bills when he is able to pay them. He further argues that if he can get his casino license he can foresee the rainbow at the end of the road.

CONCLUSIONS OF LAW

Under the undisputed facts as found, petitioner was convicted of the offense of aggravated assault in Pennsylvania in 1974. In 1981, he was charged in an indictment with a violation of N.J.S.A. 2A:111-2. He pled guilty to a disorderly person's offense in the fraudulent amount of \$690 and paid that amount in restitution.

N.J.A.C. 86c(1) and (2) enumerate offenses which are categorized as statutory disqualifiers, indicating that the conviction shall deny a casino license. I CONCLUDE that respondent has proven by a preponderance of the credible evidence that petitioner was convicted of aggravated assault in the Commonwealth of Pennsylvania, which is equivalent to a violation of N.J.S.A. 2A:90-1. Further, I CONCLUDE that under section 86g, respondent has shown by a preponderance of the credible evidence that petitioner did commit a violation of N.J.S.A. 2A:11-2 when he pled guilty to a disorderly complaint charging him with fraud in the amount of \$690 under the provisions of section 86g.

Under the provisions of section 90e, the Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of the Act, however, under section 90h, notwithstanding such provision, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation, the Commission shall consider the following factors:

- (1) The nature and duties of the position applied for.
- (2) The nature and seriousness of the offense.

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

In applying the facts as found to the criteria, petitioner seeks a casino license so that he may obtain employment in the industry designated as "Category II non-gaming related, maintenance and cleaning." It appears that petitioner has past experience in that type of employment. The nature and seriousness of the shooting of Ms. Avery cannot be minimized. Petitioner testified that he went there with the purpose of wanting to hurt her and, in fact, accomplished his purpose. In 1974 petitioner was receiving unemployment benefits and obtained employment without advising the unemployment agency, which resulted in monies in the amount of \$690 being paid to him over a three-month period. Petitioner indicates that he was young when these offenses occurred and was not mature and tolerant at the age of 21. He further indicates that he has been in no criminal trouble since that time and, although, he was indicted in 1981, the indictment reflects activities which occurred in the mid-70's. He further offers letters of recommendation (P-14 Evid.) which were provided in 1978 and 1985. He has completed all probation and restitution requirements of sentences imposed and, at age 33, states all of that is behind him. Under all the circumstances, I **CONCLUDE** that petitioner has established by clear and convincing evidence that he has been rehabilitated with respect to the two statutory disqualifiers.

N.J.A.C. 5:12-90 entitled "Licensing of Casino Employees" under subsection b, provides that "any applicant for a casino employee license must, prior to the issuance of

any such license, produce sufficient information, documentation and assurances to meet the qualification criteria . . . contained in subsection b of section 89 of this act. . . ." Section 89b(2) provides that each applicant for an "employee license shall produce . . . assurances as may be required to establish by clear and convincing evidence that financial stability, integrity and responsibility of the applicant. . . ." In applying the facts as found to this requirement, I **CONCLUDE** that petitioner has not established by clear and convincing evidence the requisite financial stability, integrity and responsibility. Petitioner's current status indicates he has two judgments of record against him which total almost \$1,000. In addition, he has three court actions which exceed \$2,000 pending in domestic relations court for support for his children. They run for a period of eight years from 1972 to 1980 and petitioner acknowledges that they are still unsatisfied. In addition, three minor hospital bills for his wife and child remain unpaid. Petitioner relates that he has continued to have financial problems due to employment dilemmas and his ability to maintain jobs after he has started them. In the interim, he purchased automobiles and paid them off without providing for outstanding obligations to both probation for his children and debts which have resulted in default judgments. Under all the circumstances, I **CONCLUDE** that petitioner does not possess the requisite financial stability, integrity and responsibility required for licensure.

In addition, section 90b of the Act provides as stated above that in addition to meeting the requirements of 89(b)(1) the requirements of Section 89(b)(2) must also be met. Section 89b(2) requires that each applicant for a license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family habits, character, criminal and arrest record, business activities, financial affairs and business, professional and personal associates, covering at least the ten-year period immediately preceding the filing of the application.

In reviewing all of the facts as found, I **CONCLUDE** that petitioner has not established by clear and convincing evidence that he has the requisite, good character, honesty and integrity mandated by the act. In 1973, petitioner sought to hurt the woman with whom he had a relationship. He accomplished his purpose. Later in the following year, he did not advise the unemployment agency that he had obtained employment. This resulted in an indictment in 1981. Petitioner was also involved in domestic disputes which resulted in his arrests from 1972 through 1979; those resulted in suspended sentences and

finer. Additionally, he has not complied with court orders requiring him to support his children and he maintains that he did so independently of the court process. These matters are still open and have not been addressed by him. He has allowed two matters to go to judgment and, although he maintains he was not properly served in either of the cases, the judgments remain of record as of this time. Petitioner argues as evidence of his good character, honesty and integrity that he has received credit for car loans and has paid the same, as well as paying bills in addition to those that remain unpaid. Petitioner looks to employment in the casino industry and the casino-employee license as an opportunity to obtain steady employment and liquidate his outstanding obligations. From the facts as found, it is clear that petitioner has undertaken additional responsibilities and obligations without first addressing those which he should have satisfied.

For all of the foregoing reasons, I have **CONCLUDED** that petitioner has not met his burden by a preponderance of the clear and convincing evidence that he has the requisite financial stability, integrity and responsibility or reputation for good character, honesty and integrity as required in N.J.A.C. 5:12-89b(1) and (2). It is, therefore, **ORDERED** that petitioner's application for casino employee license be **DENIED**.

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

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

Jan. 30, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

1/31/86  
DATE

M. D. Ricci  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 3 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ml/E

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Letter from John Mancine to The Division of Motor Vehicles, 1978
- P-2 Letter from Bob Lane to The Division of Motor Vehicles
- P-3 Letter from Mayor R. Primas, Jr. to The Division of Motor Vehicles, 1985
- P-4 Letter from Sammy Redd to The Division of Motor Vehicles, 1985
- P-5 Letter to Camden County District Court from Mr. Haskins
- P-6 Letter to Mr. Haskins from Judge Steinberg
- P-7 Letter to Mr. Haskins from Judge Steinberg, December 3, 1982
- P-8 Letter from Doris Haskins, December 3, 1985 and December 20, 1982
- P-9 Document of a vehicle purchase by Mr. Haskins
- P-10 Document of a vehicle purchase by Mr. Haskins
- P-11 Document of a vehicle purchase by Mr. Haskins
- P-12 Document of a vehicle purchase by Mr. Haskins
- P-13 Document of a vehicle purchase by Mr. Haskins
- P-14 Vehicle purchase information
- P-15 Vehicle purchase information
- P-16 Vehicle purchase information

**FOR THE RESPONDENT:**

- S-1 Indictment from Camden County Superior Court, attached thereto complaint from Camden County Municipal Court and certification
- S-2 Criminal investigation from Philadelphia Police Department
- S-3 Extract of Criminal Record, Philadelphia Police Department
- S-4 Certified documents with charges listed against Mr. Haskins and decisions
- S-5 Arrest cards from Camden Police Department on Mr. Haskins
- S-6 Incident report from Camden Police Department, Mr. Haskins arrested on a warrant

- S-7 Incident report, Camden Police Department, Mr. Haskins arrested on a warrant
- S-8 Arrest cards from Camden Police Department on Mr. Haskins
- S-9 Incident report, Camden Police Department, Mr. Haskins arrested on a warrant
- S-10 Three outstanding bills from Our Lady of Lourdes Hospital

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APPLICATION OF JOHN J. HENDERSON  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its meeting of January 15, 1985,

IT IS on this 13<sup>d</sup> day of February 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of John J. Henderson for a casino employee license is granted based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon John J. Henderson, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4717-85

AGENCY DKT. NO. 85-EA-121

**JOHN J. HENDERSON,**

Petitioner,

v.

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

Respondent.

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**Scott E. Behar, Esq.,** for the petitioner

**Joanne Cocchiola, Deputy Attorney General,** for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 31, 1985

Decided: December 9, 1985

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

This matter concerns the recommendation of the Division of Gaming Enforcement (Division), dated June 11, 1985, that the petitioner not be licensed as a casino employee (security), pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Based on this recommendation, the Casino Control Commission (Commission) informed the petitioner that there was a substantial possibility that his licensure application would be denied. Mr. Henderson requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on September 20, 1985, and at that time Mr. Henderson appeared pro se. During the prehearing, the parties agreed that the issue in this matter is whether the petitioner failed to disclose an alleged 1974 arrest on his casino licensure application form and, if so, whether said action warrants the denial of licensure. The hearing was held on October 31, 1985, at which time the petitioner was represented by Scott Behar, Esq. The record in the matter closed on that date.

#### FACTUAL FINDINGS

Detective Dwayne Daniels, a member of the New Jersey State Police assigned to the Division, was requested to investigate the casino license application filed by the petitioner. During the criminal record check, Detective Daniels found that on March 18, 1984 in Mays Landing, New Jersey, a John J. Henderson was stopped for speeding by a state police trooper and that the trooper found marijuana in the vehicle. This Mr. Henderson and his companion, Guy Cavalli, were arrested and were later released on bail (R-1, R-3). In his arrest report, the trooper stated that the Mr. Henderson involved in the incident was a resident of Darby, Pennsylvania, listed his Social Security number and noted that he had a tattoo of two cherries on his stomach (R-1). On April 25, 1974, this Mr. Henderson appeared in the Hamilton Township Municipal Court, entered a plea of guilty to the charge of the possession of less than 25 grams of marijuana, and was fined \$50 and assessed court costs of \$10 (R-1).

Also, Detective Daniels found that a John J. Henderson was arrested on January 24, 1984 in Pennsylvania and was charged with burglary, receiving stolen property, criminal trespass, theft by unlawful taking and criminal conspiracy (R-3), and that as these charges, he was allowed to participate in a program similar to the New Jersey Pre-Trial Intervention Program.

In his personal history disclosure (Form-2A), the petitioner listed the 1984 arrest but did not list any arrest in 1974 (R-2).

On May 20, 1985, Detective Daniels had a telephone conversation with the petitioner regarding the information contained on his personal history disclosure form. Detective Daniels gave the petitioner an opportunity to disclose the 1974 arrest; however, Mr. Henderson denied ever being arrested in New Jersey. After Detective Daniels told

the petitioner about the information he had regarding a 1974 arrest, Mr. Henderson still denied being arrested in New Jersey. When asked by Detective Daniels if he knew Guy Cavalli, the petitioner stated he knew a person named Guy but that this person had a different last name. The petitioner admitted that he had cherries tattooed on his stomach and confirmed that the address and Social Security number that appeared on the 1974 arrest form was his own; however, he still denied being arrested in New Jersey.

After this conversation, Detective Daniels decided to check further into the facts relating to the 1974 arrest. He obtained the fingerprints taken of Mr. Henderson at the time of the 1974 arrest, and Sergeant Ott of the New Jersey State Police Laboratory confirmed that they were identical to the fingerprints submitted by the petitioner as part of his casino license application.

It is Detective Henderson's opinion that the petitioner was the person involved in the 1974 arrest and that it is not possible that he has forgotten the incident which apparently was his first arrest.

In his own defense, Mr. Henderson testified that he listed the 1984 arrest since it is the only arrest he recalled, and that he would have listed the 1974 arrest if he had remembered the incident. As of the time of the hearing, the petitioner stated that he still did not recall an arrest and conviction in New Jersey in 1974.

In 1974, Mr. Henderson was 25 years old and employed; however, the petitioner could not recall where or for whom. Mr. Henderson confirmed that he has a tattoo of cherries on his stomach and confirmed that his address and Social Security number are the same as listed on the 1974 arrest report (R-1).

Based on the testimony presented, I **FIND** that Mr. Henderson is the person involved in the 1974 arrest, that he was charged with the possession of less than 25 grams of marijuana and that he pleaded guilty and was fined \$50 plus court costs. Further, I **FIND** that Mr. Henderson does not have any present recollection of the 1974 arrest. Although this was Mr. Henderson's first arrest, the incident did take place over ten years ago when Mr. Henderson was relatively young and I accept his testimony that he has no present recollection of the 1974 arrest.

CONCLUSIONS OF LAW

Pursuant to the Casino Control Act, an applicant for licensure is required to provide the Commission with all pertinent information, and the failure to disclose a material fact is grounds for disqualification, N.J.S.A. 5:12-86(b). The obvious purpose for this section is to insure that the Commission is provided with all the information necessary to make a decision on an application for licensure, In the Matter of the Application of Carl Lee Cooper, OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Commission (Feb. 7, 1980). It was recognized by the Commission in the Cooper matter that not every nondisclosure necessitated disqualification and that there is a difference between mere inadvertence or ignorance and an intentional and willful omission done in bad faith. It is clear that if the nondisclosure resulted from a genuine misunderstanding of the nature of the criminal act or from forgetfulness, disqualification is not required; while on the other hand, if the applicant fails to disclose information out of fear that a license would be denied then disqualification is warranted, Cooper; In the Matter of the Application of Steven M. Cohen, OAL DKT. CCC 3133-79 (Dec. 6, 1979), adopted, Commission (Jan. 30, 1980); In the Matter of the Application of William Gonzales, OAL DKT. CCC 684-82 (July 16, 1980), modified, Commission (Sept. 5, 1980). In order to determine whether the nondisclosure results from inadvertence or ignorance, it is necessary to look at the surrounding circumstances in each case, In the Matter of the Application of Ted's World of Flowers, Inc., OAL DKT. CCC 706-81 (Jan. 22, 1982), adopted, Commission (March 15, 1982).

In this matter, Deputy Attorney General Joanne Cocchiola argued that an arrest and conviction for the possession of marijuana is a material fact and that Mr. Henderson failed to present any acceptable reason for his failure to reveal this information.

On behalf of the petitioner, Mr. Behar argued that there was no intentional failure to disclose and that if Mr. Henderson failed to list an incident that occurred in 1974, it was due to his bad memory rather than an attempt to hide anything. Mr. Behar noted that the investigation report regarding the 1974 incident (R-1) indicates that the petitioner's vehicle was stopped for speeding and that Mr. Henderson received two summonses, one for speeding and one for not having a car registration in his possession. Since there is no indication in the reports that Mr. Henderson received a warrant or

summons for the charge of possession of less than 25 grams of marijuana (R-1), Mr. Behar questioned whether the petitioner was arrested for this charge.

Although I agree with Mr. Behar that there is no statement in any of the reports submitted by the Division regarding the 1974 arrest (R-1) indicating that the petitioner was specifically arrested and charged with the drug violation, I **CONCLUDE** that a reading of these documents clearly establishes that this was done and that Mr. Henderson was convicted of said drug offense.

Although I agree with Ms. Cocchiola's argument that the failure to reveal an arrest and conviction of a drug charge is a material fact, I **CONCLUDE** that there was no violation of N.J.S.A. 5:12-86(b) since Mr. Henderson did not intentionally fail to reveal the 1974 arrest. Since this is the only reason for the Division's objection to his licensure, I **CONCLUDE** that Mr. Henderson is entitled to a license as a casino employee.

**DISPOSITION**

Therefore, I **ORDER** that John J. Henderson be licensed as a casino 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 Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

December 9, 1985  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

12/10/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 12 1985  
DATE

Ronald J. Parkes, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ks/EE

**EXHIBITS ADMITTED INTO EVIDENCE FOR THE RESPONDENT:**

- R-1 New Jersey State Police Investigation Report, dated March 18, 1974; New Jersey State Police Supplemental Investigation Report, dated March 19, 1974; New Jersey State Police Supplemental Investigation report, dated April 25, 1974; New Jersey State Police Supplemental Investigation report, dated December 3, 1974; Request for examination of evidence received by the New Jersey State Police Laboratory at Hammonton on March 19, 1974; and New Jersey State Police Arrest Report, dated March 18, 1974
- R-2 Personal History Disclosure Form-2A filled out by John J. Henderson and filed with the Casino Control Commission on February 4, 1985
- R-3 Federal Bureau of Investigation, United States Department of Justice, Information Sheet on John J. Henderson, dated May 4, 1984

**WITNESSES**

**FOR THE PETITIONER:**

John J. Henderson

**FOR THE RESPONDENT:**

Detective Dwayne Daniels

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-365  
OAL DOCKET NO. CCC 06224-85  
LICENSE NO. 12301-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
  
Complainant, :  
  
v. :  
  
SHEILA HENDERSON, :  
  
Respondent. :

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FINAL ORDER

This matter having been transmitted to the Office of Administrative Law for a hearing; and an initial decision having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of March 5, 1986,

IT IS on this *9th* day of April 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed and incorporated herein by reference; and

IT IS FURTHER ORDERED that Sheila Henderson pay a civil penalty in the amount of \$150, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Sheila Henderson's casino employee license is suspended for five (5) working days to be effective as follows: April 14, 15, 16, 17, and 18, 1986; and

IT IS FURTHER ORDERED that during this period of suspension Sheila Henderson shall not be entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon Sheila Henderson, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6224-85

AGENCY DKT. NO. 85-365

**STATE OF NEW JERSEY,  
DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**SHEILA HENDERSON,**

Respondent.

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**William E. Mountford, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Sheila Henderson, respondent, pro se**

Record Closed: January 6, 1986

Decided: January 21, 1986

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

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking monetary penalties and a period of suspension against respondent, based on an allegation that she gambled at an Atlantic City casino in violation of N.J.S.A. 5:12-100(n). Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Petitioner presented the testimony of Edward Quirk, a New Jersey State police officer, and a videotape of the incident. Officer Quirk testified that on July 16, 1985, the day after the incident, he visited respondent at her place of employment in the Sands Hotel and Casino to discuss the matter. He informed her that a videotape had been made at the Golden Nugget the evening before which appeared to show her playing the slots. Officer Quirk testified that although she denied it at first, as the questioning continued, she admitted the infraction. After identifying respondent at the hearing, Officer Quirk testified that she has lost some weight since their interview, and that her hair was now done differently.

The videotape, which was played during the hearing, revealed a woman playing slot machines over the course of a few minutes who was somewhat heavier than respondent, but who otherwise bore a strong resemblance to her.

Respondent denied outright that she had been gambling at the Golden Nugget on the evening in question. She provided no other explanation as to her whereabouts.

This is the substance of the record. I found Officer Quirk to be a credible witness and accept his testimony to the effect that respondent admitted the offense to him during their interview on July 16, 1985. The videotape is corroborative of this testimony.

As this is a first offense involving no more than slot machine play, it is my conclusion that a penalty at the lower end of the scale being utilized by the Commission is appropriate. It is thus **ORDERED** that respondent pay a penalty of \$150 and be suspended for a period of five days.

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

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

DATE 1/21/86

  
SOLOMON A. METZGER, ALJ


Receipt Acknowledged:

DATE 1/22/86

  
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE JAN 24 1986

  
OFFICE OF ADMINISTRATIVE LAW

ml/e

WITNESSES

Edward Quirk  
Sheila Henderson

EXHIBITS

For petitioner:

- P-1 Memo of Senior Inspector Ladd to Principal Inspector Ford, dated July 15, 1985
- P-2 Copy of photograph

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-113  
OAL DOCKET NO. CCC 4403-85  
APPLICATION NO. 55391-22  
REGISTRATION NO. 4582-40

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APPLICATION OF PEARLENE D. HOWARD  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 22, 1986,

IT IS on this 10<sup>th</sup> day of April, 1986, ORDERED that the initial decision is modified as follows:

1. The ALJ's conclusion that the applicant is disqualified pursuant to N.J.S.A. 5:12-86(c)(2) as a consequence of her conviction in 1975 for larceny and in 1976 for assault is rejected. The judge's analysis of the disqualification issues is at variance with the Commission's accepted construction of N.J.S.A. 5:12-86(c). The applicant's criminal record must be evaluated under N.J.S.A. 5:12-86(c)(1) rather than -86(c)(2). See Application of Robert Ferrin for a Casino Employee License, Docket No. 79-EA-207, (Commission Decision January 1981).
2. The record establishes that the applicant was convicted in 1975 of larceny of \$175. Under N.J.S.A. 20:20-1 et seq., this equates to a disorderly person's offense which is not

a statutory disqualifier under section 86(c)(1).

Regarding the applicant's 1976 conviction, due to the unavailability of court documents, the record establishes only that the applicant was charged with "child cruelty and atrocious assault and battery." Absent sufficient information to establish the actual offense of which she was convicted, pursuant to N.J.S.A. 5:12-86(g), the offense actually committed notwithstanding the absence of conviction, the Commission cannot conclude that the applicant is disqualified pursuant to N.J.S.A. 5:12-86(c).

3. The ALJ's finding of rehabilitation is rejected as unnecessary in light of the absence of a disqualification pursuant to N.J.S.A. 5:12-86(c).

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Pearlene D. Howard, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4403-85

AGENCY DKT. NO. 85-EA-113

**PEARLENE D. HOWARD,**

Petitioner,

v.

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

Respondent.

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**Pearlene D. Howard, petitioner pro se**

**Frances L. Sundheim, Deputy Attorney General, for respondent (Irwin L. Kimmelman,  
Attorney General of New Jersey, attorney)**

Record Closed: November 19, 1985

Decided: December 12, 1985

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

This matter concerns the application of petitioner, Pearlene D. Howard, for a casino employee license. The Casino Control Commission notified Ms. Howard that there was a possibility that her license application would be denied based on the facts set forth in the May 24, 1985 letter of the Division of Gaming Enforcement (Division). Ms. Howard requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

The prehearing conference was held by way of a telephone conference call on September 10, 1985, and at that time, the parties agreed that the issues in this matter are:

1. Whether the petitioner is disqualified from licensure because of certain alleged criminal convictions pursuant to N.J.S.A. 5:12-86c.
2. Whether the petitioner can show that she has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2).
3. Whether the petitioner can establish that she has been rehabilitated as provided for by N.J.S.A. 5:12-90h.

The hearing took place on November 19, 1985, and the record in this matter closed on that date.

#### FACTUAL FINDINGS

I FIND that the facts in this matter are not in dispute. On August 5, 1975, while she was employed to clean a person's house, the petitioner took money and jewelry, having an alleged total value of \$525, from her employer (R-1). A complaint was filed against the petitioner alleging a violation of N.J.S.A. 2A:119-2. The value of the items taken was then reduced to \$175, and the petitioner was found guilty of the theft charge in the Ventnor City Municipal Court on December 4, 1975 (R-1). Ms. Howard was fined \$300, was assessed court costs in the amount of \$30 and was put on probation for one year (R-1). Ms. Howard successfully completed this probation period, and listed this arrest and conviction on her application for casino licensure.

Ms. Howard stated that she was approximately 19 years old at the time of the incident and had agreed to perform a job for insufficient compensation. While her employer was talking to a repairman, Ms. Howard took certain items and left the house after telling her employer that she was going out to purchase some cigarettes. Ms. Howard did not return. She stated that it was a foolish and immature act, and that she should have refused the job.

On September 2, 1975, the petitioner was arrested and was charged with child cruelty - atrocious assault and battery (R-2). Ms. Howard left her 3-year-old son in the care of a friend, Ernest Gillard, and while Ms. Howard was at work, Mr. Gillard beat the boy with a plastic strap and the boy was taken to the hospital for medical treatment

(R-2). Ms. Howard and Mr. Gillard were arrested and both of them were found guilty of the charge. On March 15, 1976, the petitioner was sentenced to 60 days in the county jail, which was partially suspended, and two years probation upon her release. The petitioner disclosed this arrest and conviction on her application for a casino license.

As to this incident, Ms. Howard stated that she did not personally abuse her child; however, the child was beaten by a friend of hers, whom she knew had a bad temper. The petitioner thought it was unfair that she had been charged and convicted of abusing her child.

After she was released from jail, Ms. Howard successfully completed her probation period and regained the custody of her son.

Since the two incidents in 1975, Ms. Howard has not engaged in any other criminal activities and currently resides with her son as well as another child born after the incidents in issue. Ms. Howard has been continually employed and attended night school at the Atlantic City Community College for one and one-half years taking various business management courses and also has taken a six-month computer training program. Since the 1975 incidents, Ms. Howard has tried to be a better person and a good mother.

Ms. Howard started to work for Caesar's Casino and Hotel as a clerk in 1979 and thereafter was promoted several times within the business office. She left this position in 1983. Thereafter, she took a job with Golden Nugget Hotel and Casino and worked there for approximately three months as an ice cream server. Since May 1985, Ms. Howard has been employed by Harrah's Marina Casino Hotel in the business office and has applied for a casino employee license in order to get a better position.

On behalf of the petitioner, John J. Durkan, director of purchasing at Harrah's Marina Hotel Casino, wrote a letter dated October 10, 1985, stating that he has known Ms. Howard for ten years and considers her to be a good employee (P-1). Also, Donna Mae Byrne, a clerical employee in the purchasing office of Harrah's Marina Hotel Casino, and Warren P. Byrne, a captain in the Atlantic City Police Department, wrote a joint letter indicating that they have known Ms. Howard for ten years and that they consider her to be a person of good character, honesty and integrity (P-2).

CONCLUSION OF LAW

The Division alleged, and I concur, that the petitioner's two criminal convictions are statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(2).

Since the incidents occurred 10 years ago when Ms. Howard was about 19 years old, and since she has not been involved in any criminal activities thereafter and has been employed and has taken college courses to improve her employment opportunity, I **CONCLUDE** that the petitioner has shown that she has been rehabilitated and that the petitioner has shown that she is now a person of good character, honesty and integrity.

DISPOSITION

Therefore, I **ORDER** that the casino employee license application of Pearlene D. Howard be approved.

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

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

December 12, 1985  
DATE

Beatrice S. Tylotki  
BEATRICE S. TYLOTKI, ALJ

Receipt Acknowledged:

12/13/85  
DATE

Duth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 17 1985  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

446  
Bc

EXHIBIT LIST

Exhibits Admitted into Evidence:

For petitioner:

P-1 Letter from John J. Durkan, dated October 10, 1985

P-2 Letter from Warren P. Byrne and Donna Mae Byrne, dated October 10, 1985

For respondent:

R-1 Information relating to the theft charge filed against Pearlene Howard

R-2 Information relating to the child cruelty - atrocious assault and battery charge filed against Pearlene Howard

WITNESSES

For petitioner:

Pearlene Howard

For respondent:

Detective Ronald Walraven

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-38  
OAL DOCKET NO. CCC 1318-85  
LICENSE NO. 46940-21

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

Complainant,

FINAL ORDER

v.

EDWARD JEFFERSON,

Respondent.

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 9, 1986,

IT IS on this 10<sup>th</sup> day of April 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Edward Jefferson is dismissed substantially based upon the reasons stated 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 Edward Jefferson, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY: \_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1318-85

AGENCY DKT. NO. 85-38

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**EDWARD J. JEFFERSON,**

Respondent.

---

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

**L. Michael Lee, Esq., for respondent (Avena, Hendren & Friedman, attorneys)**

Record Closed: January 9, 1986

Decided: February 27, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on February 8, 1985, seeking judgement revoking the respondent's casino employee license or some other sanction, pursuant to sections 86c and g, 90b and e, and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's indictment on May 17, 1984, for possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to the aforementioned indictment, has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act, or which constitutes an offense which is an automatic disqualifier from licensure, within the meaning of sections 86c(3) or (4), even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of section 86g of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the Act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.
3. Whether the respondent, notwithstanding any conduct which may constitute a disqualifying offense under section 86c of the Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 90h of the Act, thereby avoiding revocation of licensure.

#### PROCEDURAL HISTORY

By letter dated February 20, 1985, the respondent requested a hearing on the complaint filed by the Division of Gaming Enforcement. On March 8, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on April 24, 1985, at which time the matter was set down for hearing on June 24, 1985.

The matter was adjourned prior to the June 1985 hearing date because the Division of Gaming Enforcement had not yet provided complete discovery to counsel for the respondent. The hearing was rescheduled for and commenced on October 2, 1985. However, the hearing could not be completed on that date because some relevant

documentary discovery was not presented to counsel for the respondent until the day of the hearing. In order to give the respondent an opportunity to prepare adequately, the matter was continued until January 9, 1986, on which date the hearing was completed.

FINDINGS OF FACT

The respondent is a 24 year old resident of Runnemede, New Jersey. He holds casino employee license number 46940-21, issued by the Casino Control Commission. From August 1983 until May 1985, the respondent was employed by Resorts International Casino Hotel as a slot booth cashier (Exhibit R-9). Since May 1985, the respondent has been employed by Resorts as a blackjack dealer. He has maintained a good work record, and no disciplinary action has been taken against him (Exhibit R-8). According to a letter from slot cashier manager Keith Crosby, dated October 1, 1985 (Exhibit R-9), the respondent has established himself as an individual of outstanding character and ability. Other letters from individuals who have known the respondent for a number of years and which attest to his honesty and trustworthiness were admitted into evidence as Exhibits R-2 and R-3.

The incident which has given rise to the complaint of the Division of Gaming Enforcement occurred on April 10, 1984. On that date, the respondent worked the 10:00 a.m. to 6:00 p.m. shift at Resorts. A fellow employee, Laura Whiteman, told the respondent that Marla Negra, a former employee of Resorts, had returned to Atlantic City and would meet the respondent and Ms. Whiteman for a drink after work. The respondent and Ms. Whiteman waited in a lounge at Resorts for Ms. Negra, but when she did not arrive, Ms. Whiteman suggested, since she knew where Ms. Negra was staying, that they look for her there.

Ms. Negra was staying in room 410 of the Davenport Hotel on South Carolina Avenue in Atlantic City on April 10, 1984. On that date, Detective Larry Ross of the Atlantic City Police Department, Division of Special Operations, met with an informant who told Detective Ross that drug activity was taking place in room 410 of the Davenport Hotel. Detective Ross testified at the hearing that this confidential information, which he received at about 5:30 p.m., prompted him to have the confidential informant undertake a controlled buy of drugs from room 410. The informant was searched, given

\$175, and told to purchase an eighth of an ounce of methamphetamine from room 410 at the Davenport Hotel. According to Detective Ross, the informant remained in room 410 for approximately five minutes. After leaving the room he turned a quantity of drugs over to the Detective. The informant was searched and he no longer had on his person the money which he had been given.

It was the testimony of Detective Ross that he decided to go to room 410 of the Davenport Hotel to make an undercover purchase. He remained in radio contact with other officers who were conducting surveillance of the room with binoculars from a car parked from 50 yards to 100 yards away from the Davenport Hotel. Detective Ross testified candidly that when he looked at the outside window of room 410 through binoculars, he saw only two people in the room. When he was about to approach room 410 to make the undercover purchase, the surveillance officers radioed to him that there were three people in the room.

When Detective Ross knocked on the door to room 410, it was opened by a woman. At the hearing, the Detective was uncertain as to whether she was Ms. Negra or Ms. Whiteman. According to Detective Ross, he observed the other woman and a man standing at the other end of the very small room, near the window. When he quickly observed the quantity of drugs which were spread on a mirror lying horizontally, the Detective decided to make an arrest, rather than an undercover purchase. He then identified himself as a police officer, placed the three persons against the wall, patted them down and handcuffed them. Following their arrest, the three were charged with possession of a controlled danger substance (methamphetamine), possession of a controlled danger substance with intent to distribute, conspiracy to distribute a controlled danger substance, and possession of narcotics paraphernalia.

On May 17, 1984, the respondent and the two women were indicted for conspiracy to distribute a controlled danger substance, possession of a controlled dangerous substance, and possession of a controlled dangerous substance with intent to distribute (Exhibit P-4). Admitted into evidence as Exhibit P-2 was the New Jersey State Police Laboratory Report indicating that the substance seized at the time of the arrest was methamphetamine. The respondent applied for and was granted admission to the Atlantic County pretrial intervention program in July 1984. As a result, proceedings on the indictment were postponed pending the respondent's participation in the intervention program (Exhibit P-4).

Among the requirements for the respondent to satisfactorily complete the pretrial intervention was the performance of 40 hours of community service. The respondent performed this community service on behalf of the City of Brigantine and it was completed on January 10, 1985. The respondent also submitted to urine sampling for drugs on three occasions. On each occasion the result was negative. On January 28, 1985, Superior Court Judge Manuel H. Greenberg ordered that the indictment against the respondent be dismissed, as a result of the respondent's satisfactory completion of the pretrial intervention program (Exhibits R-5 and R-6). It is undisputed that the respondent had never been arrested before April 10, 1984, and has never been arrested since.

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

The factual dispute in this matter concerns the nature of the respondent's involvement in the incident which led to his arrest on April 10, 1984. According to the testimony of Detective Ross, his confidential informant did not reveal to him how many people were present when he made the controlled buy. There is no doubt that the respondent was present in the room when Detective Ross entered to make his undercover purchase. However, the Detective testified candidly that the respondent was merely standing near the window of the room and was not doing anything with the drugs when the door opened. In addition, no drug paraphernalia was found on the respondent's person.

Prior to entering the room, Detective Ross was informed by the surveillance officers that there were three people in the room who appeared to be engaging in drug packaging activity. This information must be considered in context. The surveillance officers were observing the fourth floor room through binoculars from a car parked at street level which was 50 yards to 100 yards away. It was the sincere and credible testimony of the respondent that he had been in room 410 of the Davenport Hotel for approximately ten minutes before Detective Ross arrived. The respondent had no knowledge that Marla Negra was involved with drugs prior to his arrival at the room. The respondent realized that he made a mistake remaining in the room while Marla Negra was cutting and bagging methamphetamine. The respondent testified credibly that he did not wish to participate in her activities and he did not. He was merely waiting for Ms. Negra to finish so that she could join the respondent and Ms. Whiteman for a drink.

On May 8, 1984, Ms. Negra signed an affidavit which stated that the respondent had come to her residence on April 10, 1984, without any knowledge that there would be a controlled dangerous substance present and without any intent to be part of any transaction pertaining to the controlled dangerous substance. Ms. Negra stated that the affidavit was given for the purpose of totally and completely exonerating the respondent.

The testimony of the respondent was straightforward and sincere, and entirely believable. In addition, his testimony was not inconsistent with the testimony of Detective Ross concerning his observations upon entering room 410 of the Davenport Hotel on April 10, 1984. Thus, in addition to the undisputed facts found above, I further **FIND** that the respondent was not in possession of a controlled dangerous substance on April 10, 1984, nor was he present in room 410 of the Davenport Hotel on that date with any intention to take part in any transaction involving a controlled dangerous substance.

#### CONCLUSIONS OF LAW

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

Pursuant to sections 90e, 86c(3) and (4), and 129 of the Casino Control Act, the Casino Control Commission may revoke the licensure of any licensee disqualified on the basis of his conviction of any offense which constitutes an automatic disqualifier from licensure, or which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the Act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was indicted for conspiracy to distribute a controlled dangerous substance, possession of a controlled dangerous substance and possession of a controlled substance with intent to distribute, contrary to N.J.S.A. 24:21-24, N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1). It is undisputed that the indictment against the respondent was dismissed upon his satisfactory completion of the pretrial intervention program. Thus, there was no adjudication concerning these charges and, of course, no conviction. Based upon the foregoing discussion and findings of fact, I **CONCLUDE** that the respondent has not committed the offenses of conspiracy to distribute a controlled dangerous substance, possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute. Therefore, I further **CONCLUDE** that the respondent has not committed any offenses which are automatic disqualifiers from licensure, or which would render his continued licensure inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(3) and (4), and 86g of the Act.

The credible evidence demonstrates that the respondent enjoys a reputation for good character, honesty and integrity. While he did not exercise good judgement by remaining in a room where he unexpectedly found an acquaintance to be in possession of a controlled dangerous substance, the respondent has not committed a criminal offense. Based upon the foregoing, I further **CONCLUDE** that the respondent has not engaged in conduct which so adversely affects the establishment of his good character, honesty and integrity within the meaning of sections 89b(2) and 90b of the Casino Control Act, so as to warrant imposition of any sanction, pursuant to section 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Edward J. Jefferson be and is hereby **DISMISSED**.

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

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

February 27, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

February 28, 1986  
DATE

Bernadette J. Fisher  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 4 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Photo of items seized
- P-2 Laboratory report
- P-3 Supplemental report
- P-4 Indictment and postponement order

For the respondent:

- R-1 Not in evidence
- R-2 Letter, dated December 12, 1985
- R-3 Letter, dated January 6, 1986
- R-4 Affidavit, dated May 8, 1984
- R-5 Postponement order and pretrial intervention letter
- R-6 Certification of community services
- R-7 Letter, dated October 1, 1985
- R-8 Letter, dated October 1, 1985
- R-9 Letter, dated October 1, 1985

WITNESSES

For the petitioner:

Larry Ross

For the respondent:

Edward J. Jefferson  
Jennifer Jefferson

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-383  
OAL DOCKET NO. CCC 9140-84  
REGISTRATION NO. 49535-40

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

FINAL ORDER

Complainant,

v.

WILLIAM R. JOHNSON,

Respondent.

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A hearing in this matter having been conducted in the Office of Administrative Law (OAL); and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985,

IT IS on this <sup>8<sup>th</sup></sup> day of APRIL 1986, ORDERED that the initial decision is modified as follows:

1. The reference to N.J.S.A. 5:12-91d at page four of the initial decision should read N.J.S.A. 5:12-91(b).
2. The Commission finds that the respondent is disqualified pursuant to section 86(c)(1) due to his 1983 conviction of an offense comparable to theft by failure to make required disposition, contrary to N.J.S.A. 2C:20-9.
3. That portion of the initial decision in which the ALJ concludes that the respondent has demonstrated his rehabilitation "by a preponderance of the

credible evidence" is rejected. (Init. dec. at 4). Section 80 of the Casino Control Act, the general provision governing licensure, states, "It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications ...." N.J.S.A. 5:12-80(a). While section 91(d) indicates only that rehabilitation must be "affirmatively demonstrated", the Commission does not accept demonstration of rehabilitation by a lesser standard than that required for the demonstration of qualifications generally, i.e., by clear and convincing evidence.

4. The Commission finds that the respondent failed to demonstrate by clear and convincing evidence that he is rehabilitated from his disqualifying conviction.

IT IS FURTHER ORDERED that the casino hotel employee registration of William R. Johnson is revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon William R. Johnson, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within

ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9140-84

AGENCY DKT. NO. 84-383

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**WILLIAM R. JOHNSON,**

Respondent.

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Francis Sundheim, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

William R. Johnson, respondent, pro se

Record Closed: March 12, 1985

Decided: April 26, 1985

**BEFORE RALPH J. TOLOMEO, ALJ:**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on November 14, 1984, seeking judgment revoking the respondent's casino hotel employee registration or some other appropriate sanction, pursuant to Sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on February 5, 1985, at which time the parties determined the issues in this matter as follows:

- (a) Whether respondent is disqualified from registration pursuant to N.J.S.A. 5:12-86c due to an alleged indictable conviction of embezzlement in 1983.
- (b) Whether respondent is disqualified for registration for his failure to disclose said alleged conviction pursuant to N.J.S.A. 5:12-86(b).
- (c) Whether respondent can establish that he has been rehabilitated pursuant to N.J.S.A. 5:12-91d as it applies to issue (a).

The material facts in this matter are not in dispute. The respondent is a 35-year-old resident of Tuckahoe, New Jersey, having recently purchased a home. He is currently registered as a casino hotel employee, number 49535-40, and has been employed by Bally's Park Place Casino and Hotel as a pastry chef since fall 1983.

On July 29, 1980, the respondent was indicted by the Cumberland County Grand Jury on one count of embezzlement contrary to N.J.S.A. 2A:102-5. The indictment alleged that respondent was an employee of the victim involved in the incident. Thereafter, on March 23, 1981, the respondent entered a plea of guilty to the charge and on July 8, 1983, was sentenced to a two-year probationary term, a condition of which that he serve thirty days in the Cumberland County Jail (Exhibit P-2). Thereafter, on August 15, 1983, respondent completed and submitted a Personal History Disclosure Form (PHDF) (Exhibit P-1) and, in response to question no. 8, "Have you ever been convicted of a crime or disorderly persons offense in this state or in any other jurisdiction?" answered "No."

Thereafter, Leonard Paccione, an agent for the Division of Gaming Enforcement assigned to employee licensing, investigated the application of respondent. During the course of this investigation, Agent Paccione reviewed respondent's PHDF for the purpose of verifying the information. Upon determining that respondent did in fact have a criminal conviction and had answered "no" to question no. 8, Agent Paccione on Tuesday, December 6, 1983, met with respondent for purposes of an interview. Agent Paccione questioned respondent regarding the embezzlement conviction and the fact that he had answered "no" on the PHDF. Agent Paccione testified that respondent, when asked why he did not disclose the arrest and conviction, said he was afraid he would not get a job.

In his testimony at the hearing, respondent indicated that this offense occurred back in July 1979 and since that time he has been working every day and has had no further trouble. Further, he testified that he has been employed with Bally's for over one and one-half years and that the employment at Bally's does not require him to work with any money or funds. He reports to his probation officer as required and will complete his probationary term in June 1985. He further presented letters as follows:

- R-1 Letter dated March 11, 1985, from Eldridge Law, an assistant pastry chef at Bally's, stating, "William R. Johnson has worked in Bally's Pastry Shop for the past two years. On the job, Johnson has proven himself to be a very dedicated worker. His attitude toward the job and his fellow workers is great. His willingness to learn and get involved makes him an exceptional [worker]."
- R-2 Letter dated March 11, 1985, from Grace Cassel, assistant pastry chef, Bally's Park Place, stating, "Bill is a very congenial fellow in addition to being a conscientious, valued employee. He is always punctual and an exceptionally talented employee in all aspects of pastry production. He is a definite asset to Bally's Park Place."
- R-3 Letter dated February 6, 1985, from Tony Glazer, probation officer, Cape May County Court, stating, "I am William Johnson's probation officer. He has been trouble free since his last court appearance and has complied with the conditions of his probation. He has remained employed and has reported to probation as directed."
- R-4 Letter from Bally's Park Place Casino Hotel, undated, but issued October 1984 as per respondent's testimony, acknowledging respondent's exemplary courtesy to customers and or colleagues.

Respondent further testified that he would like to continue working. Respondent offered no testimony disputing the testimony of Agent Paccione regarding their conversation of December 6, 1983.

All of the preceding evidence is essentially undisputed and believable and it is thus found as fact.

Pursuant to Section 1b(8) of the Casino Control Act, participation in casino operations as registered under the Act is a revocable privilege conditioned upon proper and continued qualification of the registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding registration.

It is undisputed that respondent was convicted of embezzlement (N.J.S.A. 2A:102-5) on July 8, 1983.

Further, based on the evidence presented and the facts as found, I **CONCLUDE** that such conviction permits the revocation of his registration pursuant to N.J.S.A. 5:12-91d. I **CONCLUDE** respondent has affirmatively demonstrated his rehabilitation by a preponderance of the credible evidence for the following reasons: Respondent is currently 35 years of age and has recently purchased a home in Tuckahoe, New Jersey. The embezzlement offense, though serious, occurred in July 1979, five years ago. Respondent's plea of guilty occurred in 1981 and he was not sentenced until July 1983. He is currently about to conclude a satisfactory two-year probationary term. In all, the respondent has been involved in the criminal justice system for six years as a result of his crime. Respondent maintains, and no evidence has been offered to the contrary, that this has been the only criminal involvement in his life. He has been steadily employed throughout this period, has demonstrated his ability in the course of his employment, and has been a good probationer.

Pursuant to Sections 91(b) and (86b) of the Casino Control Act, the Commission may revoke the registration of a casino hotel employee registrant on the basis of his failure to reveal a material fact relevant 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 respondent failed to reveal his record of a criminal conviction of embezzlement on his PHDF. He did so knowingly approximately six weeks after the imposition of his sentence. When confronted by Investigator Paccione, he acknowledged his intentional deception stating he was afraid he would not get the job if he provided the required information. Therefore, I **CONCLUDE** that respondent has intentionally failed to disclose facts material to his qualifications for registration within the meaning of N.J.S.A. 5:12-91b and N.J.S.A. 5:12-86b.

I further **CONCLUDE** that this conduct warrants the revocation of respondent's casino hotel employee registration.

Accordingly, it is **ORDERED** that the registration of respondent be and is hereby **REVOKED**.

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

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

April 26, 1985  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

April 26, 1985  
DATE

Lou Ori  
CASINO CONTROL COMMISSION

MAY 02 1985

\_\_\_\_\_  
DATE

Mailed to Parties:

Ronald J. Pukerpho  
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-416  
OAL DOCKET NO. CCC 3465-85  
REGISTRATION NO. 48313-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
RENEE Y. LARUE :  
Respondent. :

FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and Renee Y. LaRue having filed exceptions to the initial decision on April 7, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this 11<sup>th</sup> day of JUNE 1986, ORDERED that the initial decision is modified as follows:

The respondent is disqualified for the reasons stated by the ALJ, however, that disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent is therefore permitted to retain a casino hotel employee registration.

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

IT IS FURTHER ORDERED that copies of this final order be served upon Renee Y. LaRue, the Division of Gaming Enforcement, the Office of Administrative Law, and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3465-85

AGENCY DKT. NO. 84-416

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

Petitioner,

v.

**RENEE Y. LA RUE,**

Respondent.

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

**Lorraine Gormley, Esq.,** for respondent (Cape-Atlantic Legal Services, Paul Mohair, Director)

Record Closed: February 25, 1986

Decided: March 6, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Renee Y. LaRue, respondent, the holder of casino hotel employee registration no. 48313-40. The Division alleged that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal conduct, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Act. The respondent asserts that she has been rehabilitated pursuant to Section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on December 7, 1984. After several unsuccessful attempts to notify respondent of the complaint, respondent presumably received notice of the complaint on or about April 12, 1985. On April 12, 1985, respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 15, 1985, and the matter was scheduled for hearing on December 13, 1985. Respondent's attorney requested an adjournment and the matter was rescheduled for February 7, 1986. By letter dated February 6, 1986, both petitioner and respondent requested a continuance until February 25, 1986. The hearing was conducted on February 25, 1986, at the Borough of Buena Municipal Building, Minotola, New Jersey.

FINDINGS OF FACT

From the testimony and the documentary evidence, I **FIND** the following to be uncontested facts:

1. Respondent, Renee Y. LaRue, is a 29-year-old waitress at the Carnegie Delicatessen and Restaurant within the Sands Casino Hotel.
2. Her employment as a waitress with the Carnegie Delicatessen and Restaurant does not require a hotel employee registration.
3. Respondent's Aid to Families with Dependent Children (AFDC) grant began in January 1978 for her daughter and herself and continued through her period of employment.
4. Respondent was employed by the Farm Workers' Corporation from October 1979 through March 1981.
5. Respondent received New Jersey Department of Labor Unemployment Benefits from April 20, 1981 through May 31, 1982.

6. In addition to her income from employment, respondent received a \$256 monthly AFDC grant and \$93 in food stamp benefits.
7. On February 29, 1984, the respondent was indicted for theft by deception, third degree, welfare fraud, by the Camden County Grand Jury.
8. On June 1, 1984, respondent entered a plea of guilty to the indictment. Respondent was sentenced to a five-year period of probation, was ordered to make restitution in the amount of \$8,871.70 at the rate of \$50 per month, was ordered to pay a \$25 violent crime penalty and was ordered to perform 250 hours of community service per year for five years.
9. Respondent was employed as a hostess at the Tropicana Hotel and Casino for approximately one year in 1982. Although respondent received several letters of commendation, she was terminated from her employment for lateness.
10. Respondent will receive an associate degree in business administration from Camden County Community College in May 1986.
11. Respondent is an active member of the United Faith Christian Church, Sicklerville, New Jersey. She teaches Bible studies, is a member of the choir and, on occasion, cleans the church.
12. Services performed for the United Faith Christian Church are to be credited as community service. However, as of February 25, 1986, no documentation to that effect has been provided to the Camden County Probation Department.
13. Respondent's probation was terminated by Atlantic County for consistently failing to report to the Probation Department. The Camden County Probation Department allows telephonic reporting and there have been no problems in Camden County.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) as incorporated in Section 91b of the Act mandates that a person who has been convicted of any offense which is enumerated in the Section be disqualified from licensure. The Division contends that respondent's conviction on June 1, 1984, of a violation of N.J.S.A. 2C:20-4, third degree, theft by deception, is a statutory disqualifier under Section 86c(1) of the Act.

Respondent concedes that she was convicted of a violation of N.J.A.C. 2C:20-4, theft by deception, and that she was statutorily disqualified from maintaining her hotel employee registration. However, respondent claims that she has been rehabilitated from her criminal conduct.

I **CONCLUDE** that the certified judgment and conviction, dated June 1, 1984, along with respondent's admission has established, by a preponderance of the credible evidence, that the respondent is statutorily disqualified from being a registrant.

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

The respondent claims that the disqualification criteria for her casino hotel employee registration should be waived pursuant to N.J.S.A. 5:12-91e. However, respondent has not demonstrated any compelling or extraordinary circumstances that would persuade me to recommend that the disqualification criteria be waived.

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

A registrant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This Section sets forth the following eight specific criteria to be evaluated when considering rehabilitation:

1. The nature and duties of the registrant's position;

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

First, Ms. LaRue is employed as a waitress by the Carnegie Delicatessen and Restaurant, within the Sands Casino Hotel. As such, she is not required to maintain a hotel employee's registration. She has no responsibility for any gaming activities and would have limited contact with patrons of the casino. In addition, her duties as a waitress prohibit the handling of money.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:20-4, third degree, theft by deception, on June 1, 1984. The theft involved a substantial amount of money (\$8,871.70), received over an approximately three-year period. Theft by deception, third degree, is a statutory disqualifier under Section 86c(1) of the Act. The large amount of money combined with the lengthy period of time involved in the theft exacerbate the seriousness of the offense.

Third, the respondent contends that serious financial problems contributed to the circumstances under which the offense occurred.

Fourth, the respondent committed the offense between November 1979 and May 1982. On June 1, 1984, respondent was ordered to pay restitution at the rate of \$50 per month and was placed on probation for a period of five years. Respondent was to perform 250 hours of community service for each year of the five-year probationary period. Respondent's probation will most likely continue for three more years.

Fifth, the offense commenced when respondent was approximately 25 years of age. It is unlikely that her misconduct was due to immaturity.

Sixth, the respondent's misconduct involved welfare fraud over a period of three years. It was not an isolated incident.

Seventh, the respondent is a single mother, raising a 14-year-old daughter. Respondent does not receive any support payments.

Eighth, the respondent is currently attending Atlantic County Community College, Glassboro College, and Camden County Community College. Respondent will receive her associate degree in business administration from Camden County College in May 1986. Ms. LaRue is planning to obtain her secondary education degree from Glassboro College. In addition, respondent has received a nurse's assistant certificate from Philadelphia Training Center in 1976 and obtained a real estate certificate in 1980. Ms. LaRue is also active in the United Faith Christian Church teaching Bible studies, singing in the choir and on occasion, cleaning the church. It is estimated that she spends approximately ten hours per week at the church in these endeavors. Ms. LaRue contends that her community service requirement will be fulfilled by performing services for the church. Respondent presented a letter from the Reverend Walter McDaniel, United Faith Christian Church (formerly Sicklerville Christian Church) (R-1), letters from Vincent Alegret, general manager, Carnegie Delicatessen and Restaurant, Peter Averhoff, director, food and beverage, Tropicana Hotel and Casino (R-4), and from Jeannine Frisby-LaRue, respondent's aunt (R-5).

It is apparent that respondent has made an excellent start towards rehabilitation. However, several factors persuade me, at least at this juncture, that respondent has not demonstrated, by clear and convincing evidence, her rehabilitation:

1. Respondent was terminated by the Atlantic County Probation Department for consistently failing to report to her probation officer. Subsequently, her probation was transferred to Camden County where she is allowed to telephone her probation officer each month. There do not appear to be any problems with her probation in Camden County.

2. Respondent has failed to document her community service work to the Camden County Probation Department as of February 25, 1986. This involves a period of almost two years.
3. Restitution of approximately \$1,000 has been paid. However, there is a substantial balance remaining. In addition, respondent made a \$300 payment on February 1986. Until that time, she was approximately six months behind in her restitution payments.
4. There is over three years of probation remaining to complete respondent's sentence.

Ms. LaRue is a bright, articulate person who has demonstrated a passion for education and her church. She appears to be very ambitious. Respondent has made substantial progress toward rehabilitation, but given the above, I am not persuaded that she has demonstrated, by clear and convincing evidence, her rehabilitation. Therefore, I **CONCLUDE** that the respondent has not demonstrated, by clear and convincing evidence, her rehabilitation pursuant to N.J.S.A. 5:12-91d.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanction which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. Several substantial questions remain concerning Ms. LaRue's purported rehabilitation. At this juncture, I **CONCLUDE** that the respondent's registration must be revoked. However, if Ms. LaRue makes continued progress toward restitution and when her period of probation has been substantially completed, she might be a candidate for early reapplication for her registration.

ORDER OF DISPOSITION

It is **ORDERED** that the hotel employee registration no. 48313-40, held by Renee Y. LaRue, be **REVOKED**.

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

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

3-6-85  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

5-7-85  
DATE

M. Conroy  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 11 1985  
DATE

Ronald J. Parker / s  
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESS LIST

For the petitioner: None  
For the respondent: Renee Y. LaRue

EXHIBIT LIST

- P-1 Report of criminal investigation, dated June 28, 1982, from the Camden County Prosecutor's office
- P-2 Superior Court of New Jersey, Law Division, Camden County, criminal indictment no. I-0687-02-84, November 1983 term
- P-3 Certified Judgment of Conviction, dated June 1, 1984
- R-1 Letter, dated February 21, 1986, from Reverend Walter A. McDaniel, Pastor, United Faith Christian Church (formerly Sicklerville Christian Church)
- R-2 Receipt from the Camden County Probation Department indicating restitution payments
- R-3 Receipt from the Camden County Probation Department indicating restitution payments
- R-4 Various letters attesting to Ms. LaRue's abilities
- R-5 Letter dated February 23, 1986, from Jeannine Frisby-LaRue, respondent's aunt-in-law

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-7 AND  
85-COI-1 (CONSOLIDATED)  
OAL DOCKET NO. CCC 1711-85  
APPLICATIONS NOS. 44789-21 AND  
1571-70

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APPLICATION OF ROBERT LAWRENCE :  
FOR A CASINO EMPLOYEE LICENSE :  
AND : FINAL ORDER  
APPLICATION OF ATLANTIC CITY TOURS :  
FOR A CASINO SERVICE INDUSTRY LICENSE :  
:

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A hearing having been held in this matter before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 16, 1986,

IT IS on this 4<sup>th</sup> day of JUNE 1986, ORDERED that the initial decision is modified as follows:


The initial decision is corrected to eliminate any reference to the suspension of Walter Shaul's temporary license which, rather than being suspended, was not renewed and thereafter expired.

IT IS FURTHER ORDERED that the applications are granted substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Robert Lawrence, Atlantic City Tours, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1711-85

AGENCY DKT. NOS. 85-EA-7 and

85-CSI-1

**ROBERT LAWRENCE and  
ATLANTIC CITY TOURS,**

Petitioners,

v.

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

Respondent.

---

**Robert Lawrence**, petitioner pro se and on behalf of Atlantic City Tours

**Stephen J. Cirillo**, Deputy Attorney General, for respondent (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Record Closed: February 3, 1986

Decided: March 4, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

Atlantic City Tours applied for licensure as a junket enterprise and its proprietor, Robert Lawrence, applied for licensure as a junket representative. The Division of Gaming Enforcement objected to both applicants, by letter dated October 18, 1984, to the Casino Control Commission. The applicants requested a hearing on March 18, 1985, and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. There was a Prehearing Order entered May 10, 1985, identifying the issues as follows:

- A. Can both applicants establish by clear and convincing evidence their good character, honesty and integrity as required by Section 102b and c of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) which incorporates Sections 89b(2) and 90b of the Act?
- B. Can both applicants establish by clear and convincing evidence the requisite business ability and casino experience as required by Sections 102b and c of the Casino Control Act which incorporates Sections 89b(3) and 90b of the Act?

Since the Division's objection to the petitioners' licensure was primarily based upon his association with one Walter Shaul, a consent order was entered July 22, 1985, placing the matter on the inactive list pending the disposition of Walter Shaul's matter at the Office of Administrative Law, OAL Dkt. CCC 4356-84. The matter was returned to the active list and continued on two occasions at the request of Jack Feinberg, Esq., the attorney for the petitioners. At his request, Jack Feinberg, Esq., was relieved as counsel in January 1985 and the matter was heard in the Atlantic County Court House in Atlantic City on February 3, 1986.

The following facts in this case are not disputed and I FIND as follows:

1. Robert Lawrence has been a principal in Shaul-Lawrence Tours since March 1982, conducting casino junket business in Las Vegas, the Bahamas and Atlantic City from Toronto, Canada.
2. The other principal in Shaul-Lawrence Tours is Walter Shaul.
3. In 1982, Shaul-Lawrence Tours was represented in Atlantic City by Walter Shaul.
4. On January 27, 1983, an amendment to the Casino Control Act required that junket representatives be licensed.
5. Walter Shaul did not obtain a junket representative license until April 12, 1983, at which time he was granted a temporary license.

6. Because Walter Shaul operated junkets to Atlantic City in February and March 1983, without a temporary license, his temporary license was suspended by the Casino Control Commission, based upon a complaint filed by the Division of Gaming Enforcement setting forth the unauthorized junkets.
7. Thereafter, Robert Lawrence applied for licensure as a junket representative on his own behalf and on behalf of Atlantic City Tours, a new entity.
8. Shaul-Lawrence Tours continued to operate junket tours to Las Vegas and the Bahamas.
9. Neither Shaul-Lawrence Tours nor Atlantic City Tours conducted any tours to Atlantic City after Walter Shaul's suspension.
10. Walter Shaul was subsequently determined by Administrative Law Judge Joseph Fidler to be in violation of N.J.A.C. 19:49-2.1(c)1, 2 because he operated junkets to Atlantic City in February and March 1983 without first having obtained a temporary junket representative license, and he ordered that a letter of reprimand be made a permanent part of Walter Shaul's file. Judge Fidler concluded that Walter Shaul was otherwise qualified for casino licensure; the Casino Control Commission agreed, and Walter Shaul's application for licensure is presently in the investigation stage pending a report from the Division of Gaming Enforcement.

#### DISPUTED ISSUES

The Division has elected not to treat Shaul and Lawrence identically. They assert there is a difference between the two. They assert that Shaul's violation was unintentional and consequently he meets the standard for honesty, integrity and good character. Lawrence, on the other hand, the Division asserts, purposefully and knowingly attempted to evade the consequences of Shaul's suspension by creating a dummy entity called Atlantic City Tours (a "front" if you will) which would continue to do business for Shaul-Lawrence Tours with only the names changed to protect the guilty. These allegations are based on the following undisputed facts; the disputed facts to be dealt with hereafter:

11. Both Shaul and Lawrence continued their association in Shaul-Lawrence Tours.
12. Atlantic City Tours operated from the offices of Shaul-Lawrence Tours and with the same employees.
13. Atlantic City Tours and Shaul-Lawrence Tours utilized the identical patron lists.

DISPUTED FACTS

Robert Lawrence argues that these facts, while admitted, are not dispositive because they do not go far enough in delineating the relationships between Shaul-Lawrence Tours and Atlantic City Tours. He offered evidence of the following facts which are unrebutted, credible and, therefore, I further **FIND** that

14. Atlantic City Tours paid a reasonable rent to Shaul-Lawrence Tours for space, telephone, secretarial service and office equipment; i.e., \$850 per month during the time period when Atlantic City Tours had an application pending before the Casino Control Commission without objection.
15. Robert Lawrence had a proprietary interest in the patron list.
16. Atlantic City Tours had a separate telephone number, 663-1328, which was answered "Atlantic City Tours" and all calls were handled entirely by Robert Lawrence.
17. Atlantic City Tours maintained a separate checking account and record system distinct from Shaul-Lawrence Tours.
18. Atlantic City Tours paid for its license application from funds belonging entirely to Atlantic City Tours and Robert Lawrence, despite a request that Shaul-Lawrence's application fee be assigned to Atlantic City Tours.

The central issue in this case is how far a casino junket license applicant should go in disassociating himself and his business from a partner who has a violation hearing pending before the Casino Control Commission. The Division would have it that Robert Lawrence should have divested himself of an interest in Shaul-Lawrence Tours, removed himself and Atlantic City Tours from the building entirely and started a patron list from scratch that did not include any former clients. Such a position would have merit if the gravamen of the complaint against Walter Shaul was a recent conviction for a violation of the RICO statute. The position is without merit when the Division now concedes that the violation by Walter Shaul was probably unintentional.

I **CONCLUDE** that the relationship between Walter Shaul and Robert Lawrence did not adversely affect Lawrence's reputation for honesty, good character and integrity or his business ability and casino experience. It is not necessary that a casino junket licensure applicant be like Caesar's wife, only that he possesses a good reputation for honesty, integrity and good character and that he have the requisite business and casino skills and experience. Furthermore, there is not a scintilla of evidence that Robert Lawrence had any arrangement at all to split fees with Walter Shaul or Shaul-Lawrence Tours. In addition, at that time Shaul-Lawrence Tours was operating junkets to Las Vegas and the Bahamas in accordance with the law and Robert Lawrence had no other source of income except Shaul-Lawrence Tours. Atlantic City Tours had not yet been granted temporary licensure. Complete divestiture of his interest in Shaul-Lawrence Tours equaled unemployment for Robert Lawrence.

#### APPLICANTS' BURDEN

Despite this conclusion, the burden remains on the applicants to establish by clear and convincing evidence their good character, honesty, integrity, business ability and casino experience. Robert Lawrence more than met this burden, and since for all intents and purposes at this time he is Atlantic City Tours, it did also.

The petitioners produced Robert Hall, Q.C., as a character witness. Mr. Hall graduated from the University of Manitoba in 1949 and from Osgood Hall Law School in 1955 and took the silk in 1966. For the past 22 years he has been external counsel for the Ontario Racing Commission and for the past 16 years, international legal counsel for Variety Clubs International. He practices corporate and international law. He has known Robert Lawrence for approximately 20 years, initially through Lawrence's employment

with Shopsy Foods Ltd. and through Hall's association as president of Variety Clubs International where Lawrence has been active for years and has served that organization both locally and internationally in many capacities. He has never heard a disparaging word against Lawrence. He personally represents Lawrence and says he possesses good business acumen. Lawrence has held responsible jobs with Shopsy's Ltd. and Niagara Falls St. Catherines. He said that Lawrence enjoys an excellent reputation among Toronto's civic leaders.

Robert Lawrence produced numerous letters of recommendation attesting to his honesty, integrity, good character and business ability. Robert Lawrence testified in his own behalf. He has been married 42 years and has a son who is a deputy sheriff in Ventura County, California and who was formerly a detective with the Metropolitan Police. Lawrence served in the RCAF from 1943 to 1946 and was honorably discharged. He testified at length concerning his Variety Club experience. He is civic-minded and a good fund-raiser. He also testified at length about his casino junket experience. From his testimony it appears he runs a clean, lively and straightforward junket. He scrupulously followed the advice of accountants, attorneys and an employee of the Casino Control Commission in filing for licensure and setting up Atlantic City Tours. The Division concedes that no statement in Lawrence's Personal History Disclosure, Form 2A, or in his Business Entity Disclosure, Form 3, is untrue.

I **CONCLUDE** that Robert Lawrence and Atlantic City Tours possess the requisite good character, honesty and integrity for licensure.

I further **CONCLUDE** that Robert Lawrence and Atlantic City Tours possess the requisite business ability and casino experience for licensure.

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

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

March 7, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

3/5/86  
DATE

Receipt Acknowledged:  
M. Bonczyk  
CASINO CONTROL COMMISSION

MAR 7 1986  
DATE

Mailed to Parties:  
Ronald J. Parky  
OFFICE OF ADMINISTRATIVE LAW

ks/e

WITNESS LIST

**For petitioner:**

**Robert Hall, Q.C.**

**Robert Lawrence**

**For respondent:**

**None**

EXHIBIT LIST

- P-1 Letter, Robert Lawrence and Walter Shaul to State of New Jersey, Casino Control Commission, dated May 9, 1984**
- P-2 Letter, Charles A. Matison to Casino Control Commission, dated May 14, 1984**
- P-3 Letter, Brian Y. Davidson to Administrative Law Judge Edgar R. Holmes, dated June 25, 1985**
- P-4 Letter, Irving Gold to Jack Feinberg, Esq., dated November 29, 1985**
- P-5 Letter, I. Shopsowitz to To Whom it May Concern, dated January 7, 1986**
- P-6 Letter, Irwin B. Weisbarth to To Whom it May Concern, dated January 7, 1986**
- P-7 Declaration of Robert Hall, dated May 28, 1985**
- P-8 Letter, Charles J. Gordon to To Whom It May Concern, dated May 30, 1985**
- P-9 Letter, Jack Cohen to Administrative Law Judge Edgar R. Holmes, dated May 23, 1985**
- P-10 Letter, Simon Zucker to Administrative Law Judge Edgar R. Holmes, dated June 12, 1985**

- P-11 Letter, Stanley Sobol to To Whom it May Concern, dated December 2, 1985
- P-12 Letter, Larry Medford to To Whom it May Concern, undated
- P-13 Letter, Casino Control Commission to Atlantic City Tours, dated October 19, 1984
- P-14 Copy of check No. 1077, dated February 9, 1983
- P-15 Letter, same as P-3
- P-16 Statement of balance due Shaul-Lawrence Tours from Atlantic City Tours from May 15 to June 15, 1984 and receipt for payment
- P-17 Copy of Check No. 20, dated June 1, 1984
- P-18 Copy of journal entry, dated October 26, 1984
- P-19 Copy of check No. 25, dated June 21, 1984
- R-1 Copy of Business Entity Disclosure, Form 3, for Atlantic City Tours
- R-2 Personal History Disclosure, Form 2A
- R-3 Copy of Initial Decision of Administrative Law Judge Joseph F. Fidler, dated August 12, 1985, OAL Dkt. CCC 4356-84
- R-4 Civil Action Complaint

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-360  
OAL DOCKET NO. CCC 2903-84  
LICENSE NO. 15677-21

\_\_\_\_\_  
STATE OF NEW JERSEY,  
DEPARTMENT OF LAW & PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,  
  
Complainant,  
  
v.  
  
BEVERLY R. LeSANE,  
  
Respondent.  
\_\_\_\_\_

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); the respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of December 4, 1985,

IT IS on this <sup>17<sup>th</sup></sup> day of June 1986, ORDERED that the initial decision is modified as follows:

The finding that the respondent has not established by clear and convincing evidence the requisite good character, honesty and integrity for licensure is corrected to be found pursuant to N.J.S.A. 5:12-90(b), which incorporates N.J.S.A. 5:12-89(b)(2) by reference.

IT IS FURTHER ORDERED that the casino employee license held by Beverly LeSane is revoked substantially for the

reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof, and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Beverly LeSane, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2903-84

AGENCY DKT. NO. 83-360

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

Petitioner,

v.

**BEVERLY R. LE SANE,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Paul A. Vagianos, Deputy Attorney General, at the prehearing conference)

**Lorraine Gormley, Esq.,** for the respondent (Cape-Atlantic Legal Services, Inc., attorneys; the respondent pro se at the prehearing conference)

Record Closed: August 26, 1985

Decided: October 10, 1985

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Beverly R. LeSane, respondent, and the holder of casino employee license number 15677-21. The Division alleged that Ms. LeSane had committed a disqualifying criminal offense, for which the Division seeks revocation of her license, pursuant to section 129 and section 130 of the Casino Control Act (Act). N.J.S.A. 5:12-1, et seq. The respondent denied the charge.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 14, 1983. By order dated October 27, 1983, the Commission suspended the respondent's license. By letter dated October 27, 1983, the Commission notified the respondent of the pending action and of her right to a hearing. By letter filed on November 22, 1983, the respondent requested a hearing. By order dated April 19, 1984, the Commission granted the respondent's motion to vacate its previous order of suspension. On April 24, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 1, 1984. After several hearing dates were adjourned; the matter was heard and the record closed on August 26, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

In 1980 the Commission issued the respondent casino employee license number 15677-21.

The respondent was employed by the Brighton Hotel and Casino for eight months as a cashier. She resigned voluntarily in 1981.

The respondent was next employed by Resorts International Hotel, Inc. (Resorts), as a cashier for a period of two years.

From April to September 1983, the respondent was employed by Bally's Park Place Casino/Hotel (Park Place) as a cashier. She resigned for employment at the Claridge Hotel/Casino (Claridge).

The respondent was employed by the Claridge as a slot booth cashier in early-September 1983. Her duties and responsibilities included the exchange of coin for currency.

All casinos the respondent has been employed by have permitted cashiers to receive tips. Resorts and Park Place provided cashiers with a tip box. At Resorts the tips were pooled and shared among employees, and at Park Place the tips were retained by each cashier. There was no tip box at the Claridge, but the respondent would place tips in a casino cup. Overages and shortages at the end of a shift were commonplace.

The applicant worked during the evening of September 24, 1983, when she became involved in an incident which is the subject of this proceeding. During the evening, the respondent acquired a \$20 overage as the result of an inadvertent shortchange to a customer, i.e., the customer received \$30 in coins in exchange for a \$50 bill. The circumstances underlying this transaction were in dispute and will be discussed, infra. Thereafter, the respondent took the \$20 from the change booth by a circuitous route. More specifically, the respondent gave Christopher Hughes, a floor coin person, an extra \$20 in quarters during a change transaction. Thereafter, Hughes transferred the money in a cigarette case to Denise Bell, a cage person.

On September 28, 1983, New Jersey State Police Detective Robert F. Walker, assigned to the Enforcement Section of the Division, was dispatched to the Claridge to investigate a purported incident which had occurred on September 24, 1983. During the course of that investigation, Det. Walker discovered the subject transaction. The detective interviewed and took the statements of Hughes at approximately 12:20 a.m. (P-1), and Bell at approximately 4:30 a.m. (P-2). The detective also attempted to interrogate the respondent at approximately 2:00 a.m. The respondent was shown and signed a Miranda card. The respondent denied any misconduct. However, the atmosphere between the detective and the respondent was confrontational and the respondent was very upset, and the interview was discontinued. Thereafter, the respondent was interviewed by Division Agent Joseph Flanagan. This interview occurred approximately between 3:00 a.m. and 4:00 a.m. At the commencement of the interview, the respondent appeared to be upset and agitated. Again, the respondent denied the accusation that she had unlawfully taken the monies.

As a result of the investigation, a complaint against the respondent was filed in the Atlantic City Municipal Court on September 28, 1983 (J-1). The respondent was charged with a violation of N.J.S.A. 2C:20-3, theft by unlawful taking. On March 15, 1984, the respondent was tried and was found not guilty. During that trial the respondent testified that the monies constituted a tip.

As a result of the charges, the Claridge indefinitely suspended the respondent from her position. The respondent contacted the Claridge several weeks thereafter, and was advised that her employment was terminated by reason of her failure to satisfactorily complete her probationary period. The respondent has not been employed since her termination, although she has sought employment.

The respondent has not been the subject of any other criminal proceedings.

The respondent plans to attend nursing school.

The respondent worked as a volunteer at the Raleigh Avenue School, which provides day-care services.

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

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the incident, i.e., the source of the \$20, the respondent's credibility and the respondent's reputation.

The Division produced sworn statements from Hughes (P-1), Bell (P-2), and the respondent (P-3), together with the testimonies of Det. Walker and Agent Flanagan.

Hughes stated that he had been employed by the Claridge as a change person for two months. The respondent advised Hughes that she had a \$20 customer overpayment, which she intended to retain. The respondent proposed to Hughes that he assist her in the removal of the money from the casino. The respondent gave Hughes an extra \$20 in coins during a change transaction. Thereafter, Hughes gave a \$20 bill to Bell in her cigarette case. Bell was annoyed at her involvement in the transaction, which message was relayed by Hughes to the respondent.

Bell stated that the respondent expressed an intent to forward an employment application form to Bell via a change person. Thereafter, Hughes gave Bell a \$20 bill in her cigarette case from the respondent. After work, Bell went with the respondent to the Silver Dollar Bar, where the respondent retrieved the \$20.

The respondent worked a swing shift from 10:00 p.m. to 6:00 a.m., and was assigned to a cashier's booth on the first floor. In her statement, the respondent acknowledged that she had had possession of \$20 as a result of an overage on a customer shortchange, and that she placed the money into a cup in her booth. During a break, the respondent conferred with other cashiers, and the consensus was that the respondent could keep the money. Hughes confirmed this conclusion and proposed to assist the respondent in removing the money from the casino. Hughes accomplished this through Bell. Bell had no prior knowledge of the transaction and told the respondent not to repeat such actions.

During the hearing, the respondent testified that upon realizing the shortchange she called the customer and advised her that she had "left something." The customer turned around and waived her hand, which the respondent interpreted as meaning approval for the respondent to retain the money. No words were spoken between the two at that time. The respondent believed the money was a tip and put it aside; however, she did not place it in a cup. Approximately one-half hour later the same customer returned for more change. The respondent informed the customer of the shortchange. However, the monies were not returned. The respondent then placed the money into a casino cup, which is standard procedure for tips. During a break Bell asked the respondent for money for entertainment after work. Previously the respondent had borrowed \$15 from Bell, which she intended to repay. The respondent advised Bell of the tip and that it would be forwarded to Bell with an employment application form for another casino. The respondent also testified that Hughes later attempted to help her get it back to the customer. In addition, the respondent testified that the customer had reappeared with her husband and said that she had won big with lucky coins. Further, she forwarded the money together with the application form via Hughes. The respondent only discussed the tip with Hughes and no one else. The respondent forwarded the money to Bell during work because Bell's shift ended earlier than the respondent's. After work the respondent met Bell in a bar and Bell gave the respondent the \$5 change from the repayment of the loan.

The outcome of this matter depends entirely upon a resolution of the substantial and significant conflict in proofs. The Division's case consisted solely of hearsay evidence. However, there was a consistency among the statements of the respondent, Hughes and Bell, that must be weighed against the testimony of the respondent at the hearing. Accordingly, the respondent's credibility was in issue.

Initially, Ms. LeSane's position in this matter must be recognized. She is the holder of a casino hotel employee license and the respondent and, as such, has a direct interest in the outcome and a bias in these proceedings. Her testimony concerning the incident, although fundamentally consistent with her statement and the statements of Hughes and Bell, was substantially and significantly inconsistent with regard to its potential exculpable nature. More specifically, the respondent's testimony attempted to redefine the inadvertent shortchange as a tip and attempted to place the responsibility for formulating a method of secreting the money out of the casino upon other coemployees, including Hughes. Although the basic factual underpinnings were consistent, this testimony appeared to be an embellishment of the respondent's statement, which was inherently more believable. Also, the respondent's testimony at the hearing was internally inconsistent. Further, substantial disputes existed between the respondent and Det. Walker and Agent Flanagan regarding the events of September 28, 1983. Although hostility existed between the respondent and Det. Walker, which hostility increased during the hearing, the inference from the respondent's testimony to the effect that she was deprived of an opportunity to have legal representation and that her statement was not accurate, was not supported by the evidence. Rather, her statement was sufficiently consistent with the statements of Hughes and Bell. Further, the testimonies of Det. Walker and Agent Flanagan were consistent and were supported by the warning statement signed by the respondent prior to making her statement and are consistent with general human experience (P-3). In conclusion, I am not persuaded to accept the respondent's version of the incident as set forth in her testimony and as it is inconsistent with her prior statement.

Nevertheless, it is also necessary to recognize that Hughes and Bell had reason to state a version of the incident favorable to themselves in order to avoid any potential disciplinary actions. However, their statements are substantially consistent each with the other and are consistent with the statement made by the respondent. Accordingly, they are persuasive.

The credible evidence clearly indicates that the respondent came to possess the \$20 by means of an inadvertent customer shortchange. Although the respondent may have attempted to call the matter to the customer's attention, any attempt was meager and unsuccessful. Upon conferring with one or more coemployees, the respondent decided to keep the money and formulated a scheme by which to secrete the money out of the casino. This was accomplished through the use of the reluctant Hughes and Bell. Ultimately, the respondent received the benefit of the transaction.

In addition, it was readily apparent that the respondent never believed that the money was a tip. Although there was no affirmative evidence in this regard, it was clear that the respondent secreted the money out of the casino by means other than by ordinary and permissible procedures. This fact substantially nullifies the respondent's attempts to cleanse her conduct.

The respondent produced written recommendations from Janice Price, a long-time friend (R-1); Nancy Lake, another long-time friend (R-2); Darlene Wilcox, a friend and associate (R-3); and Arrawanna Allen, of the City of Atlantic City Affirmative Action Office (R-4). Each of these persons identified the respondent as a decent, responsible and reliable person.

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

1. The \$20 in the respondent's possession was the result of an inadvertent customer shortchange.
2. The \$20 was not a tip.
3. The respondent made a minimal effort on one occasion to alert the customer to the shortchange.
4. The respondent decided to keep the \$20 for herself.
5. The respondent formulated a plan to secrete the money out of the casino by means which were inconsistent with established and permitted procedures for a tip.
6. The respondent enlisted the reluctant assistance of Hughes and Bell.
7. The respondent received the benefit of the \$20.
8. The respondent's testimony was not candid and was an attempt to embellish the facts to cover up the true nature of her conduct.
9. The respondent is well regarded by her close friends and associates.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Ms. LeSane's alleged violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c(4) per section 86g, and that, accordingly, she no longer possesses the requisite degree of good character, honesty and integrity under section 89b(2), and, accordingly, establishes that her license should be revoked.

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

Section 86g provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at 15:

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

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the

inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartender's International Union Local 54, \_\_\_ N.J. Super. \_\_\_ (App. Div. 1985) (slip opinion at 17 and 18) the Appellate Division held that inimical means "adverse to the policy of the act and gaming operation," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3, theft, which, under the circumstances, renders continued licensure to be inimical to the Act.

N.J.S.A. 2C:20-3a, defines the crime of theft as follows:

A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

This statute preserves the elements of larceny as defined at common law. State v. Combariati, 186 N.J. Super. 375 (Law Div. 1982), aff'd 192 N.J. Super. 131 (App. Div. 1983).

The first element of theft is the "wrongful or fraudulent taking and carrying away." State v. Leicht, 124 N.J. Super. 127, 131 (App. Div. 1973). It is well settled that if one takes the goods of another out of the place where they were put, though he is detected before they are carried away, the larceny was complete. State v. Wilson, 1 N.J.L. 502 (1793).

The second element is that there be a taking of property of another. State v. D'Agostino, 176 N.J. Super. 49 (App. Div. 1980). Initially, it is not an element of larceny that the defendant knows that he is taking another's property. The only time that knowledge is relevant is where the defendant raises the affirmative defense of a claim of right and offers evidence that he was unaware that the property belonged to another. At this point the State must prove that the defendant knew that the property belonged to another, and did not belong to him. State v. Combariati, supra at 379.

The third element is that the property be taken "without the consent of the owner." State v. Leicht, supra at 133. As a result, larceny is not committed where property is taken "with the full knowledge and consent of the owner or his authorized servant or agent, however guilty may be the taker's intent." State v. Green, 170 N.J. Super. 292, 295 (App. Div. 1979).

The fourth element is that the defendant take "with a fraudulent intent to deprive the owner of his property." State v. Leicht, at 133. Larceny has not been committed where the taker intends to return the property to the owner. Further, if the taker has valid title to the property while the holder merely has possession, the taker does not have the "intent to deprive" but merely the lawful intent to obtain that which is rightfully his. Id. at 133.

It was clearly established that the money was in the cashier's booth and came into possession of the respondent as the direct result of an inadvertent customer shortchange. Since this money was not given to the respondent as a tip, as claimed, and in the absence of any other basis for entitlement, it is clear that the money was the property of another, whether it be the Claridge or the customer. There is no question that the respondent knew this to be true. The respondent's conduct in removing the money from the casino establishes an intent to deprive the owner of its property and the method devised establishes that the owner had no knowledge thereof. Accordingly, I CONCLUDE

that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3a.

The remaining issue is whether the conduct is inimical to the Act. The circumstances underlying the incident establish that the respondent conceived and carried out a method of removing money from the casino to which she was not entitled and which method was designed to avoid detection. The respondent's exculpatory testimony was not persuasive. This conduct occurred by a licensee and during the course of her employment. In essence, the respondent was in knowing and contumacious disregard of the criminal laws of this state, the regulations governing the casino industry and the procedures of her employer. The respondent committed a theft either from her licenced casino employer or a casino patron, i.e., the public. This misconduct is related directly to the operations of the casino and would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact upon the public perception of the integrity of the casino industry.

Although the respondent's conduct otherwise and since the incident has been proper in every regard, the fact that the respondent attempted to hide the true nature of her misconduct by giving misleading testimony defeats any potential mitigation of the seriousness of the offense.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 89b(2) of the Act, Ms. LeSane was required to establish, by clear and convincing evidence, her continued reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is

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

But for the respondent's conduct during the incident and the testimony in this proceeding, she appears to possess the requisite good character, honesty and integrity. However, because the nature of the offense strikes at the heart of the policies of the Act and in consideration of the respondent's failure to acknowledge candidly and truthfully the nature of her misconduct during this proceeding, she has failed to establish that she continues to possess the degree of good character, honesty and integrity required to maintain licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that she continues to possess the requisite degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2).

**(C) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;

- d. the prior history of the particular licensee involved with respect to gaming activity;
- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring;

There can be no doubt that the commission of a theft offense by a licensed employee of a casino within the scope of her official duties creates a real peril in regard to the public confidence in the casino industry and the perceived integrity of gaming operations. Further, the misappropriation of either casino or patron monies by a licensed casino employee, with full knowledge that such actions are improper, and pursuant to a plan intended to avoid detection, is very serious. The seriousness of the respondent's conduct has not been mitigated. Given the fact that the respondent does not now possess the qualifications for licensure and there being no mitigating factors, the respondent's license must be revoked. I so **CONCLUDE**.

**DISPOSITION**

It is **ORDERED** that the casino employee license (license number 15677-21) held by Beverly R. LeSane be **REVOKED**.

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

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

October 10, 1985  
DATE

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

Receipt Acknowledged:

October 10, 1985  
DATE

Bernadette J. Finner  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 16 1985  
DATE

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

ml/E

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- J-1 The State of New Jersey v. Beverly R. LeSane, Atlantic City Municipal Court,  
Docket No. C-10102, Complaint and Disposition
- P-1 Waiver and Statement of Christopher Hughes, September 28, 1983 (4 pages)
- P-2 Waiver and Statement of Denise L. Bell, September 28, 1983 (4 pages)
- P-3 Waiver and Statement of Beverly Romona LeSane, September 28, 1983 (4 pages)
- R-1 Letter from Janice Price
- R-2 Letter from Nancy Lake, August 2, 1984
- R-3 Letter from Darlene Wilcox, August 1, 1984
- R-4 Letter from Arrawanna Allen, July 26, 1984

(B) EXHIBIT NOT ADMITTED INTO EVIDENCE

- P-4 Id. Miranda Card (not offered)

WITNESS LIST

**FOR THE PETITIONER:**

Joseph Flanagan  
Robert F. Walker

**FOR THE RESPONDENT:**

Beverly R. LeSane

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-76  
OAL DOCKET NO. CCC 1712-85  
LICENSE NOS. 51094-21 and  
10153-22 (Inactive)

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

Complainant, :

FINAL ORDER

v. :

MERLE J. LEVITT,

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meetings of August 21 and September 4, 1985,

IT IS on this <sup>21<sup>st</sup></sup> day of January, 1986,  
ORDERED that the initial decision is rejected for the following reasons:

- (1) While the offense committed, theft by deception (a disorderly persons offense), in violation of N.J.S.A. 2C:20-4, involving funds belonging to the respondent's employer, Harrah's Trump Plaza, totalling \$79.88, is one that is, on the surface, inimical to the policy of the Casino Control Act and casino operations, under the peculiar circumstances of this case the offense does not require disqualification pursuant to N.J.S.A. 5:12-86(c)(4). In arriving at this determination the Commission has considered the criteria set forth under N.J.S.A. 5:12-90(h). In this case there are extenuating circumstances including Ms. Levitt's age, the scope of her responsibilities to her parents, and her father's physical condition. In addition, Ms. Levitt has plainly suffered for her actions and has demonstrated considerable remorse. Therefore, under the unique circumstances of this case, Ms. Levitt's offense is not one which renders her licensure inimical pursuant to section 86(c)(4).

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Merle Levitt is dismissed based upon the reasons stated herein.

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1712-85

AGENCY DKT. NO. 85-76

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

Petitioner,

v.

**MERLE LEVITT,**

Respondent.

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**William Mountford, Deputy Attorney General, for petitioner Division of Gaming Enforcement, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Gregory Imperiale, Esq., for respondent Merle Levitt**

Record Closed: June 17, 1985

Decided: July 2, 1985

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint seeking to revoke the respondent's casino employee licenses 51094-21 and 10153-22 (inactive) because she was charged with the disorderly persons offense of theft by deception from her employer casino. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. There was a pretrial hearing on May 2, 1985, and the matter was heard on June 17, 1985, at the Ventnor Municipal Court in Atlantic County.

STIPULATED FACTS

There were three stipulations made by counsel:

1. that in the Atlantic County Municipal Court the respondent entered a plea of guilty to the disorderly persons offense of theft by deception, N.J.S.A. 2C:20-4, in the amount of \$79.88;
2. that a conviction for a disorderly persons theft is not a statutory disqualifier;
3. that the theft was from respondent's casino employer.

COMPLIMENTARY SERVICES

Complimentary services are available to casino patrons. Apparently, at the Trump Casino when a patron qualifies for complimentary services a form is completed and data is entered into a computer. This process is called "rating" the patron. Based upon this rating the patron is entitled to complimentary services. The casino is required to record and report these services, N.J.A.C. 19:45-1.9. This explains what would otherwise appear to be a complicated procedure of filling out rating forms and collecting the data on a computer. This case involves the unauthorized rating of a patron by the respondent and her subsequent personal use of the complimentary services issued as a result of the rating.

UNDISPUTED FACTS

I **FIND** the following undisputed **FACTS**:

1. On October 6, 1984, November 25, 1984, January 19, 1985, and January 21, 1985, the respondent, Merle Levitt, without authority or any legitimate basis to do so, "rated" a patron by entering his name in a computer thereby making him eligible for complimentary passes. The patron was not privy to these acts.

2. On October 13, 1984, and on October 21, 1984, the respondent, Merle Levitt, obtained complimentary passes based on the above fraudulent ratings and used them for herself and her family in the New York Coffee Shop and in "Scoops" Ice Cream Shop at Trump Casino.

#### RESPONDENT'S CONTENTIONS

The respondent argued essentially that she was rehabilitated pursuant to N.J.S.A. 5:12-90h. Since the offense of which respondent was convicted is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), and (2), rehabilitation is not available to respondent. The issue here is "inimicality," pursuant to N.J.S.A. 5:12-86c(4). Because the issues of rehabilitation and inimicality are substantially similar, however, the respondent's contentions are relevant. Division of Gaming Enforcement v. Brian K. Worthey, OAL DKT. NO. CCC 7866-84 (March 19, 1985), adopted, Casino Control Commission (May 1, 1985).

Inimicality is discussed at page 15 of In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission Opinion (February 1979):

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

By way of mitigation the respondent contends that in order to treat her family, who were distraught over her father's worsening physical condition she first requested a complimentary pass but the request was denied. After this denial, respondent took it upon herself to obtain the complimentary passes in a fraudulent manner that she knew to be wrong, by improperly "rating" a patron and then obtaining the complimentary

passes for the use of herself and her family. She maintains that despite the fact that she made four such fraudulent computer entries, she obtained only two complimentary passes. The latter two entries were made not to obtain passes, but in order to cover up her bad acts, which actions had resulted in her acute distress. Significantly, it is when she made the final "cover-up" entry that she was detected. Respondent also claims by way of mitigation, that upon detection she immediately admitted her offense and made restitution.

If I accept the respondent's version that she had no intention of obtaining more complimentary passes when she made the latter two computer rating entries, but only made them out of an acute sense of guilt and was hoping to avoid detection thereby, it may be viewed as a mitigating factor in the sense that she determined not to steal again. Viewed in another light, however, the fact that she engaged in a continuing cover-up may very well be considered an aggravating factor.

In any case I am unable to determine that the respondent had consciously decided not to obtain future complimentary passes based upon the latter fraudulent ratings. We have her word for that, coupled with the fact that no more complimentary passes were requested, but she offered no such explanation when apprehended (see P-1 in evidence).

I do however **FIND** that her prompt confession when she was apprehended and her payment of restitution evidence consciousness of guilt and, therefore, may be viewed as marginally mitigating circumstances.

In considering the nature of the offense, I note that although the amount (\$79.88) was less than the statutory threshold necessary to support a criminal conviction (\$200) it was nevertheless a theft, which was from her employer, placing her good character, honesty and integrity squarely in issue.

Remoteness is not an issue pressed by respondent. The theft occurred only last year.

Finally, I address the most difficult issues — the events surrounding the occurrence, and the respondent's conduct since the offense.

This 24-year-old, single female lives at home with her father, who is a stroke/heart patient, and her mother, who tends him. She is the primary, although not sole, support of the family. She pays the mortgage and makes other household contributions. She has an otherwise unblemished record. She performs volunteer work for children at the Atlantic Learning Center in Ventnor, New Jersey. She introduced several testimonial letters on her behalf. She has obtained new employment in order to support her family. The purpose of her theft was to treat her parents to an afternoon lunch at the casino on one occasion and to treat her mother at the ice cream shop on a second occasion on their return from admitting her father to the hospital.

These factors create sympathy for respondent. It may be that she has learned her lesson, or it may be that these acts were an aberration induced by the strains placed upon respondent by her heavy family responsibilities and her perception that life was not dealing fairly with her and her family.

Nevertheless, there is a clear public policy against which respondent's bad acts must be measured. The declaration of policy and legislative findings set forth in the Casino Control Act at N.J.S.A. 5:12-1 concentrate on the public perception of the casino industry. The legislature clearly demands that the industry "maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest . . ." N.J.S.A. 5:12-1(7). N.J.S.A. 5:12-1(8) states.

Since the public has a vital interest in casino operations in Atlantic City . . . participation in casino operations as a licensee or registrant under this act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant . . . Consistent with this policy, it is the intent of this act to preclude the creation of any property right in any license . . . and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Those qualifications are set forth in N.J.S.A. 5:12-89(b), which is incorporated by reference in N.J.S.A. 5:12-90(b). They specifically require that, "each applicant for a casino . . . employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty, and integrity."

Under all of the facts and circumstances of this case, I **CONCLUDE** that the respondent has not met the burden of establishing her honesty and integrity by clear and convincing evidence.

I further **CONCLUDE** that the condonation of theft by a licensed employee from her employer casino is precisely the kind of action which would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations.

ORDER OF DISPOSITION

It is therefore **ORDERED** that respondent's casino employee licenses be **REVOKED**.

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

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

July 2 1985  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 3, 1985  
DATE

Kornelotte P. Friga  
CASINO CONTROL COMMISSION

Mailed to Parties:

July 9, 1985  
DATE

Ronald J. Puffer  
OFFICE OF ADMINISTRATIVE LAW

WITNESSES

For Petitioner:

None

For respondent:

Merle Levitt

EXHIBITS IN EVIDENCE

- P-1 Investigation Reports
- R-1 Letter, Atlantic Learning Center
- R-2 Letter, Dr. Shavelson
- R-3 Letter, Esther Levitt
- R-4 Letter, Theresa M. Plumbo
- R-5 Letter, Joseph Hitchner
- R-6 Letter, Tonya Y. Byrd
- R-7 Letter, Nanette Horner
- R-8 Letter, Dr. Haldeman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-50  
OAL DOCKET NO. CCC 2011-85  
APP. NO. 48127-22  
REGISTRATION NO. 11342-40

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APPLICATION OF JOSEPH LUCKETT  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 18, 1985,

IT IS on this 2<sup>nd</sup> day of JANUARY 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Joseph Lockett is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Joseph Lockett from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Joseph Lockett, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 2011-85**

**AGENCY DKT. NO. 85-EA-50**

**JOSEPH LUCKETT,**  
Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**  
Respondent.

---

**Joseph Lockett, petitioner, pro se**

**Frances L. Sundheim, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Record Closed: October 1, 1985**

**Decided: November 18, 1985**

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

**STATEMENT OF THE CASE**

This matter concerns the application of Joseph Lockett to the Casino Control Commission for licensure as a casino employee, permitting him to work in a casino as a maintenance and cleaning employee. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90b of the Act.

2. Whether the petitioner, with specific reference to his Personal History Disclosure Form and an interview with an agent of the Division of Gaming Enforcement, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 86b and 90e of the Act.

#### PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated January 21, 1985, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Commission to the Office of Administrative Law on April 11, 1985, 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 Atlantic City, New Jersey. The petitioner holds a casino hotel employee registration, but he is not presently employed by any Atlantic City casino hotel. According to the petitioner, he was employed by the Claridge Casino Hotel from April 1984 until August 1985. He was terminated by the Claridge when he took an unauthorized break.

Prior to his employment at the Claridge, the petitioner had been employed by Resorts International Hotel and Casino and by the Tropicana Hotel and Casino. Since August 1985, the petitioner has been employed by the housekeeping department of the Ascot Motel in Atlantic City.

It is undisputed that the petitioner has been arrested on two occasions. On March 28, 1983, the petitioner was arrested and charged with possession of marijuana under 25 grams and possession of marijuana with intent to distribute, contrary to N.J.S.A. 24:21-20a(4) and N.J.S.A. 24:21-19a(1). According to the Atlantic City Police Department Investigative Report (exhibit R-2), the petitioner was observed to be taking part in what appeared to be a drug transaction from a parked vehicle. It is undisputed that the charges against the petitioner were subsequently dismissed.

The petitioner's other arrest occurred on February 11, 1984, when he was charged with possession of marijuana under 25 grams, contrary to N.J.S.A. 24:21-20a(4). According to the Atlantic City Police Department Investigation Report (exhibit R-3), the petitioner was allegedly observed taking what appeared to be money from another person in exchange for a small plastic bag. It is undisputed that this charge against the petitioner was also subsequently dismissed.

The petitioner's Personal History Disclosure Form (exhibit R-1) was filed with the Casino Control Commission on August 8, 1983. In response to question number 16 of the form, which requires disclosure of whether an applicant has ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense, the petitioner answered "no." Thus, the petitioner's arrest on March 28, 1983, was not disclosed on the petitioner's Personal History Disclosure Form.

On August 22, 1984, the petitioner was interviewed on the telephone by New Jersey State Police Detective James C. Barber, assigned to the Division of Gaming Enforcement. Detective Barber is temporarily detached to an out-of-state assignment and he was unable to be present to testify at the hearing. Consequently, his affidavit was admitted into evidence as exhibit R-4.

According to Detective Barber's affidavit, his background investigation of the petitioner had revealed the petitioner's arrests on March 28, 1983 and February 11, 1984. During the interview which he conducted with the petitioner, Detective Barber read question number 16 of the Personal History Disclosure Form to the petitioner. The petitioner advised that he understood the question and the instructions which were given with the question, and the petitioner responded that he had never been arrested. Detective Barber confronted the petitioner with the arrest information in his possession and he asked the petitioner why he had failed to disclose the March 28, 1983, arrest during the interview and when completing his Personal History Disclosure Form. According to Detective Barber, the petitioner responded that he had failed to disclose this arrest because, "I thought it would hold up my license." In addition, the petitioner stated that he didn't feel he had to disclose it anyway, because he never went to court on the charges, and didn't know the disposition of the matter.

The petitioner's arrest on February 11, 1984, occurred after he had filed his Personal History Disclosure Form in August 1983. According to Detective Barber, the petitioner stated that he did not disclose this arrest during the questioning by the detective because it had been completely forgotten.

At the hearing, the petitioner was asked to explain why he did not disclose his February 11, 1984, arrest during his interview with Detective Barber. According to the petitioner, he had difficulty remembering the arrest and he did not want to admit to it without being sure. He acknowledged that he had gone to court on the matter prior to his interview with the detective. When the petitioner was asked to explain his failure to disclose the March 28, 1983 arrest on his Personal History Disclosure Form and during the interview, the petitioner explained that he thought since the matter was dismissed that it did not have to be disclosed. However, the petitioner candidly acknowledged that he also informed Detective Barber that he thought disclosure of the March 28, 1983, arrest on his Personal History Disclosure Form would hold up his license application.

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

#### CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86b, the Casino Control Commission shall deny licensure to any applicant who has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to qualification criteria. It is undisputed that the petitioner failed to reveal his March 28, 1983, arrest on his Personal History Disclosure Form. It is also undisputed that he initially denied this arrest and his February 11, 1984, arrest during his interview with Detective Barber of the Division of Gaming Enforcement.

During his testimony, the petitioner explained that he had not remembered the later arrest and that he felt he did not need to disclose the earlier arrest because the matter had been dismissed. However, the petitioner candidly acknowledged at the hearing that there had been another reason for not disclosing the earlier arrest. Specifically, the petitioner acknowledged that he felt disclosure of the arrest would hold up his license application.

The Personal History Disclosure Form which must be prepared and filed by an applicant for a casino employee license specifically requires disclosure of an applicant's arrest record. Thus, there can be no doubt that an arrest record is material to an applicant's qualification for licensure. The petitioner's failure to disclose his arrest record resulted from a conscious disregard of the request for such information, rather than from any misunderstanding of the disclosure requirement. Therefore, I **CONCLUDE** that the petitioner has intentionally failed to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b and N.J.S.A. 5:12-90e. Having so concluded, I further **CONCLUDE** that the petitioner has failed to sustain his affirmative burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Joseph Luckett for a casino employee license, permitting him to work in a casino as a maintenance and cleaning 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 Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

November 18, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 18, 1985  
DATE

Bernadette T. Fugner  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 21 1985  
DATE

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

ks

INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

- R-1      Personal History Disclosure Form
- R-2      Investigation Report, dated March 28, 1983
- R-3      Investigation Report, dated February 11, 1984
- R-4      Affidavit, dated August 2, 1985

WITNESSES

**FOR THE PETITIONER:**

Joseph Lockett

**FOR THE RESPONDENT:**

Joseph Lockett

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-159  
85-CSI-13  
OAL DOCKET NOS. CCC 6569-85;  
CCC 6018-85  
(CONSOLIDATED)  
APPLICATION NOS. 49630-21,  
1140-70

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APPLICATION OF DAVID K. MAO :  
FOR A CASINO EMPLOYEE LICENSE :  
(JUNKET REPRESENTATIVE) AND :  
APPLICATION OF TUNG HOP, INC., :  
FOR A CASINO SERVICE INDUSTRY :  
LICENSE. :

---

FINAL ORDER

A hearing in these matters having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the Division of Gaming Enforcement and the reply to those exceptions having been filed by the applicants; and the Commission having considered the entire record of these proceedings at its public meeting of April 9, 1986,

IT IS on this 11<sup>th</sup> day of May 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of David K. Mao for a casino employee license and the application of Tung Hop, Inc. for a casino service industry license are granted substantially for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon David K. Mao, Tung Hop, Inc., the Office of Administrative Law and the Division of Gaming Enforcement within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NOS. CCC 6569-85 and  
CCC 6018-85 (Consolidated)  
AGENCY DKT. NOS. 85-CS1-13  
and 85-EA-159

**DAVID MAO and TUNG HOP, INC.,  
t/a JADE BEACH CHINESE RESTAURANT,**

**Petitioner,**

**v.**

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

**Respondent.**

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**Brian J. Molloy, Esq., for petitioner (Wilentz, Goldman & Spitzer, attorneys)**

**Patricia M. Wild, Deputy Attorney General, for respondent (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Record Closed: January 14, 1986**

**Decided: February 27, 1986**

**BEFORE EDGAR R. HOLMES, ALJ:**

David Mao applied for licensure as a junket representative and sought to have his license endorsed as sole owner/operator of a junket enterprise. He is also the qualifying individual for Tung Hop, Inc., t/a Jade Beach Chinese Restaurant, which seeks licensure as a casino service industry. The Division objected to Tung Hop Inc.'s licensure by letter to the Casino Control Commission, dated September 19, 1985. The Division objected to David Mao's licensure by letter to the Casino Control Commission dated October 11, 1985. The applicants requested a hearing and the matters were transmitted

to the Office of Administrative Law to be heard as contested cases, pursuant to N.J.S.A. 52:14F-1 et seq. At the pretrial conference, the Division and the attorney for both applicants requested consolidation on the basis that the underlying facts were essentially identical. The matter was heard on January 6 and 7, 1986, at the Court House in Atlantic City. The record was held open until January 14, 1986, in order to provide counsel for the petitioner an opportunity to supply additional affidavits, which he elected not to do, by letter, dated January 9, 1986, and received at the Office of Administrative Law on January 13, 1986.

The pretrial Order and Order of Consolidation listed the following issues to be resolved at the hearing:

- A. Does Tung Hop, Inc. possess the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3(c)?
- B. Does David Mao possess the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-84c.
- C. Alleged subissues to the issue of good character, honesty, and integrity have been identified as follows:
  1. Did Tung Hop, Inc. and/or David Mao knowingly employ illegal aliens?
  2. Did David Mao know that Tung Hop, Inc. hired illegal aliens?
  3. If so, and since the hiring of illegal aliens is not a crime, how does it affect good character, honesty and integrity?
  4. Did Tung Hop operate a "safe house" for illegal aliens?
  5. If so, and since no federal prosecution has been initiated, is this within the scope of Casino Control Commission review?

6. Did David Mao misrepresent his knowledge concerning the aforementioned aliens to the Division of Gaming Enforcement?
7. Were the surrounding circumstances of this alleged misrepresentation; to wit, the Division of Gaming Enforcement's participation in an I.N.S. entry of premises, either with or without federal warrant, a factor to be considered in determining the admissibility of the alleged statement?

The parties stipulated at the hearing that:

1. It is not an illegal act to hire an illegal alien. 8 U.S.C.A. section 1324(a)(3).
2. The Casino Control Commission has not adopted a regulation proscribing the hiring of illegal aliens.

Nevertheless, this case arises from a Division of Gaming Enforcement investigation into the immigration status of employees of the Jade Beach Chinese Restaurant, as a result of its application for licensure as a casino service industry. At the outset, I **FIND** that this is an entirely proper subject for investigation since illegal aliens may also be fugitives from the criminal laws of this or other jurisdictions.

In his investigation into the hiring practices and alien status of employees of the Jade Beach Chinese Restaurant, which is situated in the Tropicana Hotel, State Police Investigator Mark Mai, assigned to the Division of Gaming Enforcement, asked for and obtained a list of employees of the restaurant. He forwarded it to the Immigration and Naturalization Service (I.N.S.) for a computer check. This proved to be fruitless since many of the names were anglicized. A second list was obtained and it appeared that at least one employee entered the country months earlier on a ten-day entry visa from a merchant vessel. Such persons are known as "ship jumpers." Incidentally, none of these lists were ever produced at the hearing, and are presumed lost or destroyed.

Based upon this information, Investigator Mai enlisted the aid of the I.N.S. With Detective Quirk, a State Police officer with the Casino Investigation Bureau who is

interested in Oriental organized criminal activities within casinos, and three I.N.S. agents, he entered the premises, unannounced, during the dinner hour on August 28, 1984.

Investigator Mai relates that initially he attempted, without much success, to have David Mao identify employees by name and address for about "15 minutes or so." He "believes" the I.N.S. agents followed him in. I.N.S. agent David Clark, however, recalls the scene differently. He relates that immediately upon entering the premises he flashed his badge and two employees ran out of the restaurant, while others attempted to pose as customers. The two employees who fled were apprehended by Detective Quirk, who was stationed at the rear entrance, and they were returned to the restaurant. The restaurant was closed to the public; customers were permitted to leave. The employees were questioned and 11 were arrested, processed and detained at the Atlantic City jail pending transportation to an I.N.S. detention center. No federal search warrant was ever issued in this matter. No charges were brought against the restaurant or David Mao by the I.N.S. as a result of this encounter, which can only be described as a "raid."

During the processing it became apparent that many of the employees listed 2609 Monterey Avenue in Atlantic City as their local addresses. When David Mao was asked who owned that property, he said he did not know. Later investigation showed that he was one of the owners of record, with his wife, his partner in Jade Beach, Peter Lu, and Peter Lu's wife. Based upon these factors, Investigator Mai and the Division concluded that David Mao and Peter Lu were operating a "safe house" for illegal aliens. Subsequent testimony revealed that Mao's and Lu's ownership of 2609 Monterrey Avenue was or should have been apparent from the fact that the mortgage was paid from the business checkbook, which was made available to the Division of Gaming Enforcement. The deed was properly recorded. David Mao divulged his ownership interest during subsequent Division of Gaming Enforcement interviews.

Nelson Lu, the owner and operator of some 20 or 25 Chinese restaurants during the past 14 years, and presently the owner of five such restaurants, testified that because of the limited English language skills of many employees it is customary in the Chinese restaurant business to provide housing close to the restaurant for its employees. He estimated that 95 percent of Chinese restaurants provide such accommodations. He said it is almost a sine qua non of employment contracts that housing be provided.

Cheng Hsia Fie, the chef at Jade Beach, testified that he hired kitchen help and was responsible for them. He indicated that since the raid he requires employees to have a "green card" if they are not United States citizens. Previously, he had only required employees to obtain a social security card if they did not already possess one.

Mr. Mao testified and said he did not know the status of the employees hired by Cheng; kitchen help was Cheng's responsibility. He said he had difficulty complying with Investigator Mai's request to identify employees on August 28, 1984, because of the problem of converting Chinese characters to English letters. He related that when he was interviewed by Investigator Mai in the Division of Gaming Enforcement headquarters, he was very nervous and very upset. He denied telling Mai that he did not know who owned 2609 Monterrey Avenue.

Numerous character witnesses testified to the reputation for good character, honesty and integrity of David Mao. He enjoys an excellent reputation. These witnesses included scholars, casino executives and Mr. Mao's ex-wife.

**I make the following FINDINGS OF FACT:**

1. Tung Hop, Inc. did not knowingly employ illegal aliens in the sense that it purposefully sought them out. They did not make possession of citizenship or a "green card" a condition of employment. Kitchen help were hired by the cook.
2. For the same reason, David Mao did not hire illegal aliens.
3. The unknowing employment of illegal aliens does not affect good character, honesty and integrity.
4. Tung Hop, Inc. did not operate a "safe house" for illegal aliens.
5. The hiring of illegal aliens by a casino service industry is within the scope of Casino Control Commission review since it might involve an offense which is inimical to the Act or casino operations. This is not such a case, however.

6. David Mao did not misrepresent his knowledge concerning the hiring of illegal aliens to the Division of Gaming Enforcement.
7. Tung Hop, Inc. possesses the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-84c and N.J.A.C. 19:43-1.3(c).

The remaining issues set forth in the Prehearing Order are whether or not David Mao possesses the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-102 and whether the surrounding circumstances of his alleged misrepresentation are factors to be considered in determining the admissibility of his alleged statement.

If David Mao does not possess the honesty required for licensure as a junket representative it is because he was untruthful when Inspector Mai interrogated him concerning his ownership of 2609 Monterrey Avenue. The Division has utterly failed to show that he operated a "safe house" for illegal aliens or knowingly and purposefully hired them. Whether or not he made such a misrepresentation is disputed. While Investigator Mai was less than candid in his testimony concerning the circumstances of the raid on the Jade Beach on August 28, 1984 (he would have us believe that the raid was unplanned and that the I.N.S. was there merely to assist him in obtaining the names of employees), I believe his testimony that David Mao denied ownership of 2609 Monterrey Avenue. This was also the testimony of Detective Quirk. The underlying circumstances, however, excuse David Mao for this denial.

In the first place, he had done nothing illegal, immoral or dishonest prior to the raid. Suddenly, a group of agents entered his restaurant, shut it down, chased his customers and arrested his help. He says he was nervous and upset. He had every reason to be so. The I.N.S. was there without a warrant and on the coattails of the Division. I have previously stated that the Division had a right to inquire and to investigate; it had no business locking the place up. Under those harrowing circumstances I am unable to find that David Mao lacks the requisite honesty to be licensed as a junket representative. In every other particular he has shown that he is a model citizen and would be a credit to the casino industry.

I **CONCLUDE** that Tung Hop, Inc. t/a Jade Beach Chinese Restaurant possesses the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3(c).

I further **CONCLUDE** that David Mao possesses the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-84c.

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

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

February 27, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

February 28, 1986  
DATE

Bernadette J. Frier  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 4 1986  
DATE

Ronald J. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

WITNESS LIST

**For petitioner:**

**Peter D. Lu  
Linda Mao  
David Mao  
Kenneth Hu  
Steven R. Bolson  
Joseph M. Zucchi  
Chen Hsia Fie  
Nelson Lu  
Peter Ho**

**For respondent:**

**Mark Mai  
Edward Quirk  
Daniel Clark  
Walter T. Hempel, II**

EXHIBIT LIST

**P-1 Xerox copies of checks and check stubs  
P-2 Airline tickets  
P-3 Xerox copy of daily work record  
P-4 W-2 forms**

**R-1 Document - Block and Lot No.  
R-2 Block and Lot description  
R-3 Deed  
R-4 Record of deportable alien - Chang Hsia-Pao  
R-5 Record of deportable alien - Tsia Shih-Tu  
R-6 Record of deportable alien - Chen Bo-Fao  
R-7 Record of deportable alien - Lee Ting I  
R-8 Record of deportable alien - Yu Shu-Yuh  
R-9 Order to Show Cause - Yu Shu-Yuh  
R-10 Affidavit - Yu Shu-Yuh**

R-11 Record of deportable alien - Chang Yao Chen  
R-12 Order to Show Cause - Chang Yao Chen  
R-13 Affidavit, Chang Yao Chen  
R-14 Record of deportable alien - Shih Ah Sheng  
R-15 Order to Show Cause - Shih Ah Sheng  
R-16 Affidavit - Shih Ah Sheng  
R-17 Record of deportable alien - Chang De-Ming  
R-18 Affidavit - Chang De-Ming  
R-19 Order to Show Cause - Chang De-Ming  
R-20 Record of deportable alien - Ou Chia Ching  
R-21 Affidavit - Ou Chia Ching  
R-22 Order to Show Cause - Ou Chia Ching  
R-23 Record of deportable alien - Su Hsiu Chun  
R-24 Order to Show Cause - Su Hsiu Chun  
R-25 Affidavit - Su Hsiu Chun  
R-26 Record of deportable alien - Chang Re-Tun  
R-27 Order to Show Cause - Chang Re-Tun  
R-28 Affidavit - Chang Re-Tun

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-3 AND  
82-EA-280 (CONSOLIDATED)  
APPLICATION NO. 24494-21  
REGISTRATION NO. 03849-40  
OAL DOCKET NO. CCC 5048-85

---

APPLICATION OF DAVID MARTINEZ  
FOR A CASINO EMPLOYEE LICENSE

AND

FINAL ORDER

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

Complainant,

v.

DAVID MARTINEZ,

Respondent.

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 19, 1986;

IT IS on this *9th* day of April 1986, ORDERED that the initial decision in this matter is modified as follows:

Based upon the finding at page 5 of the initial decision that respondent Martinez was convicted on October 7, 1983, of possession of controlled

dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19a(1), the Commission finds that, in addition to the disqualification pursuant to N.J.S.A. 5:12-86(c)(1) by reason of respondent's 1981 conviction for robbery, Mr. Martinez is disqualified pursuant to section 86(c)(3).

IT IS FURTHER ORDERED that the casino hotel employee registration of David Martinez is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the casino employee license application of David Martinez is denied substantially for the reasons stated in the initial decision, as modified; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon David Martinez, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5048-85  
AGENCY DKT. NO. 83-3 and  
82-EA-280

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

Petitioner,

v.

**DAVID D. MARTINEZ,**

Respondent,

and

**DAVID D. MARTINEZ,**

Petitioner,

v.

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

Respondent.

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**Frances Sundheim, Deputy Attorney General, for Division of Gaming Enforcement  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**David D. Martinez, pro se**

**Record Closed: December 2, 1985**

**Decided: January 7, 1986**

BEFORE JEFF S. MASIN, ALJ:

On January 5, 1983, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking the revocation of a casino hotel employee registration which had been issued to David D. Martinez. The complaint alleged that Mr. Martinez had been involved in various criminal activities which required revocation of his registration pursuant to various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The matter was referred to the Office of Administrative Law for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

In addition to the above matter, Mr. Martinez filed an application for licensure as a casino employee with a position designation of gaming employee sometime prior to August 16, 1982. On that date, the Division filed with the Commission a letter opposing licensure. The licensure application was also forwarded for hearing at the Office of Administrative Law and the two matters were consolidated for hearing before Administrative Law Judge Jeff S. Masin.

A prehearing conference was held on October 1, 1985, and a prehearing order was issued on October 23, 1985. A hearing was held before Judge Masin on December 2, 1985, at the Pleasantville Municipal Court.

#### ISSUES

The prehearing order identified a number of issues for consideration at the hearing. These involved determinations as to whether the applicant had committed statutory disqualifying offenses as designated by N.J.S.A. 5:12-86(c), whether he had the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b) and 90(b) and whether his licensure would be inimical to the policies of the Casino Control Act, requiring denial pursuant to N.J.S.A. 5:12-86(d). In addition, consideration also was required as to whether the applicant had rehabilitated himself from the adverse affects of his prior conduct, thus permitting continued licensure and registration pursuant to N.J.S.A. 5:12-90(h) and 91(d).

EVIDENCE

The Division presented testimony concerning Mr. Martinez's prior contacts with the law. Detective John J. Coyle of the Egg Harbor Police Department testified that on July 23, 1980, one Maybelle Angerman was the victim of a robbery and rape at her residence, which was also her business address, on Zion Road. As a result of an investigation conducted by the Egg Harbor Township Police Department, one Hector Villanueva was eventually convicted of the offenses after trial. Villanueva then phoned Detective Coyle from the County Jail and advised that David D. Martinez had helped plan the robbery. After additional investigation, including the matching of fingerprints which had been taken at an earlier 1977 robbery of Ms. Angerman at the same location, Mr. Martinez was charged with the 1977 robbery. He was indicted by the Atlantic County Grand Jury in indictment I694-80J3 on charges of possession of a weapon without a permit, unlawful use of a dangerous weapon, assault with intent to rob and armed robbery. Mr. Martinez entered into a plea bargain arrangement with the prosecutor's office which resulted in his plea of guilty to an amended charge of robbery. He was sentenced by Honorable Paul R. Porreca, C.A.J. to an indeterminate term at Yardville.

With respect to the 1977 incident, Mr. Martinez testified that he went to the Angerman house and went inside the back door. After checking around, he discovered money in a cookie jar and left. He denied that he had produced any weapon during the robbery. He had previously been at Angerman's home/business in order to see if he could buy a car. He saw that Mrs. Angerman was elderly (she was in her sixty's) and thought that she might have some cash. Martinez testified that he hitchhiked to the site on the day of the robbery and also hitchhiked back home. He denied that there were four people present at the time of the robbery, as had been asserted by Ms. Angerman, at least according to the police reports. He denied that he ransacked the premises or that he dragged Angerman into the house as she had asserted. The police reports reflect that Angerman told officers that she was grabbed around the mouth, her glasses were knocked off, a gun was held to her head and she was threatened that if she did not cooperate she would be killed.

With respect to the 1980 robbery and rape, Mr. Martinez was not charged with any offenses. He denied that he had gone to the premises, but explained that prior to the incident Mr. Villanueva had just arrived from Puerto Rico and he, Martinez, had told Villanueva about the 1977 robbery. Martinez claimed that Ms. Angerman had specifically

agreed that he, Martinez, was not present during the 1980 incident. He denied receiving any of the proceeds of that robbery.

In addition to the above-noted incidents, Martinez was arrested in May 1983 on Sovereign Avenue in Atlantic City. Detective Joseph Jasiacki of the Atlantic City Police Department testified that on May 8, 1983, he was on surveillance duty on South Sovereign Avenue when he observed Mr. Martinez in front of 25 South Sovereign engaging in transactions on three occasions where money was exchanged for a package. In addition, money and 22 glassine envelopes were observed on an electric meter. The material in the glassine envelopes field tested positive for cocaine.

On October 7, 1983, Martinez entered a plea of guilty to possession of controlled dangerous substance with intent to distribute in connection with this incident. As part of a plea bargain agreement, Martinez was sentenced to four years in the State Prison on his plea of guilty to possession of a controlled dangerous substance. The plea bargain also involved a later arrest which occurred in June 1983 when Martinez was arrested on Congress Avenue for possession of cocaine. He was sentenced to nine months concurrent with the four year sentence on the May incident.

Mr. Martinez served his time at the Wharton Tract. He was released from jail approximately three or four months before the hearing. Since that time he has been employed at his brother's store in Atlantic City. However, the store was sold three weeks prior to the hearing and at the time of the hearing Martinez was unemployed. He is divorced and has one child, who he supports in the amount of about \$35 a week.

During the time that Martinez was at Wharton Tract he worked on work release for approximately 19 months, earning about \$7,000 while employed in Mount Laurel Township at a turnpike gas station.

Mr. Martinez was employed at Resorts International Hotel/Casino in 1978 for five or six months in the store room. He last worked in the casino industry in 1979 at Caesars as a house person and a host at a buffet for a period of about 13 months.

In addition to the criminal matters noted above, in 1982 the respondent was involved in an incident at Harrah's Casino when he was found playing at a craps table at which his brother Santos was the dealer. Certain overpayments occurred and Santos

Martinez was eventually given pre-trial intervention on charges of theft by unlawful taking and conspiracy. The charges against David Martinez were administratively dismissed on August 26, 1983.

#### DISCUSSION

The Division contends that Mr. Martinez's registration should be revoked because he committed statutory disqualifying offenses designated in N.J.S.A. 5:12-86(c). The evidence as to Mr. Martinez's involvement in the criminal activities is undisputed and he was convicted on several charges. I **FIND** that he did commit a robbery in 1977 for which he was ultimately indicted and for which he entered a plea of guilty. The robbery charge constitutes a violation of N.J.S.A. 2C:15-1 and is a crime of the second degree.<sup>1</sup> Such a violation is a listed disqualifying offense under section 86c.(1) of the Casino Control Act and therefore Mr. Martinez is automatically disqualified from licensure based upon his conviction unless he has been rehabilitated in accordance with section 91d.

Mr. Martinez's convictions for drug offenses include a plea of guilty to possession of a controlled dangerous substance with intent to distribute, which is a violation of N.J.S.A. 24:21-19a(1), which constitutes a high misdemeanor and a disqualifying offense. In addition, he also pled guilty to possession of cocaine in connection with the June 1983 incident, a violation of N.J.S.A. 24:21-20a.

With respect to the issue of rehabilitation, I **FIND** that Mr. Martinez has not established his rehabilitation. His history indicates a serious criminal involvement in 1977 and a role, although not a direct one, in the 1980 robbery of Ms. Angerman, an incident which involved a rape. Although Martinez's involvement in this latter affair was peripheral, it cannot be overlooked. He did provide information and perhaps encouragement to Villanueva, who ultimately committed the crimes. In addition, Mr. Martinez had two run-ins with the law in 1983 involving drug offenses. He has only recently been released from prison and it is not clear at this early stage that he has changed his ways.

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<sup>1</sup>The plea bargain agreement indicates that count 4 was amended from armed robbery to robbery "for purposes of plea agreement only." Apparently this was done to limit the possible sentence, as a robbery involving the possession of a deadly weapon would constitute a crime of the first degree. Mr. Martinez now denies having had a weapon.

Although I am cognizant of the fact that employment in the casino industry might be a boon to Martinez's continued rehabilitation, his record indicates that he previously worked in the industry and did not avoid his drug involvements despite having had that opportunity. While he may ultimately be able to establish his rehabilitation after several years of exemplary conduct, given the short period since his incarceration following previous serious offenses, and given the long history of his criminal tendencies, I **CONCLUDE** that Mr. Martinez has not established rehabilitation.

I **FIND** that Mr. Martinez has not established by clear and convincing evidence that he has the requisite good character, honesty and integrity for employment as a casino employee. This finding is based upon his previous criminal history and is made in light of my comments concerning the rehabilitation issue and the difficulty in establishing a positive record so soon after his release from jail.

#### CONCLUSIONS

For the reasons expressed above, I **CONCLUDE** that Mr. Martinez has failed to establish by clear and convincing evidence the requisite good character, honesty and integrity required for licensure as a casino employee. In addition, I **FIND** that he has committed disqualifying offenses and that he has failed to establish his rehabilitation. Therefore, I **CONCLUDE** that his casino hotel employee registration must be **REVOKED** and that his application for licensure as a casino employee must be **DENIED**. It is so **ORDERED**.

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

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

January 7, 1986  
DATE

January 8, 1986  
DATE

JAN 10 1986  
DATE

ml

Jeff Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

W. Bronczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioner Division of Gaming Enforcement:

- P-1 Police reports, reference investigation of October 31, 1982
- P-2 Certified copies of court records with reference to incident of June 13, 1983
- P-3 Police reports, laboratory reports and municipal court complaint and superior court criminal record, reference incident of May 8, 1983
- P-4 Police reports, reference 1980 robbery and rape, 21 pages
- P-5 Indictment I694-80-J-3, with attached plea bargain agreement, and certified court records

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-297  
OAL DOCKET NO. CCC 5574-85  
REGISTRATION NO. 40682-40

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

Complainant,

FINAL ORDER

v.

TIMOTHY J. McSWEENEY,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 2, 1986,

IT IS on this 9<sup>th</sup> day of APRIL 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Timothy J. McSweeney is dismissed substantially based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Timothy J. McSweeney, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5574-85

AGENCY DKT. NO. 84-297

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

Petitioner,

v.

**TIMOTHY J. MCSWEENEY,**

Respondent.

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**William E. Mountford, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Timothy J. McSweeney, respondent, pro se**

Record Closed: January 7, 1986

Decided: February 20, 1986

**BEFORE RALPH J. TOLOMEO, ALJ:**

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on September 20, 1984, alleging that Timothy J. McSweeney, respondent, committed offenses on February 3, 1984, and that his registration as a casino hotel employee as a result thereof is inimical to the policy of the Casino Control Act and casino operations pursuant to 86(c) 4 of the Casino Control Act. The Division of Gaming Enforcement through its complaint seeks judgment in revoking respondent's hotel employee registration. Respondent opposed petitioner's action and requested a hearing. On August 28, 1985, the Casino Control Commission transmitted the matter to the Office

of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14B-1 and N.J.S.A. 52:14F-1. A prehearing conference was held on October 11, 1985, and the matter scheduled for hearing on December 17, 1985, at the Atlantic City Courthouse. On December 11, 1985, petitioner filed an amended complaint with the Casino Control Commission which further alleged respondent's violation of N.J.S.A. 2C:20-7 in 1980 and charged that the conduct complained of is per se a disqualifying offense pursuant to Section 86(c) 1 of the Casino Control Act, even though unprosecuted under Section 86(g). The matter proceeded to hearing on December 17, 1985, and, at the request of respondent and with the consent of petitioner, the record remained open so that additional documents could be submitted by respondent. The same were submitted and reviewed on January 7, 1986, at which time the record closed.

#### FINDINGS OF FACT

Timothy J. McSweeney, respondent, is currently 25 years of age and resides in Brigantine, New Jersey. Respondent presently holds a casino hotel employee registration (40682-40) issued by the Casino Control Commission in April 1982.

The material facts presented at the hearing are not in dispute. Respondent was born and raised in Philadelphia and graduated from high school in 1978. After graduation he attended one semester at Drexel University night school and worked at Dean Witter Stock Brokerage as a stock deliverer. In March 1980, Dean Witter closed its office and he was then employed by M. S. Wein in Jersey City, New Jersey, but left in September 1981 when the firm declared bankruptcy. In April 1982, he moved to Brigantine, New Jersey, and began working at the Claridge Hotel and Casino where he has been continuously employed as a food and beverage storeroom clerk.

On March 1, 1980, Officer James Nottingham was on duty as a patrol officer for the Delaware River Port Authority Police Department. At approximately 2:30 a.m. he was assigned the auto patrol of the Ben Franklin Bridge between the cities of Camden, New Jersey and Philadelphia, Pennsylvania. At that time, respondent lived in Philadelphia.

At approximately 2:30 p.m. Officer Nottingham was instructed to stop and hold a Ford pickup truck that did not pay the toll on the New Jersey side of the bridge as it headed toward Philadelphia. Officer Nottingham observed the truck on the bridge and

followed it. When they reached the bottom of the span, he signaled the driver to pull over. The driver turned out the vehicle's lights and attempted to elude the patrol car by changing lanes, at which time the officer radioed for assistance. Officer Nottingham testified that the truck continued to the location of Ninth and Vine Streets where it stopped. Both the driver and passenger ran into a nearby field. Shortly thereafter, other law enforcement officers came to the location and began looking for the suspects with the assistance of a K-9 dog. The dog found one of the suspects and the other one, identified as respondent, surrendered. The driver of the vehicle was identified as Thomas Milewski and the passenger as Timothy J. McSweeney, respondent. Officer Nottingham's investigation determined that the owners of the truck were H.A. Dehart & Sons and that they had reported the vehicle stolen from Gloucester Township on January 28, 1980. The license plates of the owner were found inside the vehicle and Delaware license plates affixed on the truck were also determined to be stolen. Officer Nottingham testified that the value of the vehicle was \$7,000. He further testified that Milewski stated, after being advised of his rights, that "we didn't steal the truck, we borrowed it." Subsequently, respondent and Milewski were indicted by the Camden County Grand Jury and charged with bringing stolen property into the state, namely a 1978 Ford truck, in violation of N.J.S.A. 2C:20-7, a crime of the third degree. Respondent applied for pretrial intervention and was approved for the same. After successfully completing the terms and conditions of the pretrial intervention program, the indictment charging him with the offenses referred to was dismissed on July 22, 1981.

Respondent testified that on March 1, 1980 he was living in Philadelphia when he and Milewski, whom he knew for five or six years from the neighborhood in Philadelphia, decided to visit a club in Cherry Hill, New Jersey. They went to the club in a truck Milewski had that evening to celebrate a friend's birthday. Respondent testified that he was very drunk at the time and, although he "doesn't do drugs," on that evening he was experimenting by taking a Quaalude. Respondent further testified that he didn't know that a police vehicle was following the truck and he thought the toll had been paid. When he observed the police vehicle, he asked Milewski why they were being followed, at which time Milewski said, "it is not my truck." When Milewski stopped the vehicle, respondent ran in a direction away from Milewski and hid in the tall vegetation, but he was apprehended by the police. When arrested and brought to the police station, he fainted. Respondent testified that when he was in the truck, he did not know it was stolen and had no reason to have such knowledge. Respondent ran when the truck was stopped because he didn't want to be associated with it, once Milewski told him that it wasn't his truck.

With respect to the incident of February 13, 1984, petitioner offered into evidence without objection an investigation report (P-2 Evid.), a certified copy of indictment no. 327-3-84, charging defendant along with two codefendants with offenses of conspiracy (N.J.S.A. 2C:5-2), three counts of burglary (N.J.S.A. 2C:18-2) and one count of theft by unlawful taking of goods in excess of \$200 but less than \$500 (N.J.S.A. 2C:20-3) and a copy of the sentencing disposition of defendant with regard to the charges contained in the indictment (P-4 Evid.).

The police investigation of the matter revealed that respondent, along with John and Michael Rattigan, on February 13, 1984, at approximately 5:00 p.m., were at the rear of a Jamesway Department Store located in the Somers Point Shopping Center, Somers Point, New Jersey. Police were summoned to that location and observed three white males, two on the loading dock and one on the ground. The investigating officer knew John and Michael Rattigan "as local subjects." The officer also observed several boxes on the loading dock. When the officer arrived, John Rattigan was arrested, at which time the other two "subjects" ran behind the trailer and through the woods. Shortly thereafter, Michael Rattigan turned himself in and these individuals identified respondent as the third person involved. Respondent was contacted by the police and surrendered himself to the Somers Point Police Department later that evening. At the time he gave a full and complete statement regarding his involvement, which indicated that the three men, including respondent, had been at a bar earlier in the day and were drinking. They stopped behind the shopping center to urinate and saw trailers parked. They unsuccessfully attempted to pry them open with a tire iron from respondent's vehicle. Thereafter, they purchased two hacksaw blades and returned to the shopping center where respondent parked his vehicle. Both Rattigan brothers opened a trailer and found roofing materials inside but took nothing. They went to the Jamesway trailer and storage shed and were removing antifreeze when the police officers arrived.

On March 6, 1984, respondent and two co-defendants were indicted. On March 19, 1984, respondent entered pleas of not guilty, and on April 23, 1984, respondent retracted not guilty pleas to that of guilty to three counts of burglary. On June 22, 1984, respondent was sentenced on count 2 (burglary) to probation for a period of 18 months; the conditions were a \$1,000 fine and 300 hours of community service. The same sentence was imposed on Counts 4 and 5 (burglary) to be concurrent with Count 2 and a \$25 penalty to the Violent Claims Compensation Board imposed on each of the three counts. Charges of conspiracy and theft by unlawful taking were dismissed.

The sentencing judge was the Honorable Robert Neustadter, J.S.C., whose reasons for the imposition of the sentence are contained in P-4 Evid. Judge Neustadter offers, "Considering the defendant's good background and good work record and otherwise impeccable character, it would appear that this incident involving three storage trailers, entry into them involving three separate entries, is but in truth one incident or act of misconduct and that it was an isolated and aberrant act on the part of the defendant and in light of his previous record, the court therefore feels that the recommended sentence is fair and just under all of the circumstances and is imposed for purposes of punishment, as a deterrent and for rehabilitation as well so as not to deprecate the seriousness of the offense."

Respondent testified that at the time the incident occurred in February 1984, it was a holiday and he had been paid; however, the banks were closed. He and the Rattigan brothers were working outside the Rattigan's uncle's house but the weather prevented continuing work and they went to a bar and drank most of the afternoon. At approximately 3:30 or 4:00 p.m., they were driving by the Jamesway Shopping Center and pulled in to urinate in the rear. It was the Rattigans who broke into the trailers and took out the items described in the police reports. Respondent agreed that the value of the same was over \$200 (approximately \$243.58). Respondent indicated that he was very intoxicated at the time and remembers running when he saw the police pulling up. When the police called, he turned himself in after he had an opportunity to shower and shave. Respondent indicated that he was 19 years old when the incident involving the stolen truck occurred and was 24 years old when he was involved with the Rattigans in 1984. Insofar as both incidents are concerned, respondent indicated he was drinking heavily at both times but did not believe he had a drinking problem; however, the two occasions when he was involved with the law were times when he got involved with other people who, he believes, were a bad influence on him. He also testified that when he and the Rattigan brothers were behind the Jamesway store, there was a lot of noise and they were not being secretive about what they were doing, although the store was open at that time.

Respondent further testified that he expected to complete his 18 months of probation on or by December 22, 1985. He further indicated that he had paid his \$1,000 fine and performed his community service requirement of 300 hours. Respondent further testified that he has been employed by the Claridge Hotel and Casino since April 15, 1982, and has continued that employment to the present time with the exception of a suspension for three days with pay when he was arrested for the February 13, 1984 incident. He

presently earns \$9.50 an hour on the night shift. His duties consist of taking inventory, rotating perishable items and replacing the stock as necessary by providing all information to his manager who orders the same. His community service consisted of working for the Brigantine Public Works Department performing carpentry work. He no longer sees the Rattigans and his involvement with them was through his former girlfriend, who was their sister.

Additionally, respondent provided a letter from his probation officer, dated December 26, 1985, indicating that respondent has made a good adjustment in that he has paid his fine and penalty in full and reports on a regular basis as well as his community service obligation (R-1 Evid.). Additionally, a letter from his supervisor, dated December 27, 1985 (R-2 Evid.), indicates that it is the opinion of James R. Gale, food and beverage storeroom manager, that respondent is of good character on the job, gets along well with coworkers, is helpful to everyone, pleasant to work with, maintains a good attitude in the worst of situations and has presented no disciplinary problems. Mr. Gale considers respondent to be the most knowledgeable and valuable clerk on the staff and next in line for promotion from within if the opportunity arises.

Having the opportunity to review the testimony of the witnesses and in particular that of respondent in assessing his credibility, recognizing his interest in the outcome of this proceeding and the documents offered, I FIND all of the foregoing as fact.

#### ISSUES

Based on the foregoing, the issue to be determined is:

Whether or not the alleged offenses are inimical to the policy of the act and casino operations pursuant to Section 86c(4).

#### DISCUSSIONS AND CONCLUSION OF LAW

Petitioner argues that it has demonstrated by a preponderance of the credible evidence that respondent is guilty of a violation of N.J.S.A. 2C:20-7, a statutory disqualifying offense, even though the charge was dismissed as a result of respondent's

successful completion of a pretrial intervention program under the provisions of Section 86g, unprosecuted conduct. Petitioner further argues that this offense, coupled with convictions of burglary, violations of N.J.S.A. 2C:18-2, which occurred on February 13, 1984, establish that this conduct is inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey seeking revocation of respondent's casino hotel employee registration.

In reviewing the incident of unprosecuted conduct which occurred in March 1980, for which respondent applied for and successfully completed a pretrial intervention program, I **CONCLUDE** that petitioner has not demonstrated the commission of the offense by respondent by a preponderance of the credible evidence. The officer that testified indicated that the truck was determined to have been stolen approximately six weeks prior to respondent and a co-defendant being found in it. Respondent, a passenger in the truck, and the co-defendant were charged with the offense of theft, violation of 2C:20-7, a crime of the third degree, by purposely bringing into the state of New Jersey, movable property, to wit, a 1978 Ford truck known to have been stolen or believed to have been stolen from A.H. Dehart & Sons. Petitioner argued that the mere presence of respondent in the vehicle and the circumstances surrounding his arrest infer culpability and knowledge upon respondent. Respondent testified that he had no knowledge of the truck being stolen and, upon inquiring of Milewski why the police were pursuing the vehicle, Milewski responded "it's not my truck." Respondent's demeanor and candid responses to questions during cross examination and the court's inquiries were significant in assessing respondent's credibility. Therefore, with respect to the 1980 offense of theft alleged as unprosecuted conduct, I **CONCLUDE** petitioner has not established respondent's guilt by a preponderance of the credible evidence. The same shall warrant no further consideration for purposes of this determination.

Petitioner further argued that the burglary convictions in the three counts and the conduct related thereto constitutes conduct which is inimical to the policies of the Casino Control Act and to casino operations. Respondent did not dispute the convictions as stated; however, he argued that he was under the influence of alcohol at the time and was led astray by individuals with whom he no longer associates. Respondent also offered opinions from his probation officer and his immediate supervisor, who have had contact with him since the events of February 1984. Further, the comments of Judge Neustadter regarding the appropriate sentence imposed for the conduct is significant with regard to respondent.

I **CONCLUDE** that petitioner has established respondent's conviction of three counts of burglary which are violations of N.J.S.A. 2C:18-2. As such, under the facts as found, and an analysis of respondent's testimony and documents regarding rehabilitation, I do not find this conduct to be inimical to the policy of the Casino Control Act and or the casino industry operation.

In applying the facts as found, respondent has been employed by the Claridge since April 1982. In his position as food and beverage storeroom clerk, he is well regarded by his supervisor and does not have contact with any gambling activity. Although the offenses committed were serious, they occurred when respondent was intoxicated and in the company of individuals with whom he no longer associates. The circumstances as stated by the sentencing judge indicate that this conduct was isolated and somewhat aberrant in terms of respondent's general conduct. This appears to be fortified by respondent's testimony that he was involved in this situation during daylight hours when the store was open and the people were making enough noise for someone to observe their conduct. Respondent has complied with the terms and conditions of his probation and, although he had not terminated his probation as of the hearing date, he expected to complete the same shortly. His probation officer acknowledged his compliance and cooperation.

Additionally, respondent remained employed in his position with the Claridge Hotel and Casino as a food and beverage storeroom clerk with a three-day suspension with pay when arrested for the burglary offenses in February 1984. His present supervisor considers him to be the most knowledgeable and valuable clerk on the staff and next in line for a promotion.

In reviewing all of the factors for consideration to determine inimicality, I do not find that participation as a hotel employee and particularly as a storeroom clerk either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. In the Matter of the Application of Resorts International Hotel, Inc. for a casino license, Dkt. No. 79-CL-1.

Therefore, it is **ORDERED** that the amended complaint filed by the Division of Gaming Enforcement on December 11, 1985, seeking the revocation of respondent's casino hotel employee registration on the basis of respondent's conduct of alleged offenses which are inimical to the policies of the Casino Control Act, pursuant to Section 86(c)(4), be and is hereby **DISMISSED**.

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

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

February 20, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

2/21/86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 24 1986  
DATE

Charles P. [Signature]  
OFFICE OF ADMINISTRATIVE LAW

ks/e

**EXHIBITS ADMITTED INTO EVIDENCE:  
FOR THE PETITIONER:**

- P-1        Indictment of Timothy J. McSweeney
- P-2        Investigation Report (4 pages)
- P-3        Indictment for conspiracy, burglary and theft by unlawful taking
- P-4        Indictment sheet on three counts

**FOR THE RESPONDENT:**

- R-1        Letter from Betty Lou Sochocky, Principal Probation Officer I, for Timothy McSweeney
- R-2        Memorandum from the Claridge Hotel and Casino to Whom it May Concern from James R. Gale, food and beverage storeroom manager

**WITNESSES**

**FOR PETITIONER:**

**James G. Nottingham**

**FOR THE RESPONDENT:**

**Timothy J. McSweeney**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-387  
OAL DOCKET NO. CCC 6712-85  
REGISTRATION NO. 02729-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
  
Complainant, :  
  
v. :  
  
DOMINGO MENDEZ, JR., :  
  
Respondent. :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision on April 28, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of May 21, 1986,

IT IS on this 12<sup>th</sup> day of June 1986, ORDERED that the initial decision is modified as follows:

The respondent is disqualified for the reasons stated by the ALJ, however, that disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent is therefore permitted to retain a casino hotel employee registration.

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

IT IS FURTHER ORDERED that copies of this final order be served upon Domingo Mendez, Jr., the Division of Gaming Enforcement and the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6712-85

AGENCY DKT. NO. 85-387

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

Petitioner,

v.

**DOMINGO MENDEZ, JR.,**

Respondent.

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

**Seth Grossman, Esq., on behalf of respondent**

**Record Closed: February 25, 1986**

**Decided: April 9, 1986**

**BEFORE RALPH J. TOLOMEO, ALJ:**

**PROCEDURAL HISTORY**

Petitioner, Division of Gaming Enforcement, filed a complaint with the Casino Control Commission on September 12, 1985, seeking revocation of respondent's casino hotel employee registration. Respondent requested a hearing. The Casino Control Commission determined the matter to be a contested case and, on October 18, 1985, advised respondent that the matter was transmitted to the Office of Administrative Law. The Office of Administrative Law received the matter on October 22, 1985, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was scheduled for a

prehearing conference, which was conducted on November 22, 1985. The matter was scheduled for hearing on February 25, 1986, at the Atlantic County Civil Court House, Atlantic City, New Jersey, at which time a hearing was conducted, and on that date the record closed.

STATEMENT OF FACTS

With little exception, the relevant and material facts in this matter are undisputed. In presenting its case, petitioner offered into evidence without objection a certified copy of Indictment No. I-1285-80-M-3 returned by the Atlantic County Grand Jury, charging the defendant with offenses of possession of a handgun without a permit, a violation of N.J.S.A. 2C:39-5(b); possession of a weapon for an unlawful purpose, a violation of N.J.S.A. 2C:39-4; and the charge of murder in the first degree, a violation of N.J.S.A. 2C:11-3. The indictment states these offenses occurred on June 1, 1981. Additionally, the certified copy of the judgement of conviction establishes that respondent was indicted on June 25, 1981, on the aforesaid charges and, on July 8, 1981, entered pleas of not guilty to the three counts. Thereafter, on November 9, 1981, the defendant entered a plea of guilty to the third count, murder in the first degree and, on December 4, 1981, he was sentenced by the Honorable Paul R. Porreca, J.S.C., to the custody of the Commissioners of Corrections for a term of 10 years, with a minimum parole time of 40 months. Additionally, respondent was ordered to pay a penalty of \$25 to the Violent Crimes Compensation Board. Counts 1 and 2, possession of a handgun without a permit and possession of a weapon for an unlawful purpose, respectively, were dismissed.

Judge Porreca's Statement of Reasons for the imposition of the sentence states:

"The minimum term was imposed because of the defendant's personal, family and community background and his lack of any prior arrest together with the factual circumstances that surrounded the commission of this offense itself. For these reasons and for those reasons contained in the presentence report, this sentence was imposed."

Respondent testified that he was paroled from prison in April 1985, and will remain on parole through July 1988. His parole officer's name is Resto and he is required to report to his parole officer once per month.

Respondent acknowledged the incident of June 1, 1981, and testified that he was 26 years old at that time. He is presently 31 years of age. In June 1981, he was employed by the Sands Hotel Casino and, on June 1, 1981, he returned from his employment to his residence at 221 South Connecticut Avenue in Atlantic City. Respondent testified that at the time, his neighborhood was known as a "high crime area." After arriving home, he left his apartment and proceeded to the boardwalk to use a public telephone to call his girlfriend. While using the phone, a man whom he testified he had never met before came toward respondent. The man had a bag in his hand. At that time, respondent was frightened and ran back to his apartment. Respondent observed this man following him. Respondent went into his apartment, which was on the second floor of the building, and observed the same man outside. Respondent then got a gun that he kept in his room and, when the man came up the stairs after him, respondent fired twice to scare him, but the man kept coming. At this time, respondent fired a third shot directly at the man, believing that he had shot him in the leg. The man then ran outside and fell across the street. Respondent told a downstairs neighbor to call an ambulance and he left the area. He was arrested the following day by police.

Respondent testified that he began employment in the casino industry in the 1970's, and worked at Resorts and Bally's. He began working at the Sands in 1979 because it was a better job. When paroled in April 1985, he returned to work in May 1985, as a housekeeper and has since been promoted to the position of heavy porter, with an increase of pay and additional responsibility.

Respondent further testified that if the same situation that occurred on June 1, 1981, presented itself, he wouldn't shoot the man; he would handle things differently. He further testified that he has never assaulted anyone either before or after the incident of June 1, 1981, nor does he possess a weapon since he now lives in the Vineland area and has no concerns for his safety.

In addition to respondent's own testimony, seven witnesses were called by respondent and testified on his behalf. One of the witnesses was Debra Mendez, respondent's ex-wife. The remaining six witnesses were all employees of the Sands.

Debra Mendez testified that she has known respondent for 15 years and they met when she was 18 years of age. She testified that they were married in February 1975 and divorced in 1978. They had two children, whose ages are now 11 and 7. Debra

Mendez further testified that she last saw the respondent after their divorce in 1979, but saw him again in the summer of 1985, and he is now visiting with the children and paying \$50 a week for child support. She testified that he is very good with the children and is a good father. She also observed that at this time in his life he is more mature and calm, whereas he had a quick temper when he was younger. Now he doesn't get excited if there is a verbal dispute.

Additional witnesses were Herman Narcisso, Supervisor of Housemen, Mary Dayton, room attendant; Beverly Howard, housekeeper; Dwight Lewis, heavy porter; Beverly Scull, floor supervisor and housekeeper; and Francisco Matos, Director of Hotel Services and former manager of training and development. All of these witnesses testified that they know respondent through working with him in various capacities. None acknowledged any contact with respondent on a social basis. All of the witnesses testified that respondent was a good employee, had a good attitude and got along well with others. They testified that he was extremely interested in doing a good job and made sure that the work was done. In his present position as a heavy porter, he accommodates the needs of fellow employees by seeing that all items are available to them as necessary. None of the witnesses ever observed respondent being argumentative or assaulting anyone, nor did anyone ever see him lose his temper. With little exception, these witnesses have contact with respondent on a daily basis. All of his coworkers and supervisors believe he is an honest and hardworking employee that they would like to see remain employed with the Sands organization. They believe he is an asset to the organization.

Having had an opportunity to observe all of the witnesses, including respondent, their demeanor, basis for knowledge and having had the opportunity to assess their credibility, I FIND all of the foregoing as fact.

#### DISCUSSION AND LEGAL ANALYSIS

Petitioner argued from facts presented that it has clearly established by a preponderance of the credible evidence that respondent has been convicted of a statutory disqualifier, murder in the first degree, a violation of N.J.S.A. 2C:11-3, under Section 86c(1). Additionally, petitioner argues that it has demonstrated by a preponderance of the credible evidence under Section 86g, violations of N.J.S.A. 2C:39-5(b), possession of a handgun without a permit, and N.J.S.A. 2C:39-4, possession of a weapon for an unlawful

purpose, even though unprosecuted. Further, petitioner argues that respondent's conduct is inimical to the policy of the Act and to casino operations, pursuant to the provisions of Section 86c(4).

Respondent argues that the circumstances surrounding the conviction and related offenses were situational. Respondent contends that the incident of June 1, 1981, is the only time he has been involved in the criminal justice system and since that time he has conducted his life in an orderly and lawful manner. Further, respondent argues that he has established his rehabilitation as to the statutory disqualifier by clear and convincing evidence, offering his return to employment at the Sands and the testimony of his supervisors and coworkers as a demonstration of the same, pursuant to Section 91d of the Act. Additionally, respondent argues that his conduct does not indicate that his continued registration would be inimical to the policy of the Act and to casino operations.

Petitioner has offered into evidence a certified judgment of conviction indicating respondent's conviction of the first-degree crime of murder. Respondent has offered testimony suggesting self-defense by way of mitigation. Nevertheless, respondent pled guilty to the first-degree crime and received a ten-year sentence thereon with a minimum parole eligibility of 40 months. Clearly, the Division has met its burden by a preponderance of the credible evidence that respondent has committed a statutory disqualifying offense, and I so FIND.

Additionally, I FIND by a preponderance of the credible evidence that respondent committed offenses of possession of handgun without a permit and possession of a weapon for an unlawful purpose.

The next issue for determination is whether or not respondent has established by clear and convincing evidence his rehabilitation with respect to the statutory disqualifying offense. Under the facts as found, respondent commenced employment with the casino industry as a casino hotel employee registrant in the 1970's. In 1979, he worked for the Sands Casino Hotel. In 1981, he shot and killed Agee Willis and received a sentence of ten years, serving 40 months before being paroled in April 1985. Thereafter, he returned to his employment at the Sands and since that time has been promoted to the position of heavy porter. At the time of the shooting, respondent was 26 years old; he is now 31 years of age. All witnesses who testified on his behalf were complimentary regarding his honesty, work effort and ability to get along with coworkers.

In contrast to what must be described as a positive effort on his behalf, respondent has just recently been paroled, has offered no evidence regarding his conduct in the institution, except to say that he was paroled at the minimum time, and is presently meeting all conditions of parole. His parole will continue through 1988. Also, respondent admitted possessing a weapon illegally. It was the availability and use of that weapon which resulted in the death of Agee Willis.

Weighing all of the factors to be considered to determine rehabilitation, I **FIND** and, therefore, **CONCLUDE** that respondent has not met his burden by clear and convincing evidence for the reasons that respondent pleaded guilty to first-degree murder, notwithstanding his testimony in the instant matter. He has been on parole for approximately one year and has at least two years remaining. Although respondent is to be commended for his employment record and is well-regarded by supervisors and coworkers, work in itself is not sufficient to establish rehabilitation.

ORDER

It is, therefore, **ORDERED** that respondent's casino hotel employee registration no. 2729-40 be and is hereby **REVOKED** for the reasons stated.

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

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

April 9, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

4/10/86  
DATE

Patricia Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 14 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

P-1 Certified copy of Indictment and Certified copy of Conviction

**FOR THE RESPONDENT:**

None

**WITNESSES**

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

Debra Mendez  
Herman Narcisso  
Mary Dayton  
Beverly Howard  
Dwight Lewis  
Beverly Scull  
Frank Matos  
Domingo Mendez, Jr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-69  
OAL DOCKET NO. CCC 0944-85  
LICENSE NO. 44403-21

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

FINAL ORDER

Complainant,

v.

JOANN MERCURIO,

Respondent.

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A hearing in this matter having been conducted in the Office of Administrative Law (OAL); and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 7, 1985,

IT IS on this 8<sup>th</sup> day of APRIL 1986, ORDERED that the initial decision is modified as follows:

1. The reference to section 86(d) at page two of the initial decision should read N.J.S.A. 5:12-86(c)(4).
2. The Commission further finds the respondent disqualified pursuant to sections 86(c)(4) and (g), due to her admitted possession of marijuana on casino premises on February 10, 1984.
3. The Commission finds the respondent disqualified pursuant to sections 86(c)(3) and (g), by reason of her admitted possession of controlled dangerous substance (marijuana) with intent to distribute on February 10, 1984.

IT IS FURTHER ORDERED that the casino employee license of Joann Mercurio is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Joann Mercurio, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 944-85

AGENCY DKT. NO. 84-69

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

Petitioner,

v.

**JOANNE MERCURIO,**

Respondent.

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**Glenn Stanton, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Joanne Mercurio, respondent pro se**

Record Closed: May 31, 1985

Decided: June 28, 1985

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

The Division of Gaming Enforcement (the Division) filed a complaint with the Casino Control Commission (Commission) on March 13, 1984 seeking the revocation of Joanne Mercurio's casino employee license because of Ms. Mercurio's arrest on a charge of possession of marijuana, a controlled dangerous substance. Ms. Mercurio requested a hearing on the proposed revocation. At her request, the matter was delayed pending disposition of the criminal charges against her, which were disposed of by a guilty plea and the grant of a six-month conditional discharge in the Atlantic City Municipal Court on April 1, 1984. On November 5, 1984, Ms. Mercurio requested that the pending hearing

request be activated 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 on March 14, 1985 and a prehearing order was issued on March 20, 1985. Thereafter, a hearing was held on May 31, 1985 at the Dover Township Municipal Court, Toms River before Administrative Law Judge Jeff S. Masin.

The prehearing order establishes the issues for consideration in the hearing. Specifically, the Division contends that Ms. Mercurio's involvement in the incident of possession of marijuana under 25 grams on the premises of the Tropicana Casino/Hotel constitutes a circumstance indicating that her continued licensure would be inimical to the policies of the Casino Control Act and the interest of the casino industry, thus requiring revocation of her license pursuant to N.J.S.A. 5:12-86(d). In addition, the Division argues that this incident indicates that Ms. Mercurio cannot demonstrate the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90(b), incorporating 5:12-89(b). The Division also argues that although Ms. Mercurio was granted a conditional discharge, the conduct in which she engaged, had it been prosecuted, would have resulted in a finding of guilt and would have been grounds for disqualification under N.J.S.A. 5:12-86(c). N.J.S.A. 5:12-86(g). Finally, the respondent contends that she has rehabilitated herself from the adverse effects of her involvement in the above-noted marijuana incident and therefore may retain her license, pursuant to N.J.S.A. 5:12-90(h).

#### THE EVIDENCE

The Division's direct case against Ms. Mercurio consisted solely of documentary evidence in the form of the Atlantic City Municipal Court complaint charging her with possession of marijuana under 25 grams on February 10, 1984 in the Tropicana Casino/Hotel, in violation of N.J.S.A. 24:21-20a4. The Division also presented the New Jersey State Police investigation report which disclosed that Detective Thorpe and Agent Bloom of the Division of Gaming Enforcement were detailed to the Tropicana Hotel on February 10, 1984 to investigate a report of two employees possessing controlled dangerous substances. At the hotel, the police encountered security officers who had discovered Ms. Mercurio and another employee in the first floor dealers' lockerroom with the suspected drugs. Security officer Parker had detected an odor of marijuana in the

lockerroom and upon checking the area found one employee named Donna Columella sitting on a bench between rows of lockers inhaling a white powder through a drinking straw which was up her nose. The second employee, Ms. Mercurio, was also seated on the bench. In front of her was a clear plastic bag containing green vegetation and a hand-rolled cigarette, as well as another hand-rolled cigarette which was burning. Mercurio identified the green vegetation as belonging to her. Columella denied any knowledge of the marijuana, or the white substance which had been in front of her. The suspected drugs were seized and the ladies taken into custody.

When interviewed by the police, Mercurio admitted that all the marijuana was hers and that she had just completed hand-rolling one cigarette and was smoking the other. She denied observing Columella with the white powder or the straw.

The drugs seized were examined by the New Jersey State Police laboratory and the green vegetation seized in front of Mercurio was determined to be marijuana. The drugs seized from in front of Columella were found to be methamphetamine. The amount of marijuana was 5.21 grams.

Ms. Mercurio testified that she had purchased the marijuana a couple of days before her arrest and that she had not bought the marijuana at the casino/hotel. She had put the marijuana in her pocketbook and had gone to work on February 10 without realizing it was there. She claimed that Donna asked her if she had any and Mercurio said "okay" and was in the process of rolling a cigarette to give to Donna. Mercurio was scheduled to start her shift in about one hour.

Ms. Mercurio was not charged with possession of the methamphetamine and denied that she had anything to do with it.

The respondent was 23 years old at the time of her arrest. She had been employed as a blackjack dealer at the Tropicana for ten months and this employment was her first in the casino industry. She lives in Toms River with her parents and has no dependents. After her termination from the Tropicana at the time of the arrest she worked in a pizza parlor for several months and quit because she did not get along with the new management. Since then she has not worked and is hopeful of returning to work in the casino industry.

Ms. Mercurio was granted a conditional discharge by the Atlantic City Municipal Court. She successfully completed the discharge in October 1984 and her supervision was at that time terminated.

Ms. Mercurio explained that she hoped to retain her license as she enjoyed working as a dealer and felt that she was a good one. She also denied that she had ever used drugs while actually working.

#### DISCUSSION

From the testimony and the documentary evidence, I **FIND** the following to be uncontested facts.

1. Joanne Mercurio, a 23-year-old blackjack dealer at the Tropicana Casino/Hotel was arrested on February 10, 1984 for possession of under 25 grams of marijuana. This marijuana was seized at the time of her arrest in the employee lockerroom.
2. Ms. Mercurio was charged with possession of the marijuana and was granted a conditional discharge by the Atlantic City Municipal Court. She successfully completed her supervised period and the conditional discharge was terminated in October 1984.
3. Ms. Mercurio was not charged with possession of the methamphetamine which had been possessed and used by Ms. Columella. There is no evidence to clearly demonstrate that Ms. Mercurio had an involvement with the methamphetamine although it appears that she was present at the time that Ms. Columella was using it. I find no evidence, however, that Mercurio intended to exercise any possession or control over the methamphetamine and therefore do not find any evidence that she is guilty of any charge in connection with that drug.
4. At the time of her arrest, Ms. Mercurio was hand-rolling a marijuana cigarette which she intended to give to Ms. Columella. Such a transfer would have constituted a distribution of the marijuana in violation of N.J.S.A. 24:21-19.

Ms. Mercurio has readily admitted that she both possessed the marijuana and intended to give some to her fellow employee. Thus, despite the fact that she was granted a conditional discharge and that there is presently no disorderly person's conviction against her, it is evident that she was guilty of both the possession under 25 grams charge and also of possession with intent to distribute.

I **FIND** that Ms. Mercurio's continued licensure would be inimical to the policies of the Casino Control Act and the best interest of the casino industry. While the term "inimical" is not defined in the Act itself, it has been stated that what is inimical is what would not be in the best interests of the industry because it would tend to bring the industry into discredit in the public eye and to lessen confidence in the integrity of the regulatory system. Since employment in the casino industry is a privilege granted in connection with the establishment of a legal system of gambling within this State, the standards to be applied to those seeking or holding licenses are strict and rightfully so. In connection with an employee who admittedly possessed marijuana on the premises of a casino/hotel, in an employee area, and who admittedly was about to distribute marijuana to another employee, it is not too difficult to conclude that such an employee's actions are so inappropriate and out of line with what is expected of a licensed employee as to indicate that continued licensure would be inimical.

I **FIND** that the respondent's actions were such as to establish that she does not have the requisite good character, honesty and integrity required for continued licensure. The use of an illegal substance in and of itself demonstrates a willingness to violate the law which bespeaks a lack of honesty and law abiding tendencies. Further, that the employee was willing to engage in this conduct at her workplace even further damages her good character. I **CONCLUDE** that she has therefore failed to establish the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90(b).

Finally, I **CONCLUDE** that the actions of the respondent, had they been prosecuted, would have likely resulted in her conviction of both possession of marijuana under 25 grams and, had the authorities chosen to prosecute her, for possession with intent to distribute marijuana. While the amount involved was admittedly quite small, she was nevertheless clearly guilty of the offenses. Pursuant to N.J.S.A. 5:12-86(g) the Division is entitled to establish the guilt of one who has not been prosecuted upon a series

of facts demonstrating a violation of law and, where the offense involved is one which constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86(c), the Commission then may deny licensure. Possession of marijuana with intent to distribute is a high misdemeanor, N.J.S.A. 24:21-19b3, and N.J.S.A. 5:12-86c(3) provides for denial of licensure where one has committed such an offense.

Ms. Mercurio has failed to demonstrate that she has rehabilitated herself from the adverse effects of the marijuana incident. Although she has not been in any trouble since the time of the incident and has successfully completed her term of conditional discharge, I do not believe that sufficient time has yet passed to allow for a finding of rehabilitation by clear and convincing evidence. While the offense involved marijuana, a substance perhaps not as troublesome as the "harder" narcotics, because the offense occurred on the premises of a licensed facility by one holding a casino license and because she engaged in her conduct shortly before she was to begin her work, the offense takes on a more serious connotation. If rehabilitation is to be established, some real indication of progress and change must be shown. In Ms. Mercurio's case, while she has avoided any trouble since the incident, I believe it is too early to declare her rehabilitated. In addition, rehabilitation is not technically available where continued licensure would be inimical. As I have concluded that Ms. Mercurio's conduct of possession of marijuana was particularly inappropriate in view of the location where the incident occurred, I cannot find that the rehabilitation section should be applied to permit her to return to the industry.

While the results of this decision are severe and while the judge has some sympathy for the plight of a relatively young individual who may have only been experimentally involved with marijuana, the overwhelming interest of the State of New Jersey and its citizens in attempting the difficult task of removing drugs from the sensitive casino industry demands that strict measures be applied to those who engage in illegal possession, use and/or distribution of any controlled dangerous substances in the casino/hotel premises. Thus, the treatment of Ms. Mercurio in this case, harsh as it is, appears to be a necessary occurrence if the proper signal is to be given to those in the industry of the extreme consequences which they may face if they engage in these types of illegal conduct. While the circumstances and considerations might differ where the offenses involved took place outside the area of the casinos and hotels, under the facts of this case, the result is fully warranted.

For the reasons expressed, I **CONCLUDE** that the continued licensure of Ms. Mercurio would be inimical to the policies of the Casino Control Act, that she has failed to establish that she has the good character, honesty and integrity required for licensure and further that she engaged in actions which, had they been prosecuted, would have required denial of her license pursuant to N.J.S.A. 5:12-86.(c). Therefore, I **FIND** that the application for revocation of her license should be **GRANTED**.

It is **ORDERED** that Ms. Mercurio's casino employee license be **REVOKED**.

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

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

DATE

June 28, 1985

JEFF S. MASIN, ALJ

Jeff S. Masin

Receipt Acknowledged:

DATE

July 1, 1985

CASINO CONTROL COMMISSION

Paul Weiss

Mailed to Parties:

DATE

July 3, 1985

OFFICE OF ADMINISTRATIVE LAW

Ronald J. Parker R.S.

ij

EXHIBITS

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-33  
OAL DOCKET NO. CCC 7051-85  
REGISTRATION NO. 47879-40

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

FINAL ORDER

Complainant, :

V. :

BRUCE D. MILLER, :

Respondent. :

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A hearing in this matter having been held before the of the Office of Administrative Law; and the initial decision the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 4, 1986,

IT IS on this 12<sup>th</sup> day of JUNE 1986, ORDERED that the initial decision is affirmed;

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

IT IS FURTHER ORDERED that Bruce D. Miller is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, pursuant to N.J.A.

19:41-8.8(a), unless Bruce D. Miller 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 Bruce D. Miller, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7051-85

AGENCY DKT. NO. 84-33

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

Petitioner,

v.

**BRUCE D. MILLER,**

Respondent.

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**Joanne Cocchiola**, Deputy Attorney General, for petitioner, (W. Cary Edwards, Attorney General of New Jersey, attorney; Andrew Kusnirik, Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference)

**Bruce D. Miller**, respondent, pro se

Record Closed: March 4, 1986

Decided: April 18, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleged that Bruce D. Miller, respondent, had committed criminal misconduct which was inimical to the policies of the Casino Control Act (Act), pursuant to sections 86c(4) and 86g, for which the Division seeks revocation of his casino hotel employee registration, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on February 10, 1984. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed with the Commission on October 28, 1985, the respondent requested a hearing. On November 6, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 13, 1985. The matter was heard on March 4, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Miller is 30 years of age. He currently resides in Ventnor, New Jersey. Since 1983 the respondent has been the holder of casino hotel employee registration no. 4879-40.

For approximately a six-month period in 1983, the respondent was employed by the then Playboy Hotel Casino (Playboy) in the housekeeping department. The circumstances under which the respondent left this position were in dispute. The respondent claimed that he resigned by reason of unfavorable treatment due to his union activities.

In January 1984, the respondent was employed by Bally's Park Place Casino Hotel (Park Place) for a three-week period as a parking lot attendant. The respondent was terminated by reason of his inability to work because of an injury incurred in a motorcycle accident.

The respondent currently operates a hot dog cart. Otherwise, the respondent has been unemployed and has performed odd jobs.

The respondent is currently behind in his rent and has received some financial assistance from his mother.

On March 27, 1979, the respondent was arrested in New York City, New York, and was charged with criminal mischief, theft of service, possession of marijuana and disorderly conduct (P-4). On March 28, 1979, the respondent was convicted of the charge. The respondent testified that he was in the U.S. Navy at the time of this incident, which he believed occurred in New Jersey. The respondent was fined \$400 and was restricted to his ship for a period of 45 days. Nevertheless, the respondent stated that the marijuana was not his.

On October 26, 1979, the respondent was arrested by the New Jersey State Police and was charged with possession of a controlled dangerous substance, marijuana, under 25 grams. There is no record of the disposition of this charge. The respondent testified that he was the driver of a military van and that the marijuana was not his.

On February 10, 1982, the respondent was arrested by the Philadelphia Police Department and was charged with aggravated assault, simple assault and reckless endangering of another person with a motor vehicle on January 23, 1982 (P-2 and P-4). On July 3, 1982, the respondent was found guilty and was sentenced to one-year probation, which was nonreporting (P-3). The respondent denied the commission of any offense.

On January 22, 1984, the respondent was involved in an incident at the Tropicana Hotel and Casino (Tropicana), which led to the subject action. He was not employed at that time. The respondent had visited his parents in Philadelphia, Pennsylvania, and had returned to Atlantic City on a junket bus to the Playboy. Essentially, the respondent received a free return trip to Atlantic City together with a casino package. The respondent had in his possession his savings of \$200 to \$300.

The incident occurred at Table 57 in Pit 9 of the casino at the Tropicana, a blackjack table. This is an end table along the main aisle in the casino (P-1). Approximately five patrons were at the table. Jeffrey Waters, a floorperson, observed a patron, Harold Harrington, go into his pants' pocket for a chip in preparation for making a bet. The chip dropped to the floor, at which time Mr. Harrington expressed verbally that he had dropped a chip. However, Mr. Waters did not see the type of chip dropped, nor where it went. Mr. Harrington and the other patrons at the table looked for the chip. At the same time, the respondent appeared in the aisle and picked up a chip. Another patron from the table grabbed the respondent by the arm and stated that the chip belonged to Mr. Harrington. The respondent claimed that the chip was his. A minor shoving incident

ensued. No other person claimed the chip. Following the scuffle, the respondent, with the chip, left the casino through an exit adjacent to the slot machines and proceeded into the hotel.

When the scuffle began, Mr. Waters instructed the pit boss to call security. Ronald Pisco, a security sergeant with the Tropicana, received a call from the command post on the casino floor concerning a fight in Pit 9. Sgt. Pisco went to the table and spoke with Mr. Harrington, who stated that a \$100 chip was taken by another person. Sgt. Pisco assumed the chip was a Tropicana chip. The sergeant also conferred with the other patron involved in the scuffle, who described the individual who took the chip as a male with a heavy beard and wearing a green army jacket. Sgt. Pisco called out the description on his radio. A person fitting that description was observed by security cameras on the boardwalk. Sgt. Pisco and two officers pursued the person, who was stopped approximately two blocks from the Tropicana. The person stopped was the respondent.

A search of the respondent revealed that he had a \$100 Playboy chip in his possession. Sgt. Pisco called back to the pit on his radio and inquired concerning the type of chip taken. The response was that the chip taken was a \$100 Playboy chip. The respondent then stated that he found the chip, but did not say where.

The Atlantic City Police Department escorted the respondent back to the Tropicana. There the respondent was identified by Mr. Harrington as the person who took the chip, and Mr. Harrington signed a complaint.

Although Mr. Miller testified that he wondered why he was apprehended, he further testified that he assumed the reason involved the altercation on the casino floor.

The chip was returned to Mr. Harrington.

The respondent was arrested and was charged with a violation of N.J.S.A. 2C:20-3, theft (P-9). The respondent appeared in the Atlantic City Municipal Court on March 14, 1984, when, by reason of Mr. Harrington's failure to appear, charges were dismissed.

Thereafter and on March 27, 1984, the respondent filed a complaint in the Atlantic County District Court against the Division and others, in which he sought the value of the chip allegedly confiscated (P-5 and P-6). The Division filed an answer in which it denied the charge.

On July 18, 1984, the Division moved for summary judgment against the respondent for failure to state a cause of action (P-7). On September 5, 1984, and absent any response to the motion, the court entered an order granting summary judgment and dismissing the complaint (P-8). The respondent testified that he did not pursue the matter because it was too costly.

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

**(B) DISPUTED FACTS**

There was no dispute that the respondent picked up a \$100 Playboy gaming chip in the aisle and in close proximity to Table 57. At issue is whether the chip belonged to Mr. Harrington or the respondent.

The respondent testified that he had acquired a \$100 Playboy chip at the conclusion of his gambling activities at the Playboy earlier in the evening. Thereafter, and during his walk through the Tropicana Casino, he dropped the chip on the floor and retrieved it. This was when the altercation occurred. The respondent also testified that the chip was found in his pocket. The respondent's testimony is entirely consistent with the statement he attached to his complaint filed in the district court (P-6).

The Division offered a statement signed by Mr. Harrington on the night of the incident, in which the respondent was identified as the person who picked up Mr. Harrington's chip (P-9). Mr. Harrington also signed a complaint against the respondent. Further, Mr. Harrington and another patron at the table, who were in position to observe the chip, made statements contemporaneous with the respondent's actions; statements which clearly indicate that the respondent was observed picking up Mr. Harrington's chip. This evidence is reinforced by the fact that the chip found on the respondent was accurately identified by Mr. Harrington despite the lack of opportunity to

closely observe the chip on the casino floor. In addition, the testimonies of Messrs. Waters and Pisco were consistent in their entirety with statements they had made in reports prepared on the night of the incident and in affidavits attached to the Division's motion to dismiss (P-7 and P-9). There was no motive for the witnesses to testify untruthfully. Their testimonies were persuasive in all regards.

The resolution of the dispute in this matter is difficult because the Division's proofs consist primarily of hearsay-type evidence; together with eyewitness testimony, which did not include the direct observation of the chip in question. This evidence was rebutted by the respondent who was a participant in the incident. In essence, the entire outcome of this matter rests substantially upon an assessment of the respondent's credibility.

Initially, Mr. Miller's position in this matter must be recognized. He is the holder of a casino hotel employee registration and is the respondent, and, as such, has a direct interest in the outcome and a bias in these proceedings. The respondent's testimony was consistent in all regards with his prior statements concerning the incident. However, the circumstances under which the respondent claims to have come into possession of the chip were vague and were in direct conflict with the believable evidence presented by the Division. Of primary concern is that respondent gave no explanation of how he dropped a chip on the floor. It is a rather amazing coincidence that the respondent would have dropped a chip which was identical with one dropped by a patron of the Tropicana Casino. Further, the respondent's version of the events which occurred as he left the casino; i.e., walked out, went to the men's room, walked along the boardwalk and had the chip taken from his pocket, does not coincide at all with the version presented by the Division's witnesses, which was detailed and corroborated by statements of other persons who participated in the investigation. Accordingly, I am persuaded that the respondent's exculpatory testimony was not worthy of belief.

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

1. The respondent's exculpatory testimony concerning the incident, although consistent with his prior statements, was not worthy of belief.
2. The evidence presented by the Division was credible and persuasive.

3. The chip picked up by the respondent on the casino floor in the Tropicana belonged to Mr. Harrington, not the respondent.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Miller's alleged violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c(4) per section 86g, and that, accordingly, his registration should be revoked.

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

Section 86g provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(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 No. 79-CL-1, (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at 15:

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

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

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div., July 11, 1985, A993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17) the Appellate Division held that inimical means "adverse to the policy of the act and gaming operation," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3; theft, which under the circumstances renders continued registration to be inimical to the Act.

N.J.S.A. 2C:20-3a defines the crime of theft as follows:

A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

This statute preserves the elements of larceny as defined at common law. State v. Combariati, 186 N.J. Super. 375 (Law Div. 1982), aff'd 192 N.J. Super. 131 (App. Div. 1983).

The first element of theft is the "wrongful or fraudulent taking and carrying away." State v. Leicht, 124 N.J. Super. 127, 131 (App. Div. 1973). It is well settled that if one takes the goods of another out of the place where they were put, though he is detected before they are carried away, the larceny was complete. State v. Wilson, 1 N.J.L. 502 (Sup. Ct. 1793).

The second element is that there be a taking of property of another. State v. D'Agostino, 176 N.J. Super. 49 (App. Div. 1980). Initially, it is not an element of larceny that the defendant knows that he is taking another's property. The only time that knowledge is relevant is where the defendant raises the affirmative defense of a claim of right and offers evidence that he was unaware that the property belonged to another. At this point the State must prove that the defendant knew that the property belonged to another, and did not belong to him. Combariati, at 379.

The third element is that the property be taken "without the consent of the owner." Leicht, at 133. As a result, larceny is not committed where property is taken "with the full knowledge and consent of the owner or his authorized servant or agent, however guilty may be the taker's intent." State v. Green, 170 N.J. Super. 292, 295 (App. Div. 1979).

The fourth element is that the defendant take "with a fraudulent intent to deprive the owner of his property." Leicht, at 131. Larceny has not been committed where the taker intends to return the property to the owner. Further, if the taker has valid title to the property while the holder merely has possession, the taker does not have the "intent to deprive" but merely the lawful intent to obtain that which is rightfully his. Id. at 133.

It was established that the respondent knowingly took the gaming chip of another. The removal of the chip from the casino establishes an attempt to deprive the owner of his property. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3a.

The remaining issue is whether the conduct is inimical to the Act. The circumstances underlying the incident establish that the respondent committed a simple theft. The respondent's exculpatory testimony was not persuasive. Although the

misconduct was committed by a registrant and in a casino, it did not occur during the course of licensed employment. Nevertheless, the respondent knew that he was committing an illegal act. Further, a registrant has a greater duty, and should have a higher degree of sensitivity, to illegal conduct committed in a casino. This misconduct is related directly to the operations of the casino and would unquestionably undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact upon the public perception of the integrity of the casino industry.

Although the respondent's previous misconduct otherwise preceded the incident and registration, the nature of the incident together with his criminal record history and his employment record within the industry, do not support continued registration.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

**(B) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino hotel employee registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;
- d. the prior history of the particular licensee involved with respect to gaming activity;

- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring;

There can be no doubt that the commission of a theft offense by a registrant and in a casino, although not within the scope of his official duties, creates a substantial risk to the public confidence in the casino industry and the perceived integrity of gaming operations. The seriousness of the respondent's conduct is established by his knowledge that he acted illegally and has otherwise not been mitigated. Under such circumstances, the respondent's registration must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the casino hotel employee registration (No. 4879-40) held by Bruce D. Miller be **REVOKED**.

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

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

April 18, 1986  
DATE

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

Receipt Acknowledged:

April 22, 1986  
DATE

M. Boczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 23 1986  
DATE

Donald J. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS INTO EVIDENCE

- P-1 Diagram
- P-2 Philadelphia Police Department - Investigation Report, February 8, 1982; Arrest Report, Bruce Miller, February 22, 1982; Commonwealth of Pennsylvania v. Bruce Miller, Complaint, No. 82-2-2756, February 10, 1982; Affidavit of Probable Cause for Arrest Warrant, February 10, 1982; Investigation Report, February 10, 1982 (10 pages)
- P-3 City of Philadelphia, Police Department - Extract of Criminal Record, Bruce Miller
- P-4 United States Department of Justice, Federal Bureau of Investigation, Identification Division - Rap Sheet, Bruce Miller (2 pages)
- P-5 Bruce D. Miller v. Division of Gaming Enforcement and Casino Control Commission, Superior Court of New Jersey, Law Division/Special Civil Part, Atlantic County District Court, Docket No. C84-1616, Complaint (2 pages)
- P-6 Affidavit of Bruce D. Miller, August 13, 1984
- P-7 Miller v. Division of Gaming Enforcement, Superior Court of New Jersey, Law Division - Special Civil Part, Atlantic County District Court, Docket No. C84-1616, Notice of Motion to Dismiss, filed by the Division of Gaming Enforcement on July 11, 1984 (12 pages)
- P-8 Miller v. Division of Gaming Enforcement, Superior Court of New Jersey, Law Division - Special Civil Part, Atlantic County District Court, Docket No. C84-1616, Order Dismissing Complaint and Granting Summary Judgment, September 5, 1984 (2 pages)
- P-9 New Jersey State Police, Casino Investigation Bureau, Investigation Report, prepared by Agent John E. McLaughlin, January 22, 1984; Supplementary Investigation Report, prepared by Agent John E. McLaughlin, May 12, 1984; Supplementary Investigation Report, prepared by Agent John E. McLaughlin, October 16, 1984; Arrest Report, Bruce David Miller, prepared by Agent John McLaughlin, January 22, 1984; State of New Jersey v. Bruce David Miller, Atlantic County Municipal Court, Complaint, January 22, 1984, together with attachments (8 pages)
- P-10 State of New Jersey v. Bruce David Miller, Atlantic City Municipal Court, Docket No. C-785, Order of Dismissal, March 14, 1984

WITNESSES

For the petitioner:

Bruce D. Miller

Ronald Pisko

Jeffrey Waters

For the respondent:

Bruce D. Miller

Ronald Pisko

Jeffrey Waters

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-172  
OAL DOCKET NO. CCC 7126-85  
APPLICATION NO. 52876-22

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APPLICATION OF JOSE A. MILLET : AMENDED  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 30, 1986,

IT IS on this 13<sup>th</sup> day of May 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) The respondent failed to establish by clear and convincing evidence that he possesses the requisite degree of good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the application of Jose A. Millet for a casino employee license be denied based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Jose A. Millet is prohibited from applying for any license, qualification or

approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this action shall not prevent Jose A. Millet from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that this amended order supersedes the Commission order in this matter dated May 7, 1986; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jose A. Millet, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7126-85

AGENCY DKT. NO. 85-EA-172

**JOSE A. MILLET,**  
Petitioner,

v.

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

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**Julio L. Mendez, Esq.,** for the petitioner (Velez & Mendez, P.A., attorneys)

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

Record Closed: February 3, 1986

Decided: March 6, 1986

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

**STATEMENT OF THE CASE**

Jose A. Millet, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the petitioner had failed to disclose information material to licensure, i.e., his criminal record history, and, therefore, lacked the requisite good character, honesty and integrity. N.J.S.A. 5:12-86b and 89b(2). The essential issue concerns the reasons for the petitioner's failure to disclose his criminal record history.

PROCEDURAL HISTORY

Mr. Millet filed his Personal History Disclosure Form 2A (PHDF-2A) with the Commission on March 15, 1984 (R-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated September 13, 1985, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on October 22, 1985, the applicant requested a hearing. On November 8, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 13, 1985. The matter was heard and the record closed on February 3, 1986.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Millet is 29 years of age. He was born in Puerto Rico. In 1968 his family immigrated to Vineland, New Jersey, where he has since resided.

The petitioner was enrolled in a special English class at Vineland High School. He left school during his junior year in order to help his mother support the family. The petitioner had intended to go to college. The petitioner reads and writes well in Spanish. In addition, he speaks English well; however, he does not read or write English well.

From August 20, 1984 until October 2, 1985, the petitioner was employed by Bally's Park Place Casino Hotel (Park Place) and cleaned escalators. He held and continues to hold a casino hotel employee registration, which is not the subject of this action. The petitioner also held a temporary casino employee license and was employed in the casino. However, he was released from this position by reason of the Division's objections to licensure (P-1, P-2 and P-3).

On March 15, 1984, the petitioner filed his PHDF-2A with the Commission (R-1).

The petitioner testified that he was assisted by an aunt in the completion of his PHDF-2A. His aunt, who is employed at a licensed casino, has a better understanding of English than the petitioner.

In response to question number 16 of his PHDF-2A, the petitioner did not disclose his criminal record history (R-1). More specifically, the petitioner did not disclose his arrest on August 3, 1979, by the Vineland Police Department, and a charge of a violation of N.J.S.A. 2C:33-2, a disorderly persons' offense. On August 13, 1979, the applicant was found guilty and was fined \$25 and \$25 costs. Mr. Millet described the circumstances underlying this incident. He and other persons were drinking alcoholic beverages in a bar when they observed police officers. Subsequently, everyone departed hastily from the bar. During his flight, the petitioner threw a beer bottle onto the grass, which rolled and broke on the ground. He was found guilty in municipal court and was ordered to clean up the broken beer bottle, which he did. The petitioner also did not disclose his arrest on August 14, 1981, by the Vineland Police Department, and charges of violations of N.J.S.A. 2C:12-1b(5), aggravated assault on a police officer; N.J.S.A. 2C:21-1a(1), simple assault; and N.J.S.A. 2C:29-2, resisting arrest. On September 15, 1981, the petitioner was indicted by a Cumberland County Grand Jury on two counts of aggravated assault, two counts of resisting arrest and two counts of making terroristic threats (R-3). On March 11, 1982, and after a trial on the indictment, the petitioner was found not guilty by Judge Kleiner. Nevertheless, the petitioner testified that his aunt was aware of one of his arrests. The reasons for these nondisclosures were in dispute and will be discussed, infra. Also in dispute was whether the petitioner failed to disclose his criminal record history to a Division investigator during a telephonic interview.

For the past five years, the petitioner has been a member of the New Jersey National Guard. He currently holds the rank of Specialist E-4, and he works as a mechanic and motor carrier.

The petitioner has not committed any other violations of the criminal laws.

For the past three months the petitioner has been employed as a laborer for a lumber company in Vineland.

The petitioner desires licensure in order to have an opportunity for enhanced employment.

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 petitioner's failure to disclose his criminal record history on PHDF-2A and whether he also failed to disclose his criminal record history to a Division agent during a telephonic interview.

The petitioner testified that he did not disclose the 1979 incident on his PHDF-2A because he did not believe that breaking a bottle constituted a crime and, also, because he did not recall the incident at the time he completed the application form. In addition, the petitioner testified that he did not disclose the 1981 incident because question number 16 referred to convictions and, since he had been found not guilty, he did not believe it was necessary to disclose the incident. Mr. Millet also denied that he had ever been interviewed telephonically by a Division agent. Rather, the applicant recounted an employment interview, which occurred apparently at Park Place.

The Division produced Revalle Brody, an agent with the Division since October 1983. Prior to her employment with the Division, the agent was employed by the Somerset County Prosecutor's Office in criminal investigations for a period of two years. Agent Brody testified that on May 2, 1985, she conducted a telephonic interview with the petitioner. This interview was conducted in English, and the petitioner did not require the assistance of a translator, nor did he request one. Also, the agent had no difficulty in communicating with the petitioner. During the course of the interview, the agent read question number 16 to the petitioner, who indicated that he understood and acknowledged the question. The petitioner stated that he had been arrested on a charge of driving while under the influence of intoxicating beverages, but disclosed neither the 1979 nor the 1981 incident. However, upon being confronted by the agent with detailed information of both incidents, the petitioner admitted his involvement therein. The petitioner stated that he had forgotten about the 1979 incident, and he did not disclose the 1981 incident because of his fear of being characterized as a criminal despite his having been found not guilty.

I am persuaded that agent Brody conducted a telephonic interview of the applicant. The agent had no motive whatsoever to fictionalize such an event. The fact

that the petitioner may not recall the interview does not mean that it did not occur. Accordingly, I am also persuaded to accept the agent's description of the interview.

The petitioner's explanations for his failure to disclose on the PHDF-2A are not persuasive. More specifically, his explanation that he did not believe the 1979 incident constituted a crime is inconsistent with the events that transpired. Further, his explanation is not consistent with his testimony that he did not recall the incident at the time he completed his application form. Given the fact that the incident constitutes the only conviction on the petitioner's record, it is a significant event in his life, which would not have easily been forgotten. It is also apparent that if the petitioner were able to recall an arrest for driving while under the influence, he should have recalled the 1979 incident. Further, the petitioner's explanation for his nondisclosure of the 1981 incident on his PHDF-2A is not consistent with the explanation he gave to Agent Brody. Question 16 clearly requires that the incident be disclosed. Although I can sympathize with the petitioner's concern about being required to disclose criminal charges which resulted in a not guilty finding, the information was clearly requested, and it is not within the petitioner's discretion to choose not to disclose such information.

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

1. Agent Brody conducted a telephonic interview of the petitioner on May 2, 1985.
2. There was no difficulty in communications between the agent and the petitioner during the interview.
3. In response to a reading of question number 16, the petitioner failed to disclose either the 1979 or 1981 incidents.
4. The petitioner admitted his involvement in the incidents only upon being confronted with the details thereof.
5. The petitioner's explanations for his failures to disclose on both his PHDF-2A and during the telephonic interview were mutually inconsistent and are not persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification. Further, neither the severity of an offense nor a finding of not guilty can serve to mitigate the significance of a nondisclosure.

It is clear that the petitioner understood fully his obligation to disclose the 1979 and 1981 incidents on his PHDF-2A and in response to questions posed by Agent Brody; however, the petitioner did not. The petitioner's explanations of the reasons for his failures to disclose were unconvincing. The petitioner's reasons, particularly with regard to the 1981 incident, indicate that he made a conscious decision not to disclose. Therefore, the failures to disclose must serve to disqualify him from licensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner be disqualified from licensure by operation of section 86b.

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

Under section 89b(2) of the Act, Mr. Millet was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

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

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzales at 8. Therefore, the conclusion that Mr. Millet failed to disclose his criminal record history in violation of section 86b automatically precludes him from meeting his burden under section 89b(2). Further, an applicant's willingness to disclose fully his criminal record history is the most direct and reliable means of testing his good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he does, in fact, possess character, honesty and integrity.

I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2) of the Act.

#### DISPOSITION

It is **ORDERED** that the application of Jose A. Millet for licensure as a casino employee (maintenance and cleaning) be **DENIED**.

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

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

March 6, 1986  
DATE

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

Receipt Acknowledged:

March 7, 1986  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 11 1986  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Handwritten statement
- P-2 Letter to Julio Mendez, Esq., from Richard Tartaglio, October 24, 1985
- P-3 Letter to Julio Mendez, Esq., from Richard Tartaglio, October 10, 1985
- 
- R-1 Personal History Disclosure Form - 2A, Jose Antonio Millet, filed on March 15, 1984 (24 pages)
- R-2 City of Vineland Police Department-Crime Against Person Offense Report, Jose A. Millet, August 14, 1981; Supplementary Offense Report, August 15, 1981; Arrest Report, August 14, 1981 (7 pages)
- R-3 State of New Jersey v. Jose (Joe) Millet and Jose (Angel) Millet, New Jersey Superior Court, Cumberland County-Law Division (Criminal), Indictment Number 818-80, Indictment, filed September 15, 1981, (3 pages)

WITNESSES

For the petitioner:

Jose A. Millet

For the respondent:

Revalle Brody

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-153  
OAL DOCKET NO. CCC 2883-85  
REGISTRATION NO. 40077-40

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

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 18, 1986.

IT IS on this *20th* day of JUNE 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Grace P. Morgan is dismissed substantially based upon the reasons stated 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  
by served upon Grace P. Morgan, the Division of Gaming  
Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



6/20

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2883-85

AGENCY DKT. NO. 85-153

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**GRACE PATRICIA MORGAN,**

Respondent.

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

Grace Patricia Morgan, respondent, pro se

Record Closed: April 13, 1986

Decided: May 8, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on April 11, 1985, seeking to revoke the respondent's casino hotel employee registration based on respondent's alleged criminal activities. The respondent requested a hearing by letter dated April 26, 1985, and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. There was a telephone prehearing conference on February 18, 1986, and the matter was heard on April 3, 1986, in the Atlantic City Court House. The record was held open until April 13, 1986, in order to give the respondent an opportunity to supply letters of recommendation and rehabilitation.

The Division introduced into evidence the following documents:

Exhibit 1: Atlantic City, New Jersey Police Department Investigation Report, dated April 5, 1984, and Arrest Report

Exhibit 2: Atlantic County Indictment No. 0599-4-84-A

Exhibit 3: Judgment of Conviction and Order for Commitment, Sentence Work Sheet and statement of reasons

The documentary evidence produced by the Division and which the respondent concedes is correct reveals the following:

1. On April 5, 1984, at 1715 hours, Officer W. Nelson of the Vice Squad observed undercover Agent Hamer in the company of the respondent and Ernest Prather, both of whom were charged with violations of the controlled dangerous substances act. On May 4, 1984, the respondent turned herself in to the Atlantic City Police on an outstanding warrant (Evid. 1).
2. The respondent and Ernest Prather were indicted by the Atlantic County Grand Jury on three counts; conspiracy, distribution and possession of heroin on April 5, 1984 (Evid. 2).
3. The respondent pled guilty to the sale of heroin (Count 2) and on July 27, 1984, was sentenced to probation for a period of one year on the condition that she be incarcerated in the Atlantic County Jail for 90 days (credit of one day), fined \$250 plus \$25 to the Violent Crimes Compensation Board. The remaining counts were dismissed. Judge Arthur Guerrero, in his reasons for imposing a custodial sentence on this first offender, called "... [t]he distribution of C.D.S. ... a serious offense that undermines the fabric of our society ... " (Evid. 3).

Based on the conviction for a sale of heroin, I **CONCLUDE** that the respondent has been convicted of a crime enumerated in N.J.S.A. 5:12-86c(3) and is disqualified from registration pursuant to N.J.S.A. 5:12-91b.

Notwithstanding the provisions of section 91b, no revocation of the respondent's registration may occur if she affirmatively demonstrates her rehabilitation pursuant to section 91d of the act.

REHABILITATION CRITERIA

Based upon the testimony of the respondent, her demeanor and the absence of any rebuttal testimony or documentary evidence, I **FIND** the following facts:

4. The nature and duties of the registrant's position are to clean public areas in casino hotels [91d(1)].
5. The offense is a serious one which "undermines the fabric of our society." The respondent participated in the sale of heroin to an undercover police officer; i.e., a stranger to her [91d(2)].
6. The circumstances were that the respondent's paramour negotiated the sale of a \$20 bag of heroin with the undercover police officer. After the money changed hands, the paramour directed the respondent to obtain the heroin from a prearranged hiding place and deliver it to the agent. She did so [91d(3)].
7. The offense occurred on April 5, 1984 [91d(4)].
8. On the date of the offense, the respondent was 21 years old [91d(5)].
9. This was an isolated incident. It was the first time that the respondent had accompanied her paramour on his rounds as a drug dealer [91d(6)].
10. The respondent was unemployed at the time of the offense and had two children to support. She participated in the sale in order to earn a commission [91d(7)].
11. The respondent said that she has "paid her fine and done her time." She has never been involved in drugs either before this incident or afterward. She does not use drugs. She has been employed as a public area

attendant at the Trump Castle without incident since July 19, 1985. She cares for her two children, age five, and age six, during the day and leaves them with her mother at night when she reports for work. On the day of the hearing, the older child was in school and she was accompanied by her daughter, a polite and charming child. On Sundays, the family travels to Leesburg to visit the respondent's co-defendant and paramour, who was sentenced to 15 years with a minimum mandatory sentence of seven and one-half years. The respondent has satisfactorily completed her probation. The respondent failed to submit any documents in support of her rehabilitation although given additional time to do so. The Division supplied additional documentary evidence that the prearranged hiding place referred to in paragraph 6 above was her person [91d(8)].

#### DISPOSITION

I was moved at the hearing by the look of concern on the child's face when her mother began to cry on the witness stand. I was also favorably inclined toward the respondent by her child's demeanor throughout the hearing. She was polite, well cared for, and the relationship between the child and her mother was obviously a loving one. On the other hand, the sale of heroin is one of the most serious crimes facing our society today. It does, in fact, undermine the fabric of our society. The respondent indicated that she was Ernest Prather's "lady," that she knew he was a drug dealer and that she voluntarily went out on the street with him on this occasion in order to participate in the sale of heroin. Since there is no evidence that the respondent has a personal drug habit and she denies she uses drugs, there is no drug habit to be rehabilitated from. There is no testimony that this was other than a single, isolated incident for which the respondent has indeed "paid her fine and done her time." She has successfully completed her period of probation. She is fully employed and raising a family. She was young at the time the offense was committed. As a working mother of two children, she does not have the time to involve herself in continuing education or charitable works. I cannot imagine what other evidence of rehabilitation she could produce except the passage of a longer period of time without incident. Her crime had absolutely nothing to do with her casino hotel employment. She was unemployed at the time. The serious nature of this offense gives

me great concern, but based upon the evidence before me I CONCLUDE that the respondent has affirmatively demonstrated her rehabilitation and no further sanction should be imposed.

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

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

May 8 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

May 9, 1986  
DATE

Receipt Acknowledged:  
Al Zayas  
CASINO CONTROL COMMISSION

MAY 13 1986  
DATE

Mailed to Parties:  
Ronald J. Pa...  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESS LIST

For the petitioner:

None

For the respondent:

Grace Patricia Morgan

EXHIBIT LIST

See body of decision

Evidence 4 Supplementary Investigation report

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-197  
OAL DOCKET NO. CCC 0007-86  
LICENSE NO. 14621-21  
REGISTRATION NO. 03688-40

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APPLICATION OF ROBERT L. MURRAY, :  
JR. FOR RENEWAL OF HIS CASINO : FINAL ORDER  
EMPLOYEE LICENSE :

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A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 21, 1986,

IT IS on this *4<sup>th</sup>* day of June 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Robert L. Murray, Jr. for renewal of his casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Robert L. Murray, Jr., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

*Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL

613



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0007-86

AGENCY DKT. NO. 85-EA-197

**ROBERT L. MURRAY, JR.,**

Petitioner,

v.

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

Respondent.

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**Robert L. Murray, Jr., pro se**

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

Record Closed: March 24, 1986

Decided: April 4, 1986

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

Robert L. Murray, holder of a casino employee license with a position designation of slot electronic, applied to renew his license. On October 24, 1985, the Division of Gaming Enforcement advised the Casino Control Commission (Commission) that it recommended denial of the renewal. The recommendation was based on the allegation that Mr. Murray had been convicted of two counts of possession of a controlled dangerous substance with intent to distribute in 1983. The Division argued that such activity constituted statutory disqualifying offenses, pursuant to N.J.S.A. 5:12-86(c)3.

Mr. Murray requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on February 11, 1986, and on February 14, 1986 a prehearing order was issued establishing the issues for trial. Pursuant to the order, the issues were as follows:

- A. Has the petitioner committed a statutory disqualifying offense, therefore requiring his disqualification from licensure pursuant to N.J.S.A. 5:12-86(c)3?
- B. Does the petitioner have the requisite good character, honesty and integrity required for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89(b)2?
- C. Has the petitioner rehabilitated himself, pursuant to section 90(h) of the Act?

A hearing was held before Administrative Law Judge Jeff S. Masin on March 24, 1986, at the Galloway Township Municipal Court. The record closed following the hearing.

#### EVIDENCE

The evidence presented by the Division consisted solely of documentary material. Police reports detailing Mr. Murray's involvement in the narcotics transactions of February 22, 1983 and March 15, 1983, revealed that Murray had distributed heroin to an Atlantic City Police Department undercover agent named Charman. The February 22, 1983 incident involved a sale of one bag of heroin for \$45. The police reports do not reveal if any money passed during the second distribution of March 15, 1983, nor is the specific amount of drugs revealed by the police report.

Mr. Murray was arrested by the Atlantic City Police in connection with the two incidents just noted on April 22, 1983. At the time of his arrest, some marijuana was found in plain view on the living room table in his home.

Mr. Murray was indicted by the Atlantic County Grand Jury on charges of conspiracy to distribute heroin, possession of heroin with intent to distribute and distribution of heroin, violations of N.J.S.A. 24:21-24, 24:21-19a(1) respectively. He entered a plea of guilty to two charges of possession with intent to distribute on July 5,

1983, and was sentenced on July 29, 1983, to one year probation with a condition that he serve one day in the Atlantic County Jail and be given credit for one day served. He was also required to remain employed and was fined a sum of \$200 payable at \$10.00 a week, along with a \$25 payment on each count to the Violent Crimes Compensation Board. The remaining counts of the indictment were dismissed.

Mr. Murray was called as a witness on behalf of the Division. He acknowledged his involvement in the distribution of heroin on the two occasions involved. He had disclosed his arrests on his renewal application. He testified that he was approached by Charman who he knew as a former police officer and was asked if he knew anyone who was selling drugs. At the time, Murray was heavily involved in drug use and since he was familiar with sellers he did get some drugs for the agent. On the second occasion, March 15, 1983, Murray obtained drugs for Charman, who sniffed the drugs himself. There was no payment involved in this incident. When Murray was arrested on April 22 there was marijuana on the table and Murray acknowledged that it was his.

Mr. Murray spent the one day in jail required by his sentence and also visited a Doctor Wilson in Atlantic City as also required. He was working at the time of his conviction at the Ocean One Complex on the boardwalk in Atlantic City and remained there for approximately six or seven months. When that job ended, he worked for the Atlantic County Department of Administration, Division of Training and Employment in the Supported Work Program, a program which provides employment opportunities for ex-convicts, drug addicts and alcoholics. Murray's work involved daily maintenance of county office buildings and moving furniture. According to a letter admitted in evidence from Gene B. Solomon, job developer for the Supported Work Program, Mr. Murray was enrolled in the program from August 24, 1983 until March 30, 1984. He was a cooperative and willing worker who terminated on March 30, 1984, for other employment.

Mr. Murray began working at the Acapulco Motel following his employment with the Supported Work Program. He left that employment for work as Caesars Boardwalk Regency Hotel. He has been employed at Caesar's since June 27, 1984, as a kitchen runner. According to Marie J. Haggerty, personnel manager, who submitted a letter in evidence on behalf of Mr. Murray, he has been employed steadily at the Caesars' facility since June 27, 1984, and his probability for continued employment is good.

Mr. Murray acknowledged that he had a serious drug problem in 1983 when he committed the offenses for which he was convicted. He was using drugs "heavily." He had been doing so for approximately one to two years. After his arrest and his confinement in the county jail, he discussed entry into a rehabilitation program, but because he was not incarcerated he instead followed up with some informal counselling with his sister, who is employed by NARCO, an offenders rehabilitation organization in Atlantic City. Mr. Murray has had no involvement with drugs since his conviction. He is married and the father of three children whom he supports. One of these children does not live with he and his wife. In addition to his employment, Murray is involved in a program which involves taking children to visit with senior citizens and he sells candy in support of this organization. Mr. Murray is 27 years old. His children with his wife, Gina Murray, are eight and a half and ten years old.

Mrs. Murray testified that she has been married to Mr. Murray for five years and with him for ten. She described Mr. Murray as "disassociated" from the element which he was with at the time of his drug problems and says that he now goes to work and lives a normal life. Mrs. Murray is a licensed casino employee with a craps license which he has held since 1980 and was previously licensed from 1978 to 1980 with a hotel license.

In addition to his other documentary evidence, Mr. Murray presented an Application for Order Granting Termination of Probation. This document was prepared by the probation office and submitted to Honorable Paul R. Porreca, J.S.C., who signed the order discharging Mr. Murray from probation. Although the copy which was provided to the court was undated, apparently it was signed during 1984. The document indicates that Murray "terminated with improvement."

#### DISCUSSION

A review of the evidence presented by the Division, as well as the candid testimony of Mr. Murray, reflects that he did indeed involve himself in the distribution of heroin on at least two occasions during 1983. These incidents, for which he entered a plea of guilty to possession with intent to distribute, constitute disqualifying offenses pursuant to the Casino Control Act, N.J.S.A. 5:12-86(c)1.

In determining whether or not Mr. Murray has the requisite good character, honesty and integrity for licensure and at the same time considering whether he has rehabilitated himself from the adverse affects of his criminal involvements, involvements which clearly had a strongly adverse affect on his good character, honesty and integrity, this judge has been struck by the obvious indications that Mr. Murray has indeed resurrected his life. As the respondent quite honestly admitted, he had a heavy drug problem in 1982 and 83, involved himself in criminal acts and was well on the way toward the "trash heap." However, since that time, and since his arrest and ultimat conviction following pleas of guilty, he has followed through with a successful probation period, maintained his employment both during and after probation, worked in the casino industry for one employer for nearly two years, and maintained a good work record. In addition, he has helped to support his children, both those that live with him and the one that does not, has apparently been a good husband to his wife, who has stood by him during his period of crisis, and has become involved to a limited but significant extent in a worthwhile community activity. All of these actions bespeak one who has apparently rescued himself from the brink of self destruction.

An examination of the police reports indicates that Mr. Murray was involved in what can perhaps best be described as typical street sales of narcotics. There is nothing particularly unusual about the circumstances of these undercover sales and the amounts of drugs involved were small. While not minimizing the seriousness of the incidents, they are typical of the type of transactions engaged in by drug users to support their habit. There is no indication from the evidence that Mr. Murray was of any major significance in the drug world.

Based on the evidence presented, including the documentary evidence and the testimony of the respondent and his wife, I **CONCLUDE** that Mr. Murray has established by clear and convincing evidence both that he has rehabilitated himself from the adverse affects of his prior conduct and that he has the requisite good character, honesty and integrity for licensure. While one can never be certain, this individual gives every reason to believe that he has straightened out his life and can in the future be a good citizen and a credit to the industry.

It is **ORDERED** that Robert L. Murray, Jr.'s casino employee license be **RENEWED**.

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

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

April 4, 1986  
DATE

*Jeff S. Masin*  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

4/7/86  
DATE

*Ruth Stout*  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 9 1986  
DATE

*Ronald J. Parke* /ks  
OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

On behalf of petitioner:

- P-1 Letter of March 20, 1986, from Charles E. Wilson, Sr., M.D.
- P-2 Application For Order Granting Termination Of Probation
- P-3 Letter of March 19, 1986, from Gene B. Solomon
- P-4 Letter of February 18, 1986, from Marie J. Haggerty

On behalf of respondent:

- R-1 Envelope and letter to Agent Victor Charman, formerly with Atlantic City Police Department, returned as no longer employed
- R-2 Affidavit of Donald P. Huggins
- R-3 Atlantic City Police Department Investigation Report of February 22, 1983, 3 pages, with attached Warrant and Arrest Report
- R-4 Atlantic City Police Department Investigation Report, with attached Arrest Report
- R-5 Atlantic City Police Department Arrest Report, 2 pages
- R-6 Indictment 4-438-83-INV, with attached certified Judgment and Conviction and Order for Commitment

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-136  
OAL DOCKET NO. CCC 4764-85  
REGISTRATION NO. 35243-40

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

Complainant, :

v. :

GAIL J. MYERS, :

Respondent. :

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 19, 1986,

IT IS on this *22nd* day of April, 1986, ORDERED that the initial decision is modified as follows:

- (1) Because the respondent was not convicted of any offense, but the Division of Gaming Enforcement established that she had committed an offense of theft by deception, third degree, between September 1, 1981, to April 30, 1982, she is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g); and
- (2) That portion of the initial decision which indicates that the respondent's repayment of money owed to the Camden County Board of Social Services as a result of the above-noted offense "can be monitored accurately upon the annual

renewal of her [casino hotel employee] registration" (init. dec. at 9), is rejected. The regulatory system does not provide for renewal of casino hotel employee registrations on an annual or any other periodic basis. A casino hotel employee registration, once acquired, is effective until revoked or suspended by the Commission pursuant to N.J.S.A. 5:12-91(b).

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Gail J. Myers is dismissed based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4764-85

AGENCY DKT. NO. 85-136

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

Petitioner,

v.

**GAIL J. MYERS,**

Respondent.

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**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney); (Norma Plenty, Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference)**

**Gail J. Myers, respondent, pro se**

Record Closed: December 3, 1985

Decided: January 15, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleged that Gail J. Myers, respondent, had committed a criminal offense which constitutes a violation of section 86c(1) of the Casino Control Act (Act), for which the Division seeks revocation of her casino hotel employee registration, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 2, 1985. By letter dated July 10, 1985, the Commission advised the respondent of the pending action and of her right to a hearing. By letter filed with the Commission on July 26, 1985, the respondent requested a hearing. On August 2, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 13, 1985. The matter was heard on December 3, 1985, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Myers is 33 years of age. She is divorced and is the mother of three teenagers. She receives no support from the father of the children.

The respondent relocated to southern New Jersey in 1977. She currently resides in Sicklerville, in a home which she is purchasing.

The respondent is the holder of casino hotel employee registration number 35243-40.

Commencing on September 14, 1979, the respondent was a recipient of public assistance from the Camden County Board of Social Services (Board) in the form of Aid to Families with Dependent Children (AFDC), food stamp and medicaid benefits.

On July 29, 1981, the respondent was employed by the Claridge Hotel and Casino (Claridge) as a full-time room attendant in the housekeeping department. The respondent's gross income was approximately \$200 per week.

On October 29, 1981, the respondent appeared at the Board's offices for a redetermination interview. During the course of the interview she completed and submitted an application and affidavit for continued benefits (P-5). However and response to section IV on page four of the application, the respondent failed to disclose

her employment at the Claridge and income therefrom. Also and on page ten of the application, the respondent certified that her answers were true and acknowledged her obligation to provide information to the Board with regard to any change in income. At the subject hearing, the respondent admitted that she was aware of her obligation to report her income to the Board and that she knowingly did not comply. Based upon the information provided by the respondent during her redetermination interview, the Board continued benefits to the household. On or about April 16, 1982, the respondent voluntarily closed her case with the Board and benefits ceased, effective May 1, 1982 (R-1).

Although there was a dispute whether the respondent notified the Board of her employment at the time she closed her case, it was evident that the Board conducted a routine wage verification cross-check with the state Department of Labor and determined that the respondent had been employed from September 1, 1981 through April 30, 1982, during which period the household had continued to receive benefits (P-1). The Board redetermined the respondent's eligibility for benefits during the period in question and, as a result, determined that it had made an overpayment to the respondent's household. More specifically, an overpayment in the amount of \$4,684.73 was made, which consisted of overpayments in the amounts of \$3,279 in AFDC, \$1,304 in food stamp benefits and \$101.73 in Medicaid.

In July 1982, the respondent was injured on the job, which caused her to be absent from work for several months with muscular spasms (R-2). During this period of absence, the respondent received disability payments.

On October 4, 1982, the respondent was injured in an automobile accident, which was not her fault. The accident aggravated the respondent's existing injuries and caused her to be absent from work for an additional substantial period (R-3 and R-4). In 1983, the respondent received a monetary settlement in the amount of a couple thousand dollars. The respondent used the proceeds of the settlement to pay off past-due bills accumulated during the time when she was unable to work and to buy a car in order to commute to work.

In January 1983, the respondent underwent a surgical appendectomy.

On January 21, 1983, the respondent contacted the Board by telephone in response to a written communication. Although the respondent did not agree to make a written statement concerning the household's receipt of benefits to which it was not entitled, the respondent conceded verbally that the benefits had been received. The respondent advised the Board that restitution had not been made because she was unable to work.

In April 1983, the Claridge terminated the respondent from employment because she was not able to perform her duties and because no light duties were available.

On September 7, 1983, the respondent entered into a reimbursement agreement with the Board, which provided that payments would be made at the rate of \$25 per month (P-2 and R-5).

On October 31, 1983, the respondent reapplied to the Board for benefits. At that time she entered into a recoupment agreement, whereby the Board would recoup the overpayment by means of a ten-percent reduction in benefit payments (R-6). The respondent's household received benefits from December 1, 1983 until June 30, 1984. The benefits ceased when the respondent voluntarily withdrew her case (R-7). The withdrawal was the result of the respondent's reemployment in the casino industry which will be discussed, infra.

On April 19, 1984, the respondent was indicted by a Camden County Grand Jury for a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud (P-3). On June 11, 1984, and with the assistance of a public defender, the respondent was permitted to enter the Pretrial Intervention Program (PTI). The respondent performed 100 hours of community service. On June 3, 1985, and upon her successful completion of the program, charges against the respondent were dismissed (R-8 and R-9).

In January 1984, the respondent attended a job jamboree and was hired by the Trump Plaza Hotel Casino (Trump). On May 5, 1984, she commenced employment as a room attendant, and received her first check in June. This employment constituted the reason for the respondent's withdrawal of her benefits case from the Board. In June 1985, the respondent was promoted to houseperson. She continues to be employed by Trump, and, according to Jack Watt, executive housekeeper, she has earned a good employment record (R-10). The respondent's gross salary is \$300 per week and she receives no tips.

The respondent commutes 40 miles one-way to work by bus because her car is not working.

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

**(B) DISPUTED FACTS**

In dispute were whether the respondent had notified the Board of her employment with the Claridge at the time she withdrew her case in April 1982 and the respondent's attitude concerning her misconduct.

The respondent testified that at the time she voluntarily withdrew her case from the Board in April 1982, she notified the Board of her employment with the Claridge. In support of this testimony, the respondent produced a notification form, dated April 16, 1982, which stated that the respondent had voluntarily withdrawn her benefits case (R-1).

Although the Division did not offer any rebuttal to the respondent's testimony, it is essential to assess the respondent's credibility. Initially, Ms. Myers's position in this matter must be recognized. She is the holder of a casino hotel employee registration and is the respondent and, as such, has a direct interest in the outcome and has a bias in these proceedings. However, it was clear both during the hearing and during my review of the record that from my observations of the respondent's demeanor, the plausibility of her testimony, the consistency between her testimony and the documentary evidence, my examination of the documentary evidence, and the positive manner in which the respondent participated in these proceedings, that the respondent testified truthfully. The respondent's testimony was sincere and persuasive. In the final analysis, I am persuaded to accept the respondent's testimony in all respects.

Accordingly, I am persuaded to believe that in April 1982, the respondent notified the Board of her employment at the Claridge.

The respondent testified that she considered her misconduct to constitute a grave mistake, which she regrets. Further, the respondent stated that she would not repeat her misconduct and did not again want to go through the resulting trauma.

Alvin McCann, a close friend of the respondent, testified on her behalf. Mr. McCann corroborated much of the respondent's testimony concerning her inabilities to make repayment, the problems with her health incurred during 1982 and 1983, and her desire to remain employed in a positive manner in a casino industry.

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

1. The respondent's testimony was credible, believable and persuasive in all respects.
2. In April 1982, when the respondent voluntarily withdrew her benefits case from the Board, she notified the Board of her employment with the Claridge.
3. The respondent expressed sincere remorse for her prior misconduct.
4. There is little likelihood, if any, that the respondent will repeat her misconduct.

#### DISCUSSION OF LAW AND CONCLUSION

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that the alleged violation of N.J.S.A. 2C:20-4 by Ms. Myers constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continuing to hold a registration.

#### (A) N.J.S.A. 5:12-86c(1)

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure.

N.J.S.A. 2C:20-4 provides as follows:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

\* \* \*

The crime of cheating or defrauding by false pretenses contains several elements. "There must be a misrepresentation by a defendant. This misrepresentation must be knowing and made with the specific intent to cheat or defraud. The aggrieved party must rely on this misrepresentation in parting with his property and [the] defendant must receive something of value as a result of the misrepresentation." State v. Cox, 150 N.J. Super. 599, 604 (Law Div. 1977), aff'd 160 N.J. Super. 28 (App. Div. 1978). As to reliance, it need not be great, sole or exclusive. State v. Franco, 153 N.J. Super. 428 (App. Div. 1977). "However, it must be shown that the fraudulent misrepresentation or statement induced the victim to part with his money in order to sustain a conviction . . ." Id. at 432.

The Division's proofs established and the respondent did not dispute each of the separate elements of the alleged offense.

As to the degree of the offense in question, N.J.S.A. 2C:20-2b(2)(a) provides that theft constitutes a crime of the third degree if the amount involved exceeds \$500 but is less than \$75,000. Accordingly, "theft" over \$4,000 would be categorized as a crime of the third degree.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud, in the third degree, which is a disqualifying offense under section 86c(1).

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

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Ms. Meyers is a registrant and is employed as a houseperson at Trump. As such, she has no responsibilities for actual gaming activities and has limited contact with casino patrons. Nevertheless, a registrant can work in areas where there is substantial casino patron contact.

Second, the respondent committed a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud. By reason of the degree of the offense, which renders it a disqualifier under section 86c(1), it was serious.

Third, the offense was committed knowingly by a registrant at the time she was employed in the casino industry. The fact that the respondent suffered an economic hardship does not serve to mitigate her misconduct.

Fourth, the misconduct occurred continually from September 1, 1981 to April 30, 1982, and ceased approximately three and one-half years ago.

Fifth, the respondent was 31 years of age at the time of the offense. There was no indication that her misconduct was due to immaturity.

Sixth, the respondent's criminal misconduct was isolated. The respondent committed no misconduct prior to the incident, nor subsequent thereto. However, respondent's misconduct continued over a period of eight consecutive months.

Seventh, there were no social conditions which contributed to the offense.

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. She has acknowledged fully and accepted responsibility for her misconduct. Further, she has completed successfully PTL. Also, the respondent has not committed any other criminal misconduct. In addition, the respondent has a positive employment record within the casino industry both prior to and subsequent to the offense. This employment continues to the present date. Further, the respondent has expressed sincere remorse for her misconduct and has no intention whatsoever of repeating the misconduct. Accordingly, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct.

Nevertheless, the respondent has failed to make significant payments under the reimbursement agreement with the Board. This was entered into voluntarily. However, it appears that until her employment at Trump in June 1984, the respondent was substantially unable to make such payments. Further, the respondent's financial condition, which existed essentially until her promotion in June 1985, made it extremely difficult for her to make payments. Accordingly, it appears that the respondent rehabilitated herself to the extent which she was able, given her past financial hardships. More specifically, she made repayments to the best of her abilities and family priorities. However and despite her current limited financial condition, she is now able to make restitution under the agreement. Such future payments constitute her continuing obligation to maintain her rehabilitation. The status of the respondent's payment record can be monitored accurately upon the annual renewal of her registration.

Although the respondent cannot eliminate her past record, there is little more that she could have done to establish her rehabilitation, other than to make payments under the reimbursement agreement. However, that should not preclude the respondent from satisfying her burden in this case.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d.

**(C) PENALTY**

Section 130 of the Act provides for the imposition of a sanction. The Division seeks an unspecified penalty against the respondent's registration.

However, the Commission in Division of Gaming Enforcement v. William E. Waters, CCC DKT. NO. 84-178, Final Order, December 3, 1985, OAL DKT. NO. CCC 5262-84, ruled that the Commission would not ". . . impose a sanction for violations of the criminal law as distinguished from violations of the act or commission regulations." Id. at 2.

Accordingly, I **CONCLUDE** that no penalty should be imposed against the respondent, pursuant to N.J.S.A. 5:12-130.

**DISPOSITION**

It is **ORDERED** that the petition of the Division against the casino hotel and employee registration of Gail Myers be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that in order to ensure that the respondent continues to maintain her rehabilitation, she is required to make payments under the reimbursement agreement with the Camden County Board of Social Services, and that renewal of her registration will be conditioned upon compliance herewith.

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

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

January 15, 1986  
DATE

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

Receipt Acknowledged:

1/16/86  
DATE

Imi Dori  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 17 1986  
DATE

Ronald J. Parkey  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS INTO EVIDENCE

- P-1 Report of Criminal Investigation, prepared by Geraldine Sorensen, January 25, 1983; Summary Report, prepared by Geraldine Sorensen, January 31, 1983; Summary Report, prepared by Debbie Smith, September 7, 1983, with attachments (4 pages)
- P-2 Reimbursement Agreement between Camden County Board of Social Services and Gail Myers, September 7, 1983 (see R-5)
- P-3 State of New Jersey v. Gail Myers, Superior Court of New Jersey, Law Division, Camden County - Criminal, Indictment No. I-1055-04-84, filed on April 16, 1984 (3 pages)
- P-4 State of New Jersey v. Gail Myers, Indictment No. I-1055-04-84, Order of Postponement under R. 3:23
- P-5 New Jersey Department of Human Services, Division of Public Welfare - Application and Affidavit for AFDC, MA, CPP, RRP, CHEP and Food Stamps, Gail Myers, October 29, 1981 (10 pages)
- R-1 Letter to Gail Myers from D. Waters, April 21, 1982
- R-2 Note from Dr. Morton Markoff, July 23, 1982
- R-3 Notes from Dr. Morton Markoff, December 23, 1982 and December 28, 1982
- R-4 Note from Dr. Morton Markoff, February 28, 1983
- R-5 Reimbursement Agreement between the Camden County Board of Social Services and Gail Myers, September 7, 1983 (see P-2)
- R-6 Camden County Board of Social Services - Acknowledgement of Recoupment, Gail Myers, October 31, 1983
- R-7 Camden County Board of Social Services - Notification Form, Gail Myers, June 12, 1984 (2 pages)
- R-8 Letter to Gail Myers from Jeffrey J. Jennings, Pretrial Services Coordinator; State of New Jersey v. Gail J. Myers, Indictment No. I-1055-04-84, Order of Dismissal under Rule 3:28, June 3, 1985 (3 pages)
- R-9 Letter to Division of Gaming Enforcement from Howell C. Cohen, Principal Probation Officer II, November 6, 1985
- R-10 Letter from Jack Watt, October 23, 1985

WITNESSES

**For the Petitioner:**

**Geraldine Sorensen**

**For the Respondent:**

**Alvin McCann**

**Gail J. Myers**

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

Complainant, :

v. :

FINAL ORDER

ANTONIO NUNES, :

Respondent. :

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This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 19, 1986,

IT IS on this 26<sup>th</sup> day of March, 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) To reject the finding that the respondent's conviction for possession of a prohibited device (dum-dum bullets) in violation of N.J.S.A. 2C:30-3(b) as well as his possession of a handgun without the proper permit in violation of N.J.S.A. 2C:39-5(b), an offense for which he was indicted but not convicted, are inimical offenses pursuant to N.J.S.A. 5:12-86(c)(4) on the grounds that there is insufficient evidence in the record to establish that the respondent's conviction or conduct constituted inimical offenses within the meaning of N.J.S.A. 5:12-89(c)(4) and (g). Moreover, in light of the finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) virtue of his March 1985 conviction for arson in violation of N.J.S.A. 2C:17-1(b), with which the Commission concurs, further consideration of the "inimical" issue is unnecessary.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Antonio Nunes is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Antonio Nunes, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5388-85

AGENCY DKT. NO. 83-305

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

Petitioner,

v.

**ANTONIO NUNES,**

Respondent.

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

**Antonio Nunes, respondent, pro se**

Record Closed: December 24, 1985

Decided: February 5, 1986

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

This matter concerns the complaint filed by the Division of Gaming Enforcement with the Casino Control Commission on September 2, 1983, seeking the revocation of the respondent's registration as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Nunes requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference was held on October 24, 1985, at which time the parties agreed that the issues in this matter are:

- (1) Whether respondent is disqualified from registration based on certain criminal activities pursuant to N.J.S.A. 5:12-86c(1) or 5:12-86g.
- (2) Whether the respondent's alleged criminal activities would render his continued registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).
- (3) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing took place on December 24, 1985, and the record closed on that date.

Factual Findings

It was established at that hearing that at approximately 3:30 a.m. on August 25, 1982, there was a fire at the Lisboa at Nite Bar and Restaurant, located at 352 N. Main Street, Barnegat, New Jersey, which was owned by the respondent. Since the fire was considered to be "suspicious," Horace L. Wilson, Jr., an investigator employed by the Ocean County Prosecutor's Office, was assigned to the matter and he concluded that the fire was caused by arson. His decision was based on a number of facts, which included that there were two unconnected fires in the building and that the fires were started by plastic bags containing gasoline and some type of a heat source. In addition, Mr. Wilson stated that the firemen had to force an entry into the building because the doors were locked and there were no broken windows. Also, a witness told Mr. Wilson that a van loaded with bar supplies taken from the respondent's bar and restaurant had been there the day before the fire.

After interviewing the respondent, his nephew and a number of other people, Mr. Wilson concluded that the respondent's business was not doing well and that he was having financial difficulties.

On August 17, 1983, Mr. Nunes and his nephew were indicted and were charged with arson, a violation of N.J.S.A. 2C:17-1b, two counts of aggravated arson, violations of N.J.S.A. 2C:17-1a and conspiracy, a violation of N.J.S.A. 2C:5-2 (P-1). On December 13, 1984, Mr. Nunes entered a plea of guilty to the arson charge, a violation of N.J.S.A. 2C:17-1b, and on March 4, 1985, he was sentenced to serve 15 weekends in the Ocean County Jail, was placed on probation for two years, was fined \$1,000 and was assessed a penalty of \$25 (P-1). The other counts of the indictment were dismissed.

On November 23, 1982, while he was driving in Tinton Falls, New Jersey, Mr. Nunes was stopped by Thomas Hall, a New Jersey State Trooper, for a motor vehicle violation. Trooper Hall observed Mr. Nunes act in a suspicious manner and found a semi-automatic handgun that was loaded with dum-dum bullets (bullets that can penetrate a bulletproof vest) in the vehicle. Mr. Nunes did not have a permit to carry a handgun.

On February 7, 1983, Mr. Nunes was indicted for the possession of the handgun, a violation of N.J.S.A. 2C:39-5(b), and for the possession of dum-dum bullets, a violation of N.J.S.A. 2C:39-3(f) (P-2). Thereafter, Mr. Nunes entered a plea of guilty to the possession of dum-dum bullets and on December 7, 1984, he was fined \$1,000 and was assessed a penalty of \$25 (P-2). The weapon count of the indictment was dismissed. This offense was considered by the judge to be Mr. Nunes' first criminal violation because at the time of the sentencing the arson matter was still pending a determination.

As to the handgun incident, Mr. Nunes stated that he legally purchased the handgun and that he was not aware that he could not carry the weapon without a permit. Further, he stated that he was not aware that dum-dum bullets were illegal. Mr. Nunes came to this country from Portugal in 1970, and he stated that it is not uncommon for men to carry guns in Portugal.

After the fire, Mr. Nunes had to demolish the Lisboa at Nite Bar and Restaurant and was unable to get a municipal permit to rebuild it. Mr. Nunes got a job as a restaurant bus person at Caesars Hotel and Casino and he worked there for about four months. The respondent then got a job as a maintenance worker for Emerson Radio Corporation and he worked there for about two years before he was laid off. Currently, Mr. Nunes is employed as a painter.

On behalf of respondent, Stephen Lane, president of Emerson Radio Corporation, wrote a letter, dated December 17, 1985, in which he stated that the respondent is a person of good character, honesty and integrity (R-1).

I **FIND** that the facts as stated above are not in dispute.

Although Mr. Nunes did not dispute the fact that he pled guilty to the arson offense and that he was represented by counsel at the time, Mr. Nunes denied that he started the fires. Mr. Nunes stated that he pled guilty since he felt responsible for the fire because he had gasoline stored in the basement. This gasoline was used for wood-cutting equipment. Mr. Nunes stated that he had \$75,000 invested in the facility and that he did not benefit by the fire since he had an inadequate amount of insurance. Further, he denied that any bar equipment was taken from the building prior to the fire. Mr. Nunes stated that the fires caused a substantial financial hardship to him and his family.

#### Conclusions of Law

Based on the facts, I **CONCLUDE** that the Division has established a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), namely the arson conviction. As to Mr. Nunes' denial that he was guilty of arson, I agree with Mr. Mountford's argument that this testimony is barred by collateral estoppel in view of the respondent's plea of guilty to the charge. In addition, I **CONCLUDE** that the conviction for the possession of dum-dum bullets as well as the possession of a handgun without the proper permit are inimical offenses, pursuant to N.J.S.A. 5:12-86c(4). In view of the fact that Mr. Nunes has been in this country for more than 15 years, I do not accept his statement that he was not aware of the laws governing the carrying of weapons.

Further, I **CONCLUDE** that the respondent has not shown by clear and convincing evidence that he has been rehabilitated pursuant to standards contained in N.J.S.A. 5:12-91d. Insufficient time has elapsed since the two convictions to establish rehabilitation.

Disposition

Therefore, I ORDER that the registration of Antonio Nunes be REVOKED and that this matter be DISMISSED.

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

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

February 5, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

February 6, 1986  
DATE

Bernadette J. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 10 1986  
DATE

Ronald J. Parker / x5  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Indictment No. I-0586-8.83 filed against Antonio Nunes and Antonio Manuel Almeida; Judgment of Conviction regarding Antonio Nunes and summary sheet regarding the matter
- P-2 Indictment No. 127-2-83 filed against Antonio Nunes and Judgment of Conviction regarding Antonio Nunes

**FOR THE RESPONDENT:**

- R-1 Letter from Stephen L. Lane, president of Emerson Radio Corporation, dated December 17, 1985

**WITNESSES**

**FOR THE PETITIONER:**

Thomas Hall  
Horace L. Wilson, Jr.

**FOR THE RESPONDENT:**

Antonio Nunes

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-336  
OAL DOCKET NO. CCC 5455-85  
LICENSE NO. 23870-21  
REGISTRATION NO. 09043-40

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

Complainant, :

FINAL ORDER

v.

EUGENIO ORTIZ :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 16, 1986,

IT IS on this *28<sup>th</sup>* day of APRIL 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the casino employee license held by Eugenio Ortiz be revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Eugenio Ortiz, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5455-85

AGENCY DKT. NO. 85-336

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

Petitioner,

v.

**EUGENIO ORTIZ,**

Respondent.

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

**Mark E. Roddy, Esq.**, for the respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: January 7, 1986

Decided: February 20, 1986

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

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission on July 31, 1985, seeking the revocation of the respondent's license as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Eugenio Ortiz requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

**PROCEDURAL HISTORY**

At the prehearing conference held by way of a telephone conference call on October 24, 1985, the parties agreed that the issues in this matter are:

- (1) Whether the respondent is disqualified from licensure based on certain alleged criminal activities pursuant to N.J.S.A. 5:12-86c(3) or 5:12-86g.
- (2) Whether the respondent's alleged criminal activities would render his continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).
- (3) Whether the respondent can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee pursuant to N.J.S.A. 5:12-90b.
- (4) Whether the respondent can establish that he has been rehabilitated as provided by N.J.S.A. 5:12-90h.

The hearing took place on January 7, 1986, at the Atlantic County Civil Court House and the record closed on that date.

#### FACTUAL FINDINGS

I **FIND** that the facts are not in dispute. On March 4, 1983, three police officers employed by the Hamilton Township Police Department, Atlantic County, entered the respondent's home in response to a telephone call alleging that a burglary was in progress there (P-3). While they were in the respondent's home, they found a cardboard box containing plastic bags filled with suspected drugs (P-3). When Mr. Ortiz came home, he was arrested for the possession of controlled dangerous substance and the possession of controlled dangerous substance with intent to distribute (P-3). The material found in the respondent's home was later tested by the New Jersey State Police Laboratory and found to be more than 1,000 grams of marijuana (P-3).

As part of the Hamilton Township Police file regarding this arrest, there is a two-page unsigned handwritten statement, apparently prepared by one of the police officers involved in the March 4, 1983 arrest of the respondent. This statement, dated March 4, 1983, summarizes an apparent interview with Mr. Ortiz by Sergeant Frederiksen of the Hamilton Township Police Department, and states that Mr. Ortiz indicated that he bought the marijuana for \$1,000 and that he hoped to make enough money, apparently

from the sale of the marijuana, to get himself out of his financial difficulties (P-4). None of the police officers involved in the March 4, 1983 arrest of the respondent testified at the hearing in this matter.

Thereafter, the respondent was indicted for the possession of controlled dangerous substance, a violation of N.J.S.A. 24:21-20a(4) and possession of controlled dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19a(1) (P-2). The respondent pled guilty to a violation of N.J.S.A. 24:21-20a(4), and on September 30, 1983, he was placed on probation for one year, fined \$200 and assessed a penalty of \$25 (P-2). The other count of the indictment was dismissed.

On April 5, 1985, the respondent was involved in a one-vehicle accident and was arrested for drunk driving and the possession of controlled dangerous substance (P-1). The arresting officer, State Police Trooper J.M. O'Hara, found in the respondent's vehicle a plastic bag containing what was later identified as 8.6 grams of marijuana and a plastic vial containing what was later identified as .08 gram of methamphetamine (P-1). Thereafter, Mr. Ortiz was indicted for the possession of methamphetamine, a violation of N.J.S.A. 24:21-20a(1) (P-1). The respondent pled guilty and on August 9, 1985, he was placed on probation for two years, fined \$150 and assessed a penalty of \$50 (P-1).

Mr. Ortiz has been employed by the Claridge Hotel and Casino as a craps and blackjack dealer, and he was suspended by the casino in August 1985. The respondent is registered as a casino hotel employee; however, the Division is not seeking the revocation of his registration in this matter.

On behalf of the respondent, two of his casino supervisors, Mary Helen Martinez and Dana P. Spinks testified that the respondent was an excellent employee who had received good evaluations while employed by the Claridge Hotel and Casino and who was named "Employee of the Month" in the spring of 1985. Ms. Martinez is a personal friend of the respondent and his wife. Brian J. Leahy, a casino coworker of the respondent, testified that he has known the respondent as a fellow employee since 1981 and considers him to be an honest and excellent worker. Joyce A. Petrosch, a friend of the respondent for the last 20 years stated that he has worked for her husband as a part-time employee and has babysat for her children. Ms. Petrosch considers the respondent to be an honest, dependable and hardworking person. None of the witnesses for the respondent felt that his prior arrests and convictions affected their opinion regarding him.

CONCLUSIONS OF LAW

On behalf of the respondent, Mark E. Roddy, Esq., argued that whatever problems the respondent may have had with drugs was a personal matter and did not affect his job. Mr. Roddy noted that the 1983 conviction was not a statutory disqualifier and argued that insufficient proof was presented by the Division to show that the respondent was guilty of the charge of possession with intent to sell. Mr. Roddy stated that the police officer's statement regarding his interview with Mr. Ortiz (P-4) is hearsay, and there was no reason for the Division's failure to have the police officer testify in the matter. He represented that since the 1983 offense, Mr. Ortiz has been a model employee and has been rehabilitated. As to the 1985 offense, Mr. Roddy stated that only a trivial amount of drugs was involved and that this conviction was insufficient reason for the revocation of the respondent's license. Lastly, Mr. Roddy argued that the respondent's witnesses established that he is a person of good character, honesty and integrity.

Deputy Attorney General William E. Mountford, on behalf of the Division, argued that the respondent's two convictions raise a substantial question regarding the respondent's character, honesty, and integrity and warrant the revocation of his licensure pursuant to N.J.S.A. 5:12-90b. Mr. Mountford argued that the fact that the respondent was considered to be a good employee by his supervisors and fellow worker is insufficient to establish that he is a person of good character, honesty and integrity. As to the statement of the police officer regarding the 1983 offense (P-4), Mr. Mountford argued that hearsay evidence is admissible pursuant to the rules governing administrative proceedings and pursuant to the rules governing casino hearings, N.J.S.A. 5:12-107(6), and that the statement proves that the respondent planned to sell the marijuana.

Based on the facts, I **CONCLUDE** that the Division has not established a statutory disqualifier pursuant to N.J.S.A. 5:12-86(3) since the respondent's convictions were not for offenses enumerated in that statute.

For purposes of establishing a statutory disqualifier pursuant to N.J.S.A. 5:12-86g, Mr. Mountford introduced into evidence the indictment and various police reports regarding the 1983 offense, including the unsigned police report regarding the interview with Mr. Ortiz (P-4). Pursuant to N.J.S.A. 5:12-86g, a statutory disqualifier can be established when the proven criminal conduct, if prosecuted, would result in a

conviction of one of the criminal statutes set forth in N.J.S.A. 5:12-86c(1), (2) or (3). In this matter, the Division would establish a statutory disqualifier pursuant to N.J.S.A. 5:12-86g if it shows that Mr. Ortiz was guilty of the 1983 charge of the possession of controlled dangerous substance with intent to distribute, which is a high misdemeanor offense enumerated in N.J.S.A. 5:12-86c(3).

As to the unsigned police statement (P-4), although I allowed the report to go into evidence, I indicated that I would take into consideration the fact that it was hearsay evidence when I decided what weight to give it in reaching my determination. After reviewing the statement (P-4), I am persuaded that it should be given very little weight since it is unsigned and there is no way to determine who prepared the report or whether that person was present when Mr. Ortiz was interviewed. Further, I recognized that the Division did not affirmatively try to have the appropriate officer testify at the hearing. Even though I recognize that a substantial amount of marijuana was found in the respondent's home in 1983, I **CONCLUDE** that this fact alone is insufficient proof that the respondent is guilty of the possession of marijuana with intent to distribute offense and this fact, along with the unsigned statement, is not persuasive to show such a violation. Therefore, I **CONCLUDE** that the Division has not established a statutory disqualifier pursuant to N.J.S.A. 5:12-86g.

However, I further **CONCLUDE** that the two criminal convictions for the possession of controlled dangerous substance would render the respondent's continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4). The 1983 conviction involved a substantial amount of marijuana and the recent 1985 conviction of the possession of methamphetamine shows a continued involvement with drugs.

Further, I **CONCLUDE** that in view of the two convictions, the respondent has not shown by clear and convincing evidence that he is a person of good character, honesty, and integrity as required for licensure pursuant to N.J.S.A. 5:12-90b.

#### DISPOSITION

Therefore, I **ORDER** that the license of the respondent as a casino employee be **REVOKED**.

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

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

February 20, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

2/21/86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 24 1986  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ks/e

**EXHIBITS ADMITTED INTO EVIDENCE:  
FOR THE PETITIONER:**

- P-1 Indictment No. 85-001472 filed against Eugenio Ortiz; Investigation Report prepared by Trooper J.M. O'Hara; Supplemental Investigation Report prepared by Detective Joseph M. Reilly; Supplemental Investigation Report prepared by Sergeant J.J. Sherman; State Police Property Report prepared by Sergeant J.J. Sherman; Arrest Report prepared by Detective Joseph M. Reilly and the Sentencing Fact Sheet regarding the matter
- P-2 Indictment No. 65743-83 filed against Eugenio Ortiz and the judgment of conviction
- P-3 Township of Hamilton Police Department Investigation Report prepared by Patrolman Bryan McCoy; Arrest Report prepared by Patrolman Bryan McCoy; Complaints filed against Eugenio Ortiz and a New Jersey State Police Laboratory Report
- P-4 Two-page statement written on Township of Hamilton Police Department stationary

**FOR THE RESPONDENT:**

None

**WITNESSES**

**FOR THE PETITIONER:**

None.

**FOR THE RESPONDENT:**

Mary Helen Martinez

Joyce A. Petrosh

Brian J. Leahy

Dana P. Spinks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-65(a)  
OAL DOCKET NO. CCC 1792-85  
LICENSE NO. 31692-21

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

Complainant,

FINAL ORDER

v.

BARBARA I. PARKER,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 5, 1986,


IT IS on this *8<sup>th</sup>* day of APRIL 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Barbara I. Parker is dismissed based upon the reasons stated 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 Barbara I. Parker, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1792-85

AGENCY DKT. NO. 85-65(a)

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**BARBARA L PARKER,**

Respondent.

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

**Stephen A. White, Esq.,** for respondent

Record Closed: December 5, 1985

Decided: January 21, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on February 22, 1985, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 86c and g, 90e and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's conviction on May 24, 1984, for shoplifting by purposely underringing merchandise, contrary to N.J.S.A. 2C:20-11(5). The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within

the meaning of sections 89b(2) and 90b of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.

2. Whether the respondent has been convicted of or has committed an offense which would indicate that her continued licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90e and 129 of the Act.

#### PROCEDURAL HISTORY

By letter dated March 21, 1985, the respondent filed her response to the complaint of the Division of Gaming Enforcement. By this letter, the respondent requested a hearing on the complaint. On March 29, 1985, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on May 16, 1985, and the hearing was originally scheduled to be held on September 19, 1985. However, the matter was adjourned from that date as a result of the hospitalization of the respondent. The matter was rescheduled for and heard on December 5, 1985.

#### FINDINGS OF FACT

The respondent is a 54 year old resident of Atlantic City, New Jersey. She holds casino employee license No. 31692-21, issued by the Casino Control Commission. Since May 17, 1985, the respondent has been employed by Trump's Castle Casino Hotel as a Designated Cashier Supervisor. She has been on a medically authorized leave of absence since August 1985. Her prior employment in the legalized gaming industry was as a Slot Cashier at the Trump Plaza Casino Hotel, which employment began on May 21, 1984.

It is undisputed that the respondent was an employee of the K-Mart Store in Pleasantville, New Jersey, on October 4, 1983. She was not then an employee in the

casino industry. On that date, the respondent was detained by a store security officer for underringing a sale of merchandise purchased by Linda Nelson, a resident of Pleasantville, New Jersey.

According to the Pleasantville Police Department Operation Report (Exhibit P-1), when Ms. Nelson was taken into custody, her sales slip from the register where the respondent was a cashier revealed that the respondent had rung up a total of \$1.14 for articles which should have been rung up for a total of \$417.98. A complaint was subsequently issued against the respondent (Exhibit P-2) charging her with committing the offense of shoplifting by purposely underringing merchandise with the intention of depriving the merchant of the full retail value of the merchandise, contrary to N.J.S.A. 2C:20-11(5).

On May 24, 1984, the respondent pled guilty to the offense of shoplifting by purposely underringing merchandise and was fined \$50. She was also ordered to pay costs of \$25 and a violent crimes penalty of \$25 (Exhibit P-2).

Testifying on her own behalf, the respondent stated that she did not know Mr. Nelson prior to October 4, 1983, but she was slightly acquainted with a woman who was with Ms. Nelson. According to the respondent, Ms. Nelson had placed some items in a bag prior to going through the check-out. When the respondent told the woman that she had not rung up that merchandise yet, the woman stated that she had. The respondent knew that she had not, but when the woman said, "well, just say that you did," the respondent was nervous and simply rang up some amount on the cash register. As the women walked out, they were arrested.

It was the testimony of the respondent that she has never been involved in any other offense. She realizes that she made a mistake and she is remorseful. The respondent supports two grandchildren and it would be a hardship for her if she lost her casino employee license and her job.

According to the respondent, she has never been written up by an employer for a problem on the job. Testifying on direct examination, the respondent stated that her casino employer has kept her on because her supervisors believe that she would not do anything wrong again. However, testifying on cross-examination, the respondent acknowledged that she has never really told her employer about her conviction. She

assumes that her employer knows about the conviction, but she doesn't really know for sure.

Several letters were admitted into evidence on behalf of the respondent as Exhibits R-1, R-2 and R-3. These letters attest generally to the respondent's honesty and dependability.

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

#### CONCLUSIONS OF LAW

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

Pursuant to sections 90e, 86c(4) and 129 of the Casino Control Act, the Casino Control Commission may revoke the licensure of any licensee disqualified on the basis of his conviction of any offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations. In this matter, it is undisputed that the respondent was convicted of the offense of shoplifting by purposely underranging merchandise, contrary to N.J.S.A. 2C:20-11(5), upon her plea of guilty on May 24, 1984. In order to determine whether this offense indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc., for Licensure as a Casino, DKT. NO. 79-CL-1 (1979).

The respondent admits underranging merchandise while working as a cashier at a store in Pleasantville, New Jersey on October 4, 1983. She denied any close association with the shoppers for whom she underrang the merchandise, and she asserts that she

committed the offense for which she was charged because the situation created by the shoppers made her nervous. It was the only offense committed by the respondent and she realizes that her conduct was a mistake.

That the respondent has been employed successfully as a cashier in the licensed casino industry since her conviction is of substantial significance. The respondent has demonstrated that she is able to work honestly as a Designated Cashier Supervisor and it is highly unlikely that she will ever repeat the sort of conduct which lead to her arrest in October 1983.

In light of all of the circumstances, the respondent's offense does not indicate that her continued participation in the legalized gaming industry would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I **CONCLUDE** that the conduct underlying the respondent's conviction for shoplifting by purposely underringing merchandise does not indicate that her continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4).

The credible evidence in the record demonstrates that the respondent enjoys a reputation for good character, honesty and integrity. Based upon the foregoing, I also conclude that the respondent has not engaged in conduct which so adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 89b(2) and 90 of the Casino Control Act, so as to warrant imposition of any sanction, pursuant to section 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Barbara I. Parker be and hereby is **DISMISSED**.

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

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

January 21, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 23, 1986  
DATE

Dorinda T. Frim  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 24 1986  
DATE

Ronald J. Parky, Jr. s.s.  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

For the petitioner:

- P-1        Operation report, dated October 4, 1983 and arrest report
- P-2        Complaint and disposition

For the respondent:

- R-1        Letter dated April 1, 1985
- R-2        Undated letter
- R-3        Letter dated March 1985

WITNESSES

For the petitioner:

None

For the respondent:

Barbar I. Parker

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-CSI-10  
OAL DOCKET NO. CCC 5456-85  
APPLICATION NO. 1059-70

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APPLICATION OF PELTZ BOXING :  
PROMOTIONS, INC., FOR A CASINO : FINAL ORDER  
SERVICE INDUSTRY LICENSE :  
:

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the applicant having filed exceptions to the initial decision and the Division of Gaming Enforcement having filed a reply thereto; and the Commission having considered the entire record of these proceedings at its public meeting of June 11, 1986,

IT IS on this 20th day of June 1986, ORDERED that the findings of fact in the initial decision are adopted; and

IT IS FURTHER ORDERED that the following conclusions of law are rejected:

1. The conclusions that the applicant had violated N.J.S.A. 2C:21-3b (offering a false instrument for filing), N.J.S.A. 2C:28-3b (unsworn falsification to authorities) and N.J.S.A. 2C:21-4a (falsifying or tampering with records), and was therefore disqualified pursuant to N.J.S.A. 5:12-86(c)(1), (c)(4) and (g) are rejected. The Commission finds insufficient evidence in the record to conclude that J. Russell Peltz had the

requisite criminal intent to violate the  
aforementioned statutes.

2. The conclusion that the applicant had failed to demonstrate his good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and -90(b) is rejected. Considering the manner in which the TV tax (N.J.S.A. 5:2-12) was administered by the State Athletic Board during the period of time at issue here, and the evidence presented by witnesses who testified on behalf of J. Russell Peltz, his conduct in connection with the payment of the TV tax does not undermine his qualifications for licensure. The Commission finds, based upon the testimony of said witnesses, that the applicant possesses the good character, honesty and integrity required for licensure.

IT IS FURTHER ORDERED that the casino service industry license application of Peltz Boxing Promotions, Inc., is granted; and

IT IS FURTHER ORDERED that this final order be served upon Peltz Boxing Promotions, Inc., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5456-85

AGENCY DKT. NO. 85-CSI-10

**PELTZ BOXING PROMOTIONS, INC.,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC SAFETY,**

Respondent.

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**Glenn A. Zeitz, Esq., for the petitioner (Zeitz & Talty, attorneys)**

**Patricia M. Wild, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: March 19, 1986

Decided: May 5, 1986

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

**PROCEDURAL HISTORY**

This matter concerns the recommendation of the Division of Gaming Enforcement (Division) that was filed with the Casino Control Commission (Commission) on May 20, 1985. In its letter, the Division recommends that the petitioner, Peltz Boxing Promotions, Inc., not be licensed as a casino service industry pursuant to the provisions of N.J.S.A. 5:12-92c. The Division alleges that the petitioner falsified certain deductions which were listed in its computation of the State tax regarding the sale or lease of television, motion picture or radio rights in connection with boxing exhibitions (TV tax), which was payable to the State Athletic Commission (SAC) pursuant to N.J.S.A.

5:2-12 (the State Athletic Commission was replaced by the State Athletic Control Board in 1985, pursuant to P.L. 1985 ch. 83). The alleged falsified deductions relate to promotion costs, nonappearance insurance, telephone expenses, extra security costs, and tickets and meals for the television crew, as reflected in the petitioner's TV tax computations for 32 boxing matches between May 31, 1981 and October 27, 1983.

The Commission transmitted the matter to the Office of Administrative Law on August 28, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq., and the prehearing conference was held on October 24, 1985. After a discussion of the issues at the prehearing conference and during a telephone conference call on December 9, 1985, the parties agreed that the issues in this matter are:

- A. Whether the applicant can demonstrate the good character, honesty and integrity required for licensure as a casino service industry pursuant to N.J.S.A. 5:12-92c, and N.J.A.C. 19:43-1.3(c) and N.J.A.C. 19:43-1.14(a)2iii.
  
- B. Whether the applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-92c and d and N.J.S.A. 5:12-86g, in that its qualifier, J. Russell Peltz, committed acts constituting violations of N.J.S.A. 2C:21-3b, offering a false instrument for filing; N.J.S.A. 2C:21-4a, falsifying or tampering with records; and N.J.S.A. 2C:28-3b, unsworn falsification to authorities.
  1. Whether J. Russell Peltz committed acts constituting a statutory disqualifying offense as enumerated in N.J.S.A. 5:12-86c(1), namely, falsifying or tampering with records, contrary to N.J.S.A. 2C:21-4a.
  
  2. Whether J. Russell Peltz committed acts constituting an offense which indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4), namely, offering a false instrument for filing, contrary to N.J.S.A. 2C:21-3b; falsifying or tampering with records, contrary to N.J.S.A. 2C:21-4a; and unsworn falsification to authorities, contrary to N.J.S.A. 2C:28-3b.

After the prehearing conference, and with the concurrence of both parties, I placed the matter on the inactive list of cases on January 8, 1986, in order to give the petitioner additional time to prepare its case.

The hearing took place on March 17, 18 and 19, 1986, at the Haddon Heights Borough Municipal Building in Haddon Heights, New Jersey, and the record in the matter closed on March 19, 1986.

### FACTUAL FINDINGS

I **FIND** that the facts in this matter are not in dispute.

#### A. TV Tax

In 1950, New Jersey enacted the TV tax, which was initially 5% of the gross amount received for the sale or lease of the television, motion picture or radio rights, payable immediately after the boxing exhibition. New Jersey amended its TV tax in 1979, and provided that the tax would be 5% of that portion of the gross amount received for the sale or lease of the television, motion picture or radio rights attributable to transmissions in New Jersey.

Robert W. Lee, the former deputy commissioner of the SAC, stated that the SAC aggressively tried to promote boxing matches in New Jersey since "Jersey Joe" Walcott, the former commissioner, felt that the matches would be good for New Jersey's economy and would give New Jersey boxers a better opportunity to get matches. Therefore, the SAC was in favor of any steps which made New Jersey more competitive with its sister states. Mr. Lee, who had been responsible for the administration of the TV tax, stated that the SAC did not know about the 1979 amendment to the TV tax until sometime in the latter part of 1980, when the amendment was brought to its attention by its chief financial officer. After discussions about the amendment between Mr. Lee, Mr. Walcott and the deputy attorney general assigned to the SAC, it was agreed that it would be difficult to establish a formula to determine the percentage for New Jersey transmissions. It was also decided that pending a resolution as to how to administer the 1979 amendment, the TV tax would be reduced to 2 1/2% of the gross amount received (J-1), and that the promoters, the TV tax payers, would be allowed to take certain

deductions. According to Mr. Lee, the deputy attorney general advised the SAC that the promoters would probably continue to be overtaxed even if the TV tax was reduced to 2 1/2% and certain deductions were allowed. The SAC did not prepare any written statements or rules regarding the type of deductions that would be allowed, and a revised TV tax form was not prepared.

Mr. Lee discussed the type of deductions that would be permitted with the promoters and they submitted the TV tax with a written statement as to their calculations. Mr. Lee stated that the SAC allowed deductions for production costs, extra security, meals and tickets provided to television crews, nonappearance insurance, and telephone costs, provided that the promoter actually realized these expenses. Sometimes Mr. Lee questioned or deleted certain deductions listed by a promoter; however, he could not recall if he ever questioned any of the deductions listed by the petitioner.

Mr. Lee noted that the TV tax was again amended in January 1985, and a graduated tax was established which is based on the gross money received.

#### B. J. Russell Peltz's Background

J. Russell Peltz is the principal officer and stockholder of the petitioner. He resides in Pennsylvania and is licensed as a promoter and matchmaker in both Pennsylvania and New Jersey.

After completing college, Mr. Peltz was employed for some time as a sportswriter for the defunct Philadelphia Evening Bulletin. In 1969, Mr. Peltz started promoting professional boxing exhibitions at the Blue Horizon in Philadelphia, Pennsylvania, and from December 1972 through February 1980, Mr. Peltz was the Director of Boxing for the Spectrum Arena in Philadelphia. Since February 1980, Mr. Peltz, through the petitioner, has been an independent boxing promoter, and approximately 99% of his matches are held in Atlantic City or Philadelphia. Mr. Peltz is one of the few major promoters who handle boxing exhibitions in the Delaware Valley area.

On June 1, 1984, Mr. Peltz entered into an agreement with Sands Hotel and Casino (Sands) regarding the promotion of boxing exhibitions, which provides that Mr. Peltz shall promote one boxing exhibition per month at the Sands and a limited number of boxing matches outside of the Sands, including one exhibition per month at the Blue Horizon in Philadelphia. This contract will terminate at the end of 1986, and at the present time, the Sands does not plan to renew the contract. Also pursuant to this contract, Mr. Peltz receives a monthly salary and the Sands pays the operating expenses for the boxing exhibitions at the casino.

Mr. Peltz currently has promotion contracts (P-2) with 45 boxers, and last year he promoted 30 boxing exhibitions, each of which consisted of six matches. Pursuant to these promotion contracts, each boxer is guaranteed a certain number of matches per year and a specified amount of money per match. The amount of money paid to a boxer is based on a standard schedule and varies based on the number of rounds, the location of the match and whether or not it will be telecasted. In general, boxers received more money for matches held in Atlantic City. Matches involving new boxers are usually held at the Blue Horizon in Philadelphia, and the important matches are held at a casino in Atlantic City. Mr. Peltz will not be able to fulfill his contractual responsibilities to his boxers if he cannot promote matches in Atlantic City.

The petitioner is currently authorized to promote boxing exhibitions in casinos pursuant to a vendor's registration issued in accordance with N.J.S.A. 5:12-104b, pending the review of its application for a license as a casino service industry. If its license application is denied, the petitioner's registration will be automatically revoked.

#### C. Petitioner's TV Tax Payments

The Division's recommendation in this matter is based on the information Mr. Peltz gave to the State Commission of Investigation (SCI) and the Division, and the petitioner's records. Mr. Peltz fully cooperated with the SCI and testified before it on November 28, 1983 and on December 1, 1983. He also fully cooperated with the Division and the Division conducted a sworn interview with Mr. Peltz on March 12, 1985.

Mr. Peltz promoted his first match in Atlantic City in 1980. For that match and the two other matches held in Atlantic City during 1980, the petitioner paid the 5% TV tax on the gross amount received without taking any deductions.

Immediately after the May 31, 1981 match between Dwight Braxton and Mike Rossman at Resorts Hotel and Casino, Mr. Peltz discussed the TV tax with Mr. Lee. Mr. Lee suggested the type and the amount of the deductions that could be taken, and Mr. Lee helped Mr. Peltz to fill out the TV tax statement for the May 31, 1981 match. For that match and for the other matches Mr. Peltz promoted in Atlantic City through October 27, 1983, the petitioner initially paid a TV tax of 2 1/2% and took deductions in the categories suggested by Mr. Lee (J-3 to J-35)\*.

For each of the matches in issue (J-3 to J-35), Mr. Peltz had prepared a balance sheet showing the money received, the expenses and the profit which was for the petitioner's internal record as well as the statement of the calculation of the TV tax which was submitted to the SAC. After reviewing these records, the Division's representatives questioned certain expenses taken by Mr. Peltz as deductions in the computation of the TV tax. As already stated, the questioned deductions fall into the following categories:

- (1) Production costs,
- (2) Nonappearance insurance,
- (3) Telephone expenses,
- (4) Extra security costs,
- (5) Tickets and meals provided to the television crew.

The other deductions taken by Mr. Peltz in the TV tax statements filed with the SAC are not disputed by the Division.

As to the production costs deductions, Mr. Peltz stated that after the May 31, 1981 boxing match, he obtained blank pieces of stationery with the letterhead of Video Techniques, Inc. (Video) (J-2) from a representative of that company and he used Video stationery to prepare an invoice for the promotional costs for that match, a part of which was for services provided by Video (J-3). The actual invoice submitted by Video to the petitioner was for \$17,500, while the invoice prepared by Mr. Peltz on Video's stationery, which was submitted with the TV tax statement, was for \$42,500 (J-3).

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\* Documents regarding 34 matches were introduced into evidence (J-3 to J-36), however, the documents relating to one of these matches (J-36) do not indicate that the petitioner took any deductions in computing the TV tax for that match.

Thereafter, Mr. Peltz sometimes listed production costs on the TV tax statements without attaching an invoice (J-11, J-12, J-15, J-16, J-17, J-18, J-20, J-21), and other times he attached an invoice for the production costs which he prepared on Video's stationery (J-3, J-4, J-5, J-6, J-7, J-8, J-9, J-10, J-13, J-14, J-19, J-23, J-24, J-27). Only on one other occasion, the match between Jeff Chandler and Julian Salis, did the petitioner actually use the services of Video and for that fight, the actual invoice from Video to the petitioner was for \$21,000, while the invoice prepared by Mr. Peltz on Video's stationery, which was submitted with the TV tax statement, was for \$45,000 (J-6). Among the TV tax statements in issue there are a number of statements which do not contain a production costs deduction (J-22, J-25, J-26, J-27, J-29, J-30, J-31, J-32, J-33, J-34, J-35). On all of the TV tax statements in issue (J-3 to J-35), Mr. Peltz listed "tape production" as a separate deduction.

As to the petitioner's balance sheets for the matches in issue, production costs as such appear on the sheets for seven matches (J-3, J-6, J-12, J-14, J-19, J-20, J-24) however, the amounts are smaller than those listed as production costs on the TV tax statements for the same matches.

Mr. Peltz stated that the production costs deductions which appear on the TV tax statements in issue were his estimates of his actual costs; however, he offered no explanation for his use of Video's stationery for the invoices.

Having reviewed the exhibits admitted into evidence regarding the TV tax statements in issue (J-3 to J-35), it appears that when Mr. Peltz listed a production costs deduction without including an invoice to support these costs (J-11, J-12, J-15, J-16, J-17, J-18, J-20 and J-21), the production costs ranged between \$5,000 and \$35,000, and most of these deductions were for less than \$10,000. However, when Mr. Peltz listed a production costs deduction and submitted an invoice that he had prepared on the stationery of Video (J-3, J-4, J-5, J-6, J-7, J-8, J-9, J-10, J-13, J-14, J-19, J-23, J-24 and J-27), the production costs ranged from \$6,500 to \$58,000, and except for one match, these production costs deductions exceeded \$13,500.

As to the nonappearance insurance deduction listed by Mr. Peltz on all but 10 of the TV tax statements in issue (J-3 to J-24, J-27), he admitted that he did not obtain any such insurance nor did he act as a self-insurer by establishing an escrow account for

the monies. However, Mr. Peltz noted that since the matches in issue were to be telecasted, he had to guarantee that they would take place and it was his responsibility to find a substitute boxer in case someone did not appear.

As to the telephone expense deduction listed on all of the TV tax statements in issue except one (J-35), which ranged between \$75 and \$850 (J-3 to J-34), Mr. Peltz stated that he estimated the amount of the telephone expenses for the match based on his office's telephone bill for the month preceding the match. Mr. Peltz stated that the balance sheets for the same matches that he prepared for the petitioner's record do not include the telephone expenses since he considered this item to be an ordinary office expense. However, in reviewing Mr. Peltz's balance sheets for the matches in issue, it should be noted that he does not reflect any general office cost and does list as separate items postage, message services and secretarial assistance, even though these items appear to be ordinary office expenses and are for substantially smaller amounts than the telephone expenses listed on the TV tax statements.

As to the extra security costs and/or the costs for tickets and meals provided to the television crews that appeared on all the TV tax statements in issue (J-3 to J-35), Mr. Peltz admitted that he did not directly pay these costs and that these items were provided by the casinos. Mr. Peltz stated that he considers these items to be indirect expenses since they were part of the compensation he received from the casino for bringing the match to that location. According to Mr. Peltz, he could have received money in lieu of these free benefits and then he would have paid for these expenses.

Mr. Peltz stated that he first learned about the 1979 TV tax amendment when the first report on boxing of the SCI was released. At that time, he discussed that tax amendment with Robert Arum, another boxing promoter, and he was advised by Mr. Lee that he should continue to pay the TV tax in the same manner as he had done since 1981.

After testifying before the SCI, Mr. Peltz submitted amended TV tax statements to the SAC in which he deleted the deductions that had been questioned by the SCI (basically the same deductions that have been questioned by the Division) and he made additional payments of the TV tax which totaled \$21,885.10 (J-37, J-38 and J-39). Recently the petitioner has computed the amount of TV tax that it should have paid based on the TV tax as amended in 1979 and has concluded that it overpaid \$77,559.68 in TV taxes between 1981 and 1983 (P-3). In making this calculation, Mr. Peltz obtained

information from the various television stations and cable television companies as to the percentage of New Jersey transmissions. Mr. Peltz has been advised that administratively the new State Athletic Control Board is not authorized to handle the petitioner's claim for reimbursement of the amount of the alleged overpayment, and that he has to bring the matter before the New Jersey Tax Court (P-4, P-5).

Robert Arum, a New York attorney who is now a full-time boxing promoter, agreed with Mr. Peltz's position that the free rooms, meals and tickets that a promoter receives from the casino is considered by both the casinos and the promoters to be part of the consideration for bringing the fight match to the casino.

Mr. Arum testified that when he was orally informed by Mr. Lee that the TV tax would be reduced to 2 1/2% and that certain deductions would be allowed. Mr. Arum felt that there was something wrong since the type of deductions allowed were poorly defined. Because of his concern, Mr. Arum paid the 2 1/2% TV tax and did not take any deduction for his regularly scheduled matches. For certain other matches, Mr. Arum did take certain deductions for expenses and identified these expenses as estimates on his TV tax statements. Mr. Arum thought that at sometime in the future there would be an audit of these statements, at which time the exact amount of the deductions would have to be established.

Mr. Arum also became aware of the 1979 amendment to the TV tax when the first report on boxing of the SCI was released, and thereafter he paid the TV tax based on to the revised statute. Although Mr. Arum felt that he had grossly overpaid the TV taxes in the past and had been "taken" by the SAC, he has not filed any demand for the repayment of the excess TV taxes.

Mr. Arum through his corporation, Top Rank, is the only boxing promoter who is currently licensed as a casino service industry in New Jersey.

#### D. Character Witnesses

On behalf of the petitioner, 43 witnesses, all of whom have had business dealings with Mr. Peltz, testified that Mr. Peltz is a good and honest promoter and that his reputation in the boxing and business community is that of a person of good character, honesty and integrity. Except for Mr. Arum, most of these witnesses were not aware that

the Division had objected to the licensure of the petitioner, and those who knew about the Division's objection had only a vague understanding of the reasons for the objection. The persons who testified are as follows:

Randy Gordon - a free-lance sportscaster who has worked as a boxing announcer for cable TV in Atlantic City.

Mary Ann Seymour - a free-lance graphic artist who has done layouts for Mr. Peltz since the early 1970's.

Francis C. Walker - the executive secretary of the Pennsylvania Athletic Commission, who has known Mr. Peltz for approximately 8 years.

Nigel Collins - the editor-in-chief of Ring Magazine and a former boxing manager, who has known the petitioner since 1969.

Samuel D. Solomon - a retired Pennsylvania Railroad employee who has been involved with boxing for 50 years as a trainer, manager, promoter, and cut man,<sup>1</sup> and who has known the petitioner since 1969.

Sam Schroeder - the assistant general manager for programs for Prism, who has known the petitioner since 1980.

Monte Pearson - a co-owner of Pearson's Sporting Goods in Philadelphia, which is one of the largest sports stores in the eastern United States, who has known Mr. Peltz for about 20 years.

David Pearson - a co-owner of Pearson's Sporting Goods in Philadelphia, who has known Mr. Peltz for about 20 years.

Jim Barniak - the sports director for Prism, who has known Mr. Peltz for 7 years.

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<sup>1</sup> A person who renders first-aid to a boxer during a match.

Ed Derian - an auto parts salesman who works part-time as a boxing announcer, who has known the petitioner since 1975.

Louis Clendenial - a trainer who has been involved in about 35 matches which have been promoted by Mr. Peltz.

Melvin D. Ellis - a detective in the Intelligence Division of the Philadelphia Police, who has known the petitioner since the early 1970's.

Milton Bailey - involved in boxing activities for 40 years as a trainer, second, and currently a cut man, who has known the petitioner for a number of years.

Louie Fischer - an unemployed construction truck driver who sometimes acts as a co-trainer for boxers, and who has known the petitioner since 1969.

Quenzell McCall - involved in boxing for approximately 15 years as a trainer, manager and cut man, and who has known the petitioner since the 1970's.

James P. Thorton - a boxer and a U.S. Post Office employee for whom Mr. Peltz has promoted 12 matches since 1983.

Anthony Coccaro - a boxing manager for approximately 35 years, who has known the petitioner for about 25 years.

Fred Jenkins - a boxing manager who works for the Philadelphia Department of Recreation, and who has known the the petitioner for about 17 years.

Marty Feldman - a boxing manager and trainer who has been involved in two matches promoted by Mr. Peltz, and who has known the petitioner for about 17 years.

Michael Picciotti - a boxer for whom Mr. Peltz has promoted approximately 36 matches, 15 of which were held in Atlantic City.

John D. Carter - a boxer who has been promoted by Mr. Peltz since 1981.

Charles D. Williams - a boxer who has been involved with 5 matches promoted by Mr. Peltz in Atlantic City within the last 12 months.

John Farina - a boxer who has been involved in 6 matches promoted by Mr. Peltz.

Joseph Gramby - involved in boxing for 55 years as a boxer, cut man, second, manager and promoter, and who has known Mr. Peltz for about 17 years.

James Toppi - the owner of Blue Horizon and a former boxing promoter, who has known Mr. Peltz since 1969.

Benny Briscoe - a former boxer who is currently employed by the City of Philadelphia and who fought in a number of matches promoted by Mr. Peltz.

Harold Moore - a part-time trainer who has been involved in a number of matches promoted by Mr. Peltz.

Ali Saad Muhammad - a boxer who has been involved in 9 matches promoted by Mr. Peltz.

Marvin L. Johnson - the current light heavyweight champion of the world, whose matches have been promoted by Mr. Peltz since 1976.

John Baskerville - a dressing room attendant, who also acts as a second and who has worked for Mr. Peltz on a number of occasions.

Willie Chriss - a corner person and dressing room attendant, who has known Mr. Peltz for approximately 7 years.

Marvin Gordon - a former Philadelphia police officer who currently manages boxers and has been involved in approximately 20 matches promoted by Mr. Peltz.

Frank Taylor - the Athletic Director at the West Philadelphia Athletic Club who has been involved in boxing for about 30 years as a boxer, trainer and second, and who has known Mr. Peltz for a number of years.

Rebecca O'Neill - the former manager for Jeff Chandler, a retired boxing champion, who has been involved in 37 matches promoted by Mr. Peltz.

William O'Neill - the husband of Ms. O'Neill, who has been involved in boxing for over 50 years as a manager, trainer, corner person and advisor, and who has known Mr. Peltz for a number of years.

Donald G. Nelson - a boxing manager and cut man who has been involved in boxing for 40 years and who has worked for Mr. Peltz as a cut man for 3 years.

Edward Aliano - a retired railroad employee who has been a cut man for approximately 25 years, and who has known Mr. Peltz since 1969.

Donald Elbaun - a boxing promoter who was under contract with Tropicana Hotel and Casino until recently and who has known the petitioner since 1969. Mr. Elbaun has filed an application for licensure as a casino service industry in New Jersey.

Patrick F. Duffy - a boxing manager who has been involved with the United States boxing teams for the Olympics and Pan-American Games, who has been employed by the federal government to supervise boxing matches for the Army and Navy, and who has known the petitioner since he graduated from college. Mr. Duffy has been involved in approximately 11 matches promoted by the petitioner.

Henry R. Kropinski - a retired General Electric employee who is a boxing announcer and who has announced matches promoted by Mr. Peltz.

Theodore Brenner - a matchmaker for Top Rank, Inc., who has known Mr. Peltz since 1969.

Robert Arum - a New York attorney who has been a boxing promoter since 1966.

James J. Binns - a Pennsylvania attorney who is currently the chairman of the Pennsylvania Athletic Commission, who has known Mr. Peltz for about 15 years.

CONCLUSIONS OF LAW

In closing, Deputy Attorney General Patricia M. Wild argued that the documents submitted into evidence regarding the matches in issue (J-3 to J-35) show that the petitioner, through its principal officer, Mr. Peltz, filed TV tax statements with the SAC which set forth deductions for expenses that were not incurred by the corporation. Ms. Wild specifically noted that invoices were prepared by Mr. Peltz on Video's stationery and were submitted to the SAC even though Video had not rendered any production services for the petitioner or its services for a substantially smaller amount than that reflected in the invoices submitted to SAC.

Ms. Wild alleged that these actions by Mr. Peltz constitute unprosecuted violations of the following statutes:

N.J.S.A. 2C:21-3b, which provides:

A person is guilty of a disorderly persons offense when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with knowledge or belief that it will be filed with, registered or recorded in or otherwise becomes a part of the records of such public office or public servant.

N.J.S.A. 2C:21-4a, which provides:

Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

N.J.S.A. 2C:28-3b which provides:

A person commits a disorderly persons offense if, with purpose to mislead a public servant in performing his function, he:

- (1) Makes any written false statement which he does not believe to be true;
- (2) Purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading;
- (3) Submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (4) Submits or invites reliance on any sample, specimen, map boundary-mark, or other object which he knows to be false.

Ms. Wild stated that a violation of N.J.S.A. 2C:21-4a is a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, and that violations of N.J.S.A. 2C:21-3b and N.J.S.A. 2C:28-3b were inimical offenses pursuant to N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g.

Although Ms. Wild admitted that Mr. Peltz has the reputation of being an excellent businessman and that he fully cooperated with both the SCI and the Division, she argued that because he listed falsified deductions on the TV tax statements in issue, the petitioner cannot show by clear and convincing evidence that it has a reputation for good character, honesty and integrity, as required by N.J.S.A. 5:12-92c, and N.J.A.C. 19:43-1.3(c) and N.J.A.C. 19:43-1.14(a)2iii.

On behalf of the petitioner, Glenn A. Zeitz, Esq. noted that the SAC improperly administrated the TV tax after the law was amended in 1979 and until sometime after October 1983. During part of that period, the SAC allowed the promoters to take certain deductions in the computation of the TV tax but provided no guidelines, except for the oral representations of Mr. Lee, as to what deductions would be permitted. Mr. Zeitz stated that Mr. Lee's testimony clearly shows that the SAC encouraged the use of deductions since the SAC was mainly concerned with getting promoters to bring matches to New Jersey.

Mr. Zeitz argued that Mr. Peltz had no criminal intention and was simply trying to comply with Mr. Lee's suggestions. He represented that Mr. Peltz's actions were the result of carelessness or neglect, and noted that Mr. Peltz amended his TV tax statements and paid additional TV taxes after eliminating all of the questioned deductions, even though at that time he was aware that he had overpaid the TV tax initially.

Further, Mr. Zeitz stated that no criminal charges have been filed against Mr. Peltz or the petitioner, and noted that if there had been a conviction, the criminal penalty would be de minimis as compared to the business impact on the petitioner if it does not receive the casino service industry license and, therefore, cannot promote any boxing exhibitions in casinos in Atlantic City.

The facts in this matter clearly establish that the SAC incorrectly supervised the payment of the TV tax during the time the petitioner submitted the TV tax statements in issue. However, I **CONCLUDE** that this does not excuse any falsification in the TV tax statements that had been submitted by the petitioner during that period.

Although it is clear from the testimony of Mr. Lee that promoters were encouraged to take deductions in the computation of the TV tax and there was an ambiguity as to what type of deductions were allowed, there was no evidence presented that Mr. Lee or any other representative of the SAC authorized a promoter to list as deductions expenses not incurred by that promoter.

In comparing the production costs listed by Mr. Peltz on the TV tax statements in issue with the expenses listed on the petitioner's balance sheets for the same matches, it is evident that the amounts listed as "production costs" on the statements do not appear as such on the balance sheets. However, these balance sheets contain some items listed as production costs and a number of expenses which do not appear on the TV tax statements and which conceivably could have been included in the production costs deductions that appear on the TV tax statements. In absence of a definition of what could be included as "production costs," and in absence of any evidence to the contrary, I accept Mr. Peltz's testimony that he did have production costs for the matches in issue. However, Mr. Peltz offered no explanation as to why he submitted falsified invoices for certain production costs that he listed as deductions on his TV tax statements. Since he consistently submitted such falsified invoices when the production costs listed were in excess of \$13,500, the logical conclusion is that the falsified invoices were an apparent attempt to avoid having this deduction questioned by the SAC.

Based on the facts that Mr. Peltz submitted falsified deductions for nonappearance insurance in 23 of the TV tax statements in issue, and falsified invoices for production costs in 14 TV tax statements during the more than two-year period in issue, I

**CONCLUDE** that the Division has shown that Mr. Peltz was guilty of violations of N.J.S.A. 2C:21-3b, N.J.S.A. 2C:21-4a and N.J.S.A. 2C:28-3b.

Since Mr. Peltz is the principal officer and stockholder of the petitioner and since he prepared the TV tax statements with the falsified invoices and the falsified deductions for nonappearance insurance on behalf of the petitioner, I **CONCLUDE** that the Division has shown a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, namely, the unprosecuted violation of N.J.S.A. 2C:21-4a. Even if this statutory disqualifier was not established, I **CONCLUDE** that these actions by Mr. Peltz, on behalf of the petitioner, constitute violations of N.J.S.A. 2C:21-3b and N.J.S.A. 2C:28-3b, which are disorderly persons offenses, and which would render the licensure of the petitioner inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g.

In addition, I **CONCLUDE** that the same actions by Mr. Peltz prevent the petitioner from establishing its reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-92c, and N.J.A.C. 19:43-1.3(c) and N.J.A.C. 19:43-1.14(a)2iii.

As to the other deductions questioned by the Division, I accept Mr. Peltz's testimony that he considered the extra security costs and tickets and meals provided to the television crews to be indirect expenses of the petitioner because these items were provided by the casino, pursuant to contract, as part of the compensation given to the petitioner for bringing the boxing exhibition to that casino. From the testimony, it is apparent that Mr. Peltz would have been required to pay for these items if the petitioner had not received them as part of its compensation from the casino. Therefore, I **CONCLUDE** that the listing of these items as deductions was not a violation of N.J.S.A. 2C:21-3b, N.J.S.A. 2C:21-4a or N.J.S.A. 2C:28-3b, nor does the taking of these deductions reflect negatively on the petitioner's reputation or character.

As to the telephone expenses listed as deductions on the TV tax statements in issue, a review of the petitioner's balance sheets for the same matches does not show similar expenses. However, since there are substantial differences between the items listed on the balance sheets as compared to the TV tax statements submitted to the SAC, and in the absence of any evidence to show that the petitioner did not incur the telephone expenses, I **CONCLUDE** that these items as set forth in the TV tax statements were appropriate out-of-pocket expenses realized by the petitioner and that the taking of these

deductions does not constitute a violation of the cited criminal statutes nor does it adversely reflect on the character or reputation of the petitioner.

DISPOSITION

Based on my conclusions that the Division has established a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g and that the petitioner has not been able to establish its reputation for good character, honesty and integrity, I **CONCLUDE** that the petitioner is not entitled to licensure pursuant to N.J.S.A. 5:12-92c, and I **ORDER** that the application of Peltz Boxing Promotions, Inc. for licensure as a casino service industry 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 5, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

May 5, 1986  
DATE

Bernadette T. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 8 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**JOINT EXHIBITS:**

- J-1 Letter from Robert W. Lee to All Boxing and Wrestling Promoters
- J-2 Blank stationery with the letterhead of Video Techniques, Inc., 101 West 57th Street, New York, NY 10010
- J-3 Documents regarding the fight between Dwight Braxton and Mike Rossman
- J-4 Documents regarding the fight between Frank Fletcher and Norberto Sabater
- J-5 Documents regarding the fight between Jimmy Young and Marvin Stinson
- J-6 Documents regarding the fight between Jeff Chandler and Julian Solis
- J-7 Documents regarding the fight between Frank Fletcher and Ernie Singletary
- J-8 Documents regarding the fight between Johnny Carter and Sergio Castro
- J-9 Documents regarding the fight between Jeff Chandler and Eijiro Murata
- J-10 Documents regarding the fight between Frank Fletcher and Tony Braxton
- J-11 Documents regarding the fight between Randall "Tex" Cobb and Jeff Shelburg
- J-12 Documents regarding the fight between James Green and Teddy Mann
- J-13 Documents regarding the fight between Kevin Howard and Johnny Cooper
- J-14 Documents regarding the fight between Frank Fletcher and Clint Jackson
- J-15 Documents regarding the fight between Gaby Canizales and Diego Rosario
- J-16 Documents regarding the fight between Kevin Howard and Mao de la Rosa
- J-17 Documents regarding the fight between Curtis Parker and Henry Walker
- J-18 Documents regarding the fight between Gaby Canizales and Franco Torregoza
- J-19 Documents regarding the fight between Frank Fletcher and James Green
- J-20 Documents regarding the fight between Jeff Chandler and Miguel Iriarte
- J-21 Documents regarding the fight between Johnny Bumphus and Pat Jefferson
- J-22 Documents regarding the fight between Myron Taylor and Refugio Rojas
- J-23 Documents regarding the fight between Frank Fletcher and Wilford Scypion
- J-24 Documents regarding the fight between Jeff Chandler and Gaby Canizales

- J-25 Documents regarding the fight between Mike Rossman and Charlie Smith
- J-26 Documents regarding the fight between Curtis Parker and Ken Bristol
- J-27 Documents regarding the fight between Jeff Chandler and Hector Cortez
- J-28 Documents regarding the fight between Duane Thomas and Nino Gonzales
- J-29 Documents regarding the fight between Mike Rossman and Al Fracker
- J-30 Documents regarding the fight between Jeff Chandler and Oscar Muniz
- J-31 Documents regarding the fight between Johnny Bumphus and Jose Angulo
- J-32 Documents regarding the fight between Anthony Fletcher and Ricardo Jimenez
- J-33 Documents regarding the fight between Richie Kates and Jerry Martin
- J-34 Documents regarding the fight between Pinklon Thomas and Leroy Boone
- J-35 Documents regarding the fight between Mike Rossman and Henry Sims
- J-36 Documents regarding the fight between Charlie Brown and Ruben Munoz
- J-37 Letter from J. Russell Peltz to Robert W. Lee, dated December 6, 1983
- J-38 Letters from J. Russell Peltz to Robert W. Lee, all dated either May 1, 1984 or May 7, 1984, with attachments
- J-39 Various checks issued by Peltz Boxing Promotions, Inc., to the New Jersey Athletic Commission, all dated May 16, 1984
- J-40 Copy of N.J.S.A. 5:2-12
- J-41 Copy of N.J.A.C. 13:46-13.1
- J-42 Copy of Chapter 83 P.L. 1985
- J-43a Copy of N.J.S.A. 2C:21-3
- J-43b Copy of N.J.S.A. 2C:21-4
- J-43c Copy of N.J.S.A. 2C:28-3

**FOR THE PETITIONER:**

- P-1 Promotional information for various fights promoted by J. Russell Peltz
- P-2 Typical Boxing Promotion Agreement entered into between the petitioner and a boxer

P-3 A report prepared by the petitioner relating to its alleged overpayment of TV taxes during the years of 1980 through 1984

P-4 Letter from Mark I. Slotkin, Esq., to J. Russell Peltz, dated March 6, 1986

P-5 Letter from Larry Hazzard to Mark I. Slotkin, Esq., dated February 28, 1986

**FOR THE RESPONDENT:**

R-1 Pages 26 through 30 of the Interim Report and Recommendations of the State of New Jersey Commission of Investigation on the Inadequate Regulation of Boxing

WITNESSES

FOR THE PETITIONER:

Robert W. Lee  
J. Russell Peltz  
Randy Gordon  
Mary Ann Seymour  
Francis C. Walker  
Nigel Collins  
Samuel D. Solomon  
Sam Schroeder  
Monte Pearson  
Dave Pearson  
Jim Barniak  
Ed Derian  
Louis Clendential  
Melvin D. Ellis  
Milton Bailey  
Louie Fischer  
Quenzell McCall  
James Thorton  
Anthony Coccoaro  
Fred Jenkins  
Marty Feldman  
Michael Picciotti  
John D. Carter  
Charles D. Williams  
John Farina  
Joseph Gramby  
Jimmy Toppi  
Bennie Briscoe  
Harold Moore  
Ali Saad Muhammad  
Marvin L. Johnson  
John Baskerville

Willie Chriss  
Marvin Gordon  
Frank Taylor  
Rebecca O'Neill  
William O'Neill  
Donald G. Nelson  
Edward Aliano  
Donald Elbaun  
Patrick F. Duffy  
Henry R. Kropinski  
Theodore Brenner  
Robert Arum  
James J. Binns

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-300  
OAL DOCKET NO. CCC 1838-85  
LICENSE NO. 40541-22

---

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

Complainant,

FINAL ORDER

v.

JOHN H. RATTIGAN,

Respondent.

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 8, 1986,

IT IS on this 10<sup>th</sup> day of JANUARY 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of John H. Rattigan is dismissed based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon John H. Rattigan, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: *Dennis Daly*

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 1838-85

AGENCY DKT. NO. 84-300

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**JOHN H. RATTIGAN,**

Respondent.

---

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

**John H. Rattigan, respondent, pro se**

Record Closed: October 8, 1985

Decided: November 22, 1985

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on September 21, 1984, seeking revocation of the respondent's casino employee license, or some other sanction, pursuant to sections 86c and g, 90 and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq). The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to his indictment on March 6, 1984, for conspiracy, in violation of N.J.S.A. 2C:5-2, burglary, in violation of N.J.S.A. 2C:18-2, and theft, in violation of N.J.S.A. 2C:20-3, has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control

Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the Act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.

#### PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated March 19, 1985, the Division of Gaming Enforcement withdrew its objection to the continued casino hotel employee registration of the respondent. By the same letter, the Division advised the Commission that it wished to proceed to a hearing on the complaint seeking revocation of the respondent's casino employee license. On April 2, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 23, 1985, and the hearing was held on October 8, 1985.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 26-year-old resident of Mays Landing, New Jersey. He holds casino hotel employee registration number 36610-40, issued by the Casino Control Commission on August 29, 1981. The respondent's casino employee license number 40541-22 was issued by the Commission on January 4, 1983. For approximately four and one-half years, the respondent has been employed as a maintenance mechanic at the Claridge Hotel and Casino in Atlantic City, New Jersey.

It is undisputed that the respondent was involved in an incident on February 13, 1984, which led to his arrest. Somers Point Patrolman Richard Rest testified that he was on routine patrol on that date when he received a radio call that there was a burglary or theft in progress behind the Jamesway Department Store in Somers Point, New Jersey. Upon his arrival, Patrolman Rest observed three individuals standing near trailers, with several boxes placed on the ground and on a loading dock. One of the individuals was the respondent, who was placed under arrest by the patrolman. The other two individuals ran from the scene. At the time of his arrest, the respondent had a hacksaw blade in his back pocket.

Detective Gary C. Gray of the Somers Point Police Department testified at the hearing that he investigated the incident which led to the respondent's arrest. According to the detective, two trailers and a storage shed had been broken into with the use of a tire iron and a hacksaw blade. Michael D. Rattigan, the respondent's brother, turned himself in to the police department shortly after the respondent's arrest. The third individual involved surrendered to the police later in the day.

The total value of the items taken from one of the trailers and from the storage shed was approximately \$250 (exhibit P-1). According to Detective Gray, the respondent stated that he and the other two individuals involved had been drinking during the day and when they stopped behind the Somers Point Shopping Center to relieve themselves, they decided to break into the trailers and storage shed. They were unloading property from one of the trailers when the police officers arrived at the scene.

The respondent was charged with burglary and theft, in violation of N.J.S.A. 2C:18-2 and N.J.S.A. 2C:20-3. On March 6, 1984, the respondent was indicted for conspiracy, contrary to N.J.S.A. 2C:5-2, burglary, and theft by unlawful taking of goods valued at least at \$200 and not in excess of \$500 (P-2). It is undisputed that the respondent was admitted into the Atlantic County Pretrial Intervention Program on April 4, 1984 (exhibit R-2). Following his participation in the program for a period of six months, the indictment against the respondent was dismissed on October 15, 1984 (exhibit R-1). Among the conditions which the respondent was required to satisfy for satisfactory completion of the Pretrial Intervention Program were weekly meetings with the Probation Department, full-time employment, and attendance at meetings of Alcoholics Anonymous.

Testifying on his own behalf, the respondent accepted full responsibility for his participation in the burglary and theft for which he was indicted. The respondent explained that the Launch Haven Inn where he had been drinking on the day of his arrest was like a second home to him. He and his brother would drink and get into fights and the respondent acknowledged that between the ages of 17 and 24 years he had numerous arrests for being drunk and disorderly.

According to the respondent, he and the others involved on February 13, 1984 had stopped behind the shopping center to relieve themselves and the horseplay which commenced at that time led to the burglary and theft. The respondent testified that he has not been arrested since February 13, 1984. He attended Alcoholics Anonymous meetings once or twice a week for 10 months, although his Pretrial Intervention Program required such attendance for only six months.

In addition to his employment as a maintenance mechanic at the Claridge Hotel and Casino, the respondent has been in the contracting business with his brother for approximately one year. Because he is working two jobs for approximately 16 hours a day, the respondent does not now attend meetings of Alcoholics Anonymous. The respondent knows that he is a recovering alcoholic and he has not had a drink of an alcoholic beverage since June 1984. He has been married for approximately one and one-half years and he has a child who is approximately one year old. It was the sincere testimony of the respondent that he has completely turned his life around.

Bernie Laleyan and Joseph Flood testified on behalf of the respondent. According to Mr. Laleyan, who is employed by both the Claridge and Bally's Hotel and Casino, there has been a complete transformation of the respondent since his arrest in February 1984. While he lacked responsibility before the incident, the respondent is now very responsible, in the opinion of Mr. Laleyan. Mr. Flood, who is a shop steward at the Claridge Hotel and Casino, agreed that the respondent has completely turned his life around.

Several letters from supervisory personnel in the facilities department at the Claridge were admitted into evidence as exhibits R-3, R-4 and R-5. These letters attest to the respondent's good character, trustworthiness and conscientious work performance.

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. Pursuant to sections 80, 89b(2) and 90b of the Act, a casino employee licensee must establish, by clear and convincing evidence, his reputation for good character, honesty and integrity.

Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license. Pursuant to sections 86c(4), 86g and 129 of the Act, the Commission may revoke, suspend, limit, or otherwise restrict licensure of any person who has committed an act constituting an offense which would render licensure inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Although the respondent was admitted into the Pretrial Intervention Program and the indictment against him was dismissed, he does not dispute his commission of the offenses of conspiracy, burglary and theft, in violation of N.J.S.A. 2C:5-2, N.J.S.A. 2C:18-2, and N.J.S.A. 2C:20-3. The burglary committed by the respondent was a crime of the third degree, pursuant to the grading provision of N.J.S.A. 2C:18-2b. Since the property was valued at between \$200 and \$500, the theft committed by the respondent constitutes a crime of the fourth degree, pursuant to N.J.S.A. 2C:20-2b(3). Pursuant to N.J.S.A. 2C:5-4, the conspiracy committed by the respondent is a crime of the same degree as the most serious crime which is the object of the conspiracy. Thus, the conspiracy to commit the crime of burglary is a crime of the third degree.

The respondent acknowledges that he has a record of many arrests for being drunk and disorderly prior to his arrest in February 1984. He has no further arrests since that date. The respondent's participation in the Pretrial Intervention Program, including regular attendance at meetings of Alcoholics Anonymous has brought about a profound change. The respondent is now a responsible citizen who works diligently at two jobs,

including employment as a maintenance mechanic at a licensed casino hotel. He is viewed as a trustworthy and conscientious employee by his supervisors, and those who know him have attested to his good character and sense of responsibility since his participation in the Pretrial Intervention Program.

It is clear that the respondent's serious criminal involvement was in large measure the product of his heavy involvement with alcohol. He has not consumed an alcoholic beverage since June 1984. It appears highly unlikely that the respondent will again become involved in any criminal activity. Thus, from the credible evidence in the record, it also appears that the offenses committed by the respondent are not of such a nature as to adversely affect the public's confidence in the integrity of the licensed gaming industry and of the regulatory process. Accordingly, I **CONCLUDE** that the offenses committed by the respondent do not indicate that the respondent's continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(4) and 86g of the Act. I further **CONCLUDE** that the respondent possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90b of the Act.

**ORDER OF DISPOSITION**

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against John H. Rattigan be and hereby is **DISMISSED**.

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

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

November 22, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 26, 1985  
DATE

Bernadette J. Frayne  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 27 1985  
DATE

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

ks

INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

- P-1 Investigation and arrest reports
- P-2 Indictment
- P-3 Record of postponement

**FOR THE RESPONDENT:**

- R-1 Order of Dismissal
- R-2 Letter, dated October 18, 1984
- R-3 Letter, dated October 17, 1984
- R-4 Letter, dated October 17, 1984
- R-5 Letter, dated October 17, 1984

WITNESSES

**FOR THE PETITIONER:**

Richard Rest  
Gary C. Gray

**FOR THE RESPONDENT:**

Bernie Laleyan  
Joseph Flood  
John H. Rattigan

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-86  
OAL DOCKET NO. CCC 2547-85  
(ON REMAND)

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
BERNARD W. RESNIK, ROBERT GERALD :  
PARKER, GARY JOHN SMITH, ERVIN W. :  
SISKA, JOHN F. GROOM AND ANTHONY :  
PETER LEONE, :  
Respondents. :

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Proceedings in this matter having been held before the Office of Administrative Law; and an initial decision approving the parties proposed stipulation of settlement having been filed with the Casino Control Commission (Commission); and the parties having agreed to expand the record to include additional exhibits (R1 to R3); and the Commission having considered the entire record of the proceedings at its public meeting of January 8, 1986,

IT IS on this 24<sup>th</sup> day of February 1986, ORDERED that the initial decision and stipulation of settlement, as supplemented, are approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that the following respondents pay civil penalties in the amounts designated, which are due

and payable upon receipt of an invoice from the Commission's  
Division of Financial Evaluation and Control:

Bernard W. Resnik.....	\$8,000
John F. Groom.....	3,000
Anthony Peter Leone.....	2,500
Gary John Smith.....	1,000
Ervin W. Siska.....	1,000

IT IS FURTHER ORDERED that respondent Robert Gerald  
Parker pay a civil penalty in the amount of \$1,500, payable  
over twelve (12) months in equal monthly installments; and

IT IS FURTHER ORDERED that copies of this final order  
be served upon the respondents, the Division of Gaming  
Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

**OAL DKT. NO. CCC 2547-85**

**(CCC 4657-83 ON REMAND)**

**AGENCY DKT. NO. 83-86**

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

**Petitioner,**

**v.**

**BERNARD W. RESNIK, ROBERT  
GERALD PARKER, GARY JOHN  
SMITH, ERVIN W. SISKA,  
JOHN F. GROOM, ANTHONY PETER  
LEONE,**

**Respondents.**

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**Kevin F. O'Toole, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Charles A. Matison, Esq., for respondents Gary John Smith and Ervin W. Siska  
(Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, P.A., attorneys)**

**J. Michael Nolan, Jr., Esq., for respondents Robert Gerald Parker, John F. Groom  
and Anthony Peter Leone (Pitney, Hardin, Kipp & Szuch, attorneys; Charles A.  
Matison, Esq., at the prehearing conference)**

**Anthony R. Mautone, Esq., for respondent Bernard W. Resnik (Charles A. Matison,  
Esq., at the prehearing conference)**

**Record Closed: November 7, 1985**

**Decided: November 13, 1985**

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, filed charges against Bernard W. Resnik, Robert Gerald Parker, Gary John Smith, Ervin W. Siska, John F. Groom and Anthony Peter Leone, respondents, each of whom is the holder of a casino key employee license. The Division alleged that the respondents had committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties against the respondents' licenses, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondents opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letters dated April 5, 1983, the Commission notified each of the respondents of the pending action and advised them of their right to request a hearing. On May 16, 1983, the respondents filed an answer with the Commission and requested a hearing. On June 22, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

An initial decision-settlement, dated May 9, 1984, was issued, which adopted a prior settlement agreement between the parties. However, the Commission rejected the settlement and, on May 6, 1985, remanded the matter to the Office of Administrative Law.

A second prehearing conference was held on May 31, 1985, and the matter was scheduled for hearing. The record closed on November 7, 1985 upon receipt of a new stipulation of settlement.

FINDINGS OF FACT AND CONCLUSION

The parties have again agreed to a settlement, which has been set forth in a stipulation of facts and settlement agreement, and which are attached hereto and fully incorporated herein.

I have reviewed the submissions and the terms of the settlements and I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by the stipulations which contain the signatures of counsel for each of the parties.
2. The settlements fully dispose of all issues in controversy.

I CONCLUDE that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is ORDERED that the parties comply with the settlement terms and that these proceedings be concluded; and it is further ORDERED that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

November 13, 1985  
DATE

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

Receipt Acknowledged:

11/18/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 19, 1985  
DATE

Chabro Lopez  
OFFICE OF ADMINISTRATIVE LAW

bc



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**FILED**

MAY 11 1984

CASINO CONTROL COMMISSION  
LEGAL DIVISION

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 4657-83

AGENCY DKT. NO. 83-86

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

Petitioner,

v.

**BERNARD W. RESNIK,  
ROBERT GERALD PARKER,  
GARY JOHN SMITH,  
ERVIN W. SISKA,  
JOHN F. GROOM,  
ANTHONY PETER LEONE,**

Respondents.

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**APPEARANCES:**

**Kevin F. O'Toole, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Charles A. Matison, Esq., for the respondents (Cooper, Perskie, April, Niedelman,  
Wagenheim & Weiss, P.A., attorneys)**

**Record Closed: April 5, 1984**

**Decided: May 9, 1984**

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaing Enforcement (Division), Department of Law and Public Safety, petitioner, against Bernard W. Resnik, Robert Gerald Parker, Gary John Smith, Ervin W. Siska, John F. Groom and Anthony Peter Leone, respondents, each of whom is the holder of a casino key employee license. The Division alleged that the respondents committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties against the respondents' casino key employee licenses, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondents opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letters dated April 5, 1983, the Commission notified each of the respondents of the pending action and advised them of their right to request a hearing. On May 16, 1983, the respondents filed an answer with the Commission and requested a hearing. On June 22, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on August 31, 1983, but was continued pending settlement negotiations. The record closed on April 5, 1984, upon receipt of the stipulations of settlement.

FINDINGS OF FACT AND CONCLUSION

The parties have agreed to a settlement, which has been set forth in a Stipulation of Settlement for each respondent, which are attached hereto and fully incorporated herein.

I have reviewed the submissions and the terms of the settlements and I **FIND**:

1. The parties have voluntarily agreed to the settlements as evidenced by the stipulations of settlement, which contain the signatures of counsel for each of the parties and of each respondent.
2. The settlements fully dispose of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

**DISPOSITION**

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

May 9, 1984  
DATE

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

Receipt Acknowledged:

[Signature]  
CASINO CONTROL COMMISSION

11 MAY 1984  
DATE

Mailed to Parties:

MAY 15 1984  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**IRWIN I. KIMMELMAN**  
**Attorney General of New Jersey**  
**Attorney for the State of New Jersey**  
**Richard J. Hughes Justice Complex**  
**CN-047**  
**Trenton, New Jersey**

By: **Kevin F. O'Toole**  
**Deputy Attorney General**  
**(609) 984-6197**

**STATE OF NEW JERSEY**  
**CASINO CONTROL COMMISSION**

**STATE OF NEW JERSEY,** )  
**DEPARTMENT OF LAW AND** )  
**PUBLIC SAFETY, DIVISION OF** )  
**GAMING ENFORCEMENT,** )  
  
**Plaintiff,** )  
  
**vs.** )  
  
**BERNARD W. RESNIK,** )  
  
**Respondent.** )

**AGENCY DOCKET NO. 83-87**  
**STIPULATION OF SETTLEMENT**

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Bernard W. Resnik, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

- 1. WHEREAS Respondent presently holds Casino Key Employee License #00187-11, issued by the Casino Control Commission in June, 1979 and renewed in June, 1982; and,

2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Assistant Casino Manager; and,
3. WHEREAS Respondent is presently employed by BRC in the capacity of Assistant Vice-President; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone was observed traversing the interior of Pit No. 1 at BRC on multiple occasions as defined in N.J.A.C. 19:45-1.1 and playing roulette from within said pit from a position approximately adjacent to the dealer in violation of N.J.S.A. 5:12-96 and Condition Paragraph 29 of the Certificate of Operation issued to BRC by the Commission; and,
6. WHEREAS Respondent became aware of Mr. Caltagirone's activities described in paragraph 5, supra, and failed to take corrective action to insure that said activities would not occur and failed to cooperate with a Commission inspector's request to take corrective action, in violation of N.J.S.A. 5:12-80(d).
7. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-96, and

- Condition Paragraph 29 of BRC's Certificate of Operation issued by the Commission; and,
8. WHEREAS Respondent acknowledges that a violation of N.J.S.A. 5:12-80(d) did occur; and,
  9. WHEREAS on or about May 17, 1981, Respondent attempted to have a Senior Commission inspector move a Commission inspector from the outside of the gaming table area by requesting to the Senior Commission inspector that the Commission inspector observe Mr. Caltagirone's gaming activities from inside the pit, in violation of N.J.S.A. 5:12-80(d); and,
  10. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d); and,
  11. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(d) did occur; and,
  12. WHEREAS on or about May 15, 1981, Mr. Caltagirone established a credit line in the amount of \$1,500,000 for the purpose of obtaining casino gaming credit from BRC; and,
  13. WHEREAS Mr. Caltagirone drew counter checks against his established credit limit from BRC resulting in an outstanding balance, as of May 18, 1981, of \$1,200,000; and,
  14. WHEREAS on or about May 18, 1981, BRC employees, including Respondent, removed from the casino cage all of the outstanding counter checks drawn by Mr. Caltagirone and transported them to Mr. Caltagirone's hotel room in BRC in violation of N.J.S.A. 5:12-

101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and,

15. WHEREAS on or about May 18, 1981, Mr. Caltagirone, in his hotel room, presented to BRC employees, including Respondent, three (3) personal checks each in the amount of \$400,000 for the purpose of making payment upon or in consolidation of his outstanding gaming debt; and,
16. WHEREAS all three (3) checks presented to BRC employees by Mr. Caltagirone were made payable to Gaetano Caltagirone and not to BRC in violation of N.J.S.A. 5:12-101(b)1 and N.J.A.C. 19:45-1.25(c)3. One of the checks was not dated at the time of receipt in violation of N.J.S.A. 5:12-101(b)2 and N.J.A.C. 19:45-1.25(c)4. The other two (2) checks were post-dated in violation of N.J.S.A. 5:12-101(b)2, N.J.S.A. 5:12-101(c), N.J.A.C. 19:45-1.26(e), and N.J.A.C. 19:45-1.25(c)4; and,
17. WHEREAS BRC employees, including Respondent, accepted, on behalf of BRC, the three (3) checks presented by Mr. Caltagirone in consolidation of Mr. Caltagirone's outstanding gaming debt in violation of N.J.S.A. 5:12-101(b) and (c), N.J.A.C. 19:45-1.25(d)1, and N.J.A.C. 19:45-1.26(d) and (e), and transported them from Mr. Caltagirone's hotel room to the casino cage; and,
18. WHEREAS BRC employees, including Respondent, knew or should have known that their actions constituted violations of the Casino Control Act and regulations promulgated thereunder; and,
19. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging

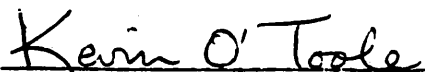
violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e); and,

20. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-101(b)1 and (b) 2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e) did occur;
21. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder, and Bernard W. Resnik has agreed to comply with the aforementioned statutory and regulatory provisions.

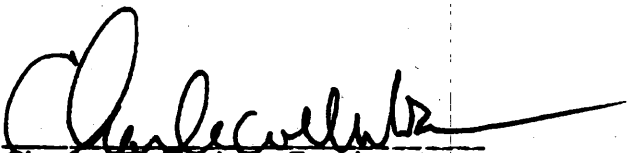
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Seven Thousand Dollars (\$7,000);
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and,
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

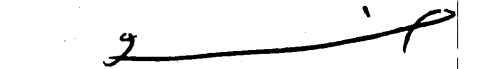
The undersigned consent to the form and entry of the above Stipulation of Settlement.



Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff



Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent



Bernard W. Resnik  
Respondent.

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey

By: Kevin F. O'Toole  
Deputy Attorney General  
(609) 984-6197

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

ROBERT GERALD PARKER,

Respondent.

AGENCY DOCKET NO. 83-86  
STIPULATION OF SETTLEMENT

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Robert Gerald Parker, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds Casino Key Employee License #00262-11 issued by the Casino Control Commission in June, 1979 and renewed in June, 1982; and,


2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Casino Shift Manager; and,
3. WHEREAS Respondent is presently employed by Greate Bay Hotel and Casino, Inc., in the capacity of Casino Shift Manager; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone was observed traversing the interior of Pit No. 1 at BRC on multiple occasions as defined in N.J.A.C. 19:45-1.1 and playing roulette from within said pit from a position approximately adjacent to the dealer in violation of N.J.S.A. 5:12-96 and Paragraph 29 of the Certificate of Operation issued to BRC by the Commission; and,
6. WHEREAS BRC employees, including Respondent, were informed of Mr. Caltagirone's activities by Casino Control Commission personnel and took no action to stop or prevent Mr. Caltagirone from engaging in these activities; and,
7. WHEREAS BRC employees, including Respondent, knew that failing to stop or prevent Mr. Caltagirone from gaining access to the pit area constituted a regulatory violation; and,
8. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-96, and Condition Paragraph 29 of BRC's Certificate of Operation issued by the Commission; and,

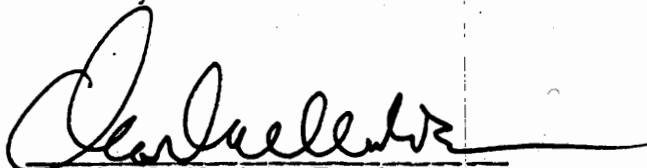
9. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(g), N.J.S.A. 5:12-96, and Condition Paragraph 29 of BRC's Certificate of Operation did occur; and,
10. WHEREAS the parties recognize the need to comply with the Casino Control Act and regulations promulgated therefrom, and Robert Gerald Parker has agreed to comply with the aforementioned statutory and regulatory provisions;

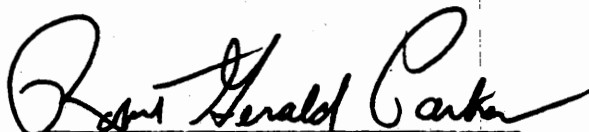
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Fifteen Hundred Dollars (\$1,500) to be paid as follows: \$125 per month until the full amount is paid.
- B. This settlement shall be full and final settlement of all matters contained herein.
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and,
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent

  
Robert Gerald Parker  
Respondent

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey

By: Kevin F. O'Toole  
Deputy Attorney General  
(609) 984-6197

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

GARY JOHN SMITH,

Respondent.

AGENCY DOCKET NO. 83-86

STIPULATION OF SETTLEMENT

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Gary John Smith, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds Casino Key Employee License #00337-11, issued by the Casino Control Commission in October of 1979 and renewed in October of 1982; and,

2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Casino Department Manager; and,
3. WHEREAS Respondent is presently employed by GNAC, Corp. in the capacity of Pit Boss All Games, Casino Shift Manager; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone was observed traversing the interior of Pit Number 1 at BRC on multiple occasions as defined in N.J.A.C. 19:45-1.1 and playing roulette from within said pit from a position approximately adjacent to the dealer in violation of N.J.S.A. 5:12-96 and Condition Paragraph 29 of the Certificate of Operation issued to BRC by the Commission; and,
6. WHEREAS BRC employees, including Respondent, were aware of Mr. Caltagirone's activities and took no action to stop or prevent Mr. Caltagirone from engaging in these activities; and,
7. WHEREAS BRC employees, including Respondent, knew that failing to stop or prevent Mr. Caltagirone from gaining access to the pit area constituted a regulatory violation; and,
8. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-96, and

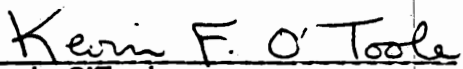
Condition Paragraph 29 of BRC's Certificate of Operation issued by the Commission; and,

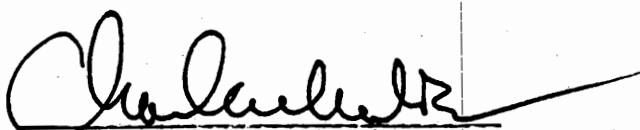
9. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(g), N.J.S.A. 5:12-96, and Condition Paragraph 29 of BRC's Certificate of Operation did occur; and,
10. WHEREAS the parties recognize the need to comply with the Casino Control Act and regulations promulgated therefrom, and Gary John Smith has agreed to comply with the aforementioned statutory and regulatory provisions;

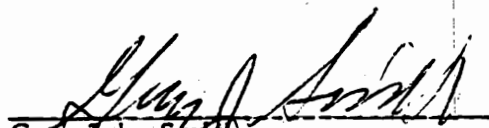
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent acknowledges that this Stipulation of Settlement shall act as a letter of censure, describing his conduct and statutory and regulatory violations committed, and shall be placed in his file at the Casino Control Commission.
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman  
Wagenheim and Weiss  
Attorney for Respondent

  
Gary John Smith  
Respondent

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey

By: Kevin F. O'Toole  
Deputy Attorney General  
(609) 984-6197

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

ERVIN W. SISKA,

Respondent.

AGENCY DOCKET NO. 83-86

STIPULATION OF SETTLEMENT

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Ervin W. Siska, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds Casino Key Employee License #00194-11, issued by the Casino Control Commission in August, 1979 and renewed in August, 1982; and,

2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Casino Department Manager Assistant; and,
3. WHEREAS Respondent is presently employed by Claridge Limited in the capacity of Executive Casino Host; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone was observed traversing the interior of Pit Number 1 at BRC on multiple occasions as defined in N.J.A.C. 19:45-1.1 and playing roulette from within said pit from a position approximately adjacent to the dealer in violation of N.J.S.A. 5:12-96 and Paragraph 29 of the Certificate of Operation issued to BRC by the Commission; and,
6. WHEREAS BRC employees, including Respondent, were informed of Mr. Caltagirone's activities by Casino Control Commission personnel and took no action to stop or prevent Mr. Caltagirone from engaging in these activities; and,
7. WHEREAS BRC employees, including Respondent, knew that failing to stop or prevent Mr. Caltagirone from gaining access to the pit area constituted a regulatory violation; and,
8. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-96, and


Condition Paragraph 29 of BRC's Certificate of Operation issued by the Commission; and,

9. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(g), N.J.S.A. 5:12-96, and Condition Paragraph 29 of BRC's Certificate of Operation did occur; and,
10. WHEREAS the parties recognize the need to comply with the Casino Control Act and regulations promulgated therefrom, and Ervin W. Siska has agreed to comply with the aforementioned statutory and regulatory provisions.

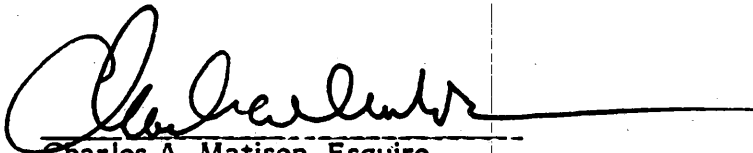
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent acknowledges that this Stipulation of Settlement shall act as a letter of censure, describing his conduct and statutory and regulatory violations committed, and shall be placed in his file at the Casino Control Commission;
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and,
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

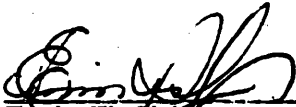
The undersigned consent to the form and entry of the above Stipulation of Settlement.



Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff



Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent



Ervin W. Siska  
Respondent

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IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: Kevin F. O'Toole  
Deputy Attorney General  
(609) 984-6197

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

JOHN F. GROOM,

Respondent.

AGENCY DOCKET NO. 83-86

STIPULATION OF SETTLEMENT

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, John F. Groom, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds Casino Key Employee License #00340-11, issued by the Casino Control Commission in August of 1979 and renewed in August of 1982; and,

2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times referenced herein in the capacity of Games Manager; and,
3. WHEREAS Respondent is presently employed by BRC in the capacity of Shift Manager; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 17, 1981, Respondent directed a pit boss, Mr. Alessandro G. Fornasiero, licensed in the games of blackjack and roulette, to perform the function of curator of the shoe in the game of baccarat being played by Mr. Caltagirone at table 1 in Pit No. 7 of the BRC casino in violation of N.J.S.A. 5:12-99a(16), N.J.S.A. 5:12-100(a) and (e), N.J.A.C. 19:45-1.11(c)3iii, N.J.A.C. 19:45-1.12(a)8, and N.J.A.C. 19:47-3.1 et seq.; and,
6. WHEREAS at or about the same time that Respondent ordered Mr. Fornasiero to perform the function of curator of the shoe, he also ordered Mr. Fornasiero to remove his casino key employee license in violation of N.J.S.A. 5:12-89(b)3 and (c), N.J.S.A. 5:12-99a(16), and N.J.A.C. 19:41-1.3(d) and (e); and,
7. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-89(b)3 and (c); N.J.A.C. 19:41-1.3(d) and (e), N.J.A.C. 19:45-1.11(c)3iii,

N.J.A.C. 19:45-1.12(a)8, and N.J.A.C. 19:47-3.1 et seq.; and,

8. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(g), N.J.S.A. 5:12-89(b)3 and (c), N.J.A.C. 19:41-1.3(d) and (e), N.J.A.C. 19:45-1.11(c)3iii, N.J.A.C. 19:45-1.12(a)8, and N.J.A.C. 19:47-3.1 et seq. did occur. Plaintiff agrees to the dismissal of N.J.S.A. 5:12-80(d); and,
9. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and John F. Groom has agreed to comply with the aforementioned statutory and regulatory provisions.

IT IS THEREFORE agreed and stipulated by and between the parties that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Three Thousand Dollars (\$3,000);
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

Kevin F. O'Toole

Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

Charles A. Matison

Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent

John F. Groom

John F. Groom  
Respondent

**IRWIN I. KIMMELMAN**  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: **Kevin F. O'Toole**  
Deputy Attorney General  
(609) 984-6197

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION**

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

**Plaintiff,**

**vs.**

**ANTHONY PETER LEONE,**

**Respondent.**

**AGENCY DOCKET NO. 83-86**

**STIPULATION OF SETTLEMENT**

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Anthony Peter Leone, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:


1. WHEREAS Respondent presently holds Casino Key Employee License #00330-11, issued by the Casino Control Commission in October, 1979 and renewed in October 1982; and,


2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Assistant Games Manager; and,
3. WHEREAS Respondent is presently employed by BRC in the capacity of Pit Boss; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 17, 1981, Respondent requested to a Senior Commission inspector that he wanted a Commission inspector who was observing the gaming activities of Mr. Caltagirone to move back from the gaming table area, in violation of N.J.S.A. 5:12-80(d); and,
6. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging a violation of N.J.S.A. 5:12-80(d); and,
7. WHEREAS Respondent acknowledges that a violation of N.J.S.A. 5:12-80(d) did occur; and,
8. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom and Anthony Peter Leone has agreed to comply with the aforementioned statutory and regulatory provisions;

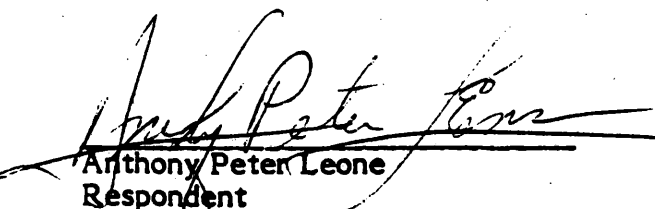
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Fifteen Hundred Dollars (\$1,500) in twelve (12) equal monthly installments;
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent

  
Anthony Peter Leone  
Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-87  
OAL DOCKET NO. CCC 2546-85  
(ON REMAND)

---

STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
LARRY JEAN WOOLF, CHARLES HORTON, :  
BERNARD W. RESNIK AND LUCIA A. :  
VAN PELT, :  
Respondents. :

---

Proceedings in this matter having been held before the Office of Administrative Law; and an initial decision approving the parties proposed stipulation of settlement having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of January 8, 1986,

IT IS on this *24<sup>th</sup>* day of February 1986, ORDERED that the initial decision and stipulation of settlement are approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that the following respondents pay civil penalties in the amounts designated, which are due

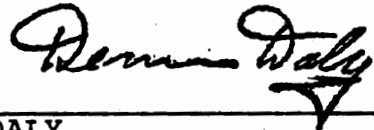
and payable upon receipt of an invoice from the Commission's  
Division of Financial Evaluation and Control:

Larry Jean Woolf..... \$7,500  
Bernard W. Resnik..... 2,000  
Lucia A. VanPelt..... 1,500

IT IS FURTHER ORDERED that respondent Charles Horton  
pay a civil penalty in the amount of \$2,500, payable over  
twenty-four (24) months in equal monthly installments; and

IT IS FURTHER ORDERED that copies of this final order  
be served upon the respondents, the Division of Gaming  
Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 2546-85

(CCC 4658-83 ON REMAND)

AGENCY DKT. NO. 83-87

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

Petitioner,

v.

**LARRY JEAN WOOLF,  
CHARLES HORTON,  
BERNARD W. RESNIK,  
AND LUCIA A. VAN PELT,**

Respondents.

---

**Kevin F. O'Toole, Deputy Attorney General, for the petitioner (Irwin L. Kimmelman, Attorney General of New Jersey, attorney)**

**J. Michael Nolan, Jr., Esq., for respondents Larry Jean Woolf and Lucia A. Van Pelt (Pitney, Hardin, Kipp & Szuch, attorneys)**

**Brian J. Molloy, Esq., for respondent Charles Horton (Wilentz, Goldman & Spitzer, P.C., attorneys)**

**Anthony R. Mautone, Esq., for respondent Bernard W. Resnik (Charles A. Matison, Esq., at the prehearing conference)**

Record Closed: October 4, 1985

Decided: November 13, 1985

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, filed charges against Larry Jean Woolf, Charles Horton, Bernard W.

735

Resnik and Lucia A. Van Pelt, respondents, each of whom is the holder of a casino key employee license. The Division alleged that the respondents had committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties against their licenses, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondents opposed the action.

### PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letters dated April 5, 1983, the Commission notified the respondents of the pending action and advised them of their right to request a hearing. Mr. Horton filed an answer and statement of request for a hearing with the Commission on May 12, 1983. Mr. Woolf and Ms. Van Pelt filed a notice of defense and statement of request for a hearing with the Commission on May 16, 1983. Mr. Resnik filed an answer with the Commission on May 16, 1983. On June 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

An initial decision-settlement, dated May 9, 1984, was issued, in which a prior settlement agreement reached by and between the parties was adopted. However, the Commission rejected the proposed settlement and, on May 6, 1985, remanded the matter to the Office of Administrative Law.

An additional prehearing conference was held on May 31, 1985, and the matter was scheduled for hearing. The record closed on October 4, 1985, upon receipt of a new stipulation of settlement.

### FINDINGS OF FACT AND CONCLUSION

The parties have again agreed to settlements, which have been set forth in a stipulation of fact and settlement agreement, which is attached hereto and fully incorporated herein.

I have reviewed the submissions and the terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlements as evidenced by the stipulations which contain the signatures of counsel for each of the parties.
2. The settlements fully dispose of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

**DISPOSITION**

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded, and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

November 13, 1985  
DATE

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

Receipt Acknowledged:

11/18/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 19, 1985  
DATE

Chick Jones  
OFFICE OF ADMINISTRATIVE LAW

ij

RECEIVED  
OFFICE OF THE ATTORNEY GENERAL  
SEP 30 4 37 PM '85

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Plaintiff  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: Kevin F. O'Toole  
Deputy Attorney General  
(609) 633-7123

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. CCC2546-85  
AGENCY DOCKET NO. 83-87

STATE OF NEW JERSEY, DEPARTMENT )  
OF LAW & PUBLIC SAFETY, DIVISION )  
OF GAMING ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
 )  
 )  
LARRY JEAN WOLF, CHARLES HORTON, )  
BERNARD W. RESNIK, AND LUCIA A. )  
VAN PELT, )  
 )  
Respondents. )

Civil Action  
STIPULATION OF FACTS  
AND  
SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and Anthony R. Mautone, attorney for Respondent Bernard W. Resnik, and J. Michael Nolan,

Jr. of Pitney, Hardin, Kipp and Szuch, attorney for Respondents Larry Jean Woolf and Lucia A. Van Pelt, and Brian J. Molloy of Wilentz, Goldman and Spitzer, attorney for Respondent Charles Horton, set forth below are the facts and proposed terms of settlement that have been agreed upon and stipulated to:

1. Scope and Purpose of Stipulation. (a) The Stipulations and agreements contained herein are entered into for purposes of this action only and for purposes of settlement; (b) each part of this Stipulation is made in consideration of the execution of the entire Stipulation by the parties hereto; and (c) the Stipulation is entered into as a full and final settlement of all matters encompassed by the Complaint;

2. Each Part Contingent Upon Commission Approval. Each part of this Stipulation is contingent upon the approval of this Stipulation in its entirety by the Casino Control Commission ("Commission") and is also contingent upon the entry of the entire Stipulation as the final judgement. Should any part of this Stipulation not be approved by the Commission or not be included in a final judgement in this action, or for any other reason be invalidated, voided, overruled or overturned, then the entire Stipulation shall be null and void.

3. Section Headings. The section headings contained in this Stipulation are for reference purposes only and shall not in any way affect the meaning or construction of this Stipulation.

A. PRELIMINARY FACTS - PROCEDURAL

4. Respondent Bernard W. Resnik presently holds casino key employee license #00187-11, originally issued by the Commission in June 1979 and, at all times referenced herein, has been employed by Boardwalk Regency Corporation ("BRC") and has acted on behalf of BRC as a duly authorized agent or employee thereof.
5. Respondent Lucia A. Van Pelt presently holds casino key employee license #00245-11, originally issued by the Commission in March 1979 and, at all times referenced herein, has been employed by BRC and has acted on behalf of BRC as a duly authorized agent or employee thereof.
6. Respondent Larry Jean Woolf held casino key employee license #00200-11, originally issued by the Commission in June 1979 and, at all times referenced herein, was employed by BRC and acted on behalf of BRC as a duly authorized agent or employee thereof. Mr. Woolf's casino key employee license is inactive because he did not submit a 1985 renewal application.
7. Respondent Charles Horton presently holds casino key employee license #00277-11, originally issued by the Commission in June 1979 and, at all times referenced herein, was employed by BRC and acted on behalf of BRC as a duly authorized agent or employee thereof.
8. On April 4, 1984, plaintiff, the Division of Gaming Enforcement ("Division"), filed with the Commission the instant Complaint against the Respondents alleging

various violations of the Casino Control Act ("Act") and Commission regulations pertaining to (1) the removal of counter checks from the casino cage, and (2) the improper acceptance of certain personal checks in consolidation of said counter checks while in a patron's hotel suite.

9. Said violations of the Act and Commission regulations stemmed from Respondents' conduct with regard to a gaming patron, Gaetano Caltagirone, while Mr. Caltagirone was gaming at BRC between the dates of May 15, 1981 and May 18, 1981.
10. The casino licensee, BRC, was also alleged by the Division to have violated the Act and Commission regulations with regard to Respondents' activities relating to Mr. Caltagirone's stay at BRC between the dates of May 15, 1981 and May 18, 1981. State of New Jersey v. Boardwalk Regency Corporation, CCC Docket No. 81-32, was decided by the Commission on January 4, 1983.
11. During Mr. Caltagirone's stay at BRC between the dates of May 15, 1981 and May 18, 1981, the Respondents to the instant action held the following positions within the organizational structure of BRC:

Larry Jean Woolf - Vice President of Casino  
Operations

Charles Horton - Assistant to the Treasurer

Bernard W. Resnik - Assistant Casino Manager

Lucia Van Pelt - Casino Cage Shift Supervisor

B. PRELIMINARY FACTS - SUBSTANTIVE

12. On May 15, 1981, Mr. Caltagirone, a resident of Rome, Italy, checked into the hotel at BRC. There were approximately ten (10) persons in the Caltagirone party. The party received complimentary rooms, food and beverages.
13. Mr. Caltagirone came to BRC on May 15, 1981 in order to engage in casino gaming.
14. Mr. Caltagirone was a well-known customer of Caesars Palace in Las Vegas, Nevada where he was authorized to receive \$1.5 million dollars in gambling credit.
15. Upon his arrival at BRC on May 15, 1981, Mr. Caltagirone completed the necessary forms to obtain credit at BRC and he was granted a credit line in the amount of \$1.5 million dollars. Attached hereto and incorporated herein and marked as Exhibit A is a true copy of Mr. Caltagirone's credit card at BRC.
16. In order to assist Mr. Caltagirone, who spoke only Italian, BRC assigned Alessandro Fornasiero, a pit boss licensed in the games of blackjack and roulette, as Mr. Caltagirone's interpreter. Mr. Fornasiero interpreted for Mr. Caltagirone during his entire stay at BRC.

C. VIOLATION REGARDING REMOVAL OF THE COUNTER CHECKS FROM THE CASHIERS CAGE

17. During the weekend beginning on Friday, May 15, 1981 and ending on Monday, May 18, 1981, Mr. Caltagirone proceeded

to gamble on his credit account at BRC by drawing counter checks at the gaming tables.

18. Mr. Caltagirone was a high-stakes gambler who negotiated at the gaming tables thirty-seven (37) counter checks totalling \$1.4 million dollars at BRC on May 15th, 16th, and 17th, 1981. Attached hereto and incorporated herein and marked as Exhibit B are true copies of the "Accounting Copy" of the thirty-seven (37) counter checks negotiated by Mr. Caltagirone on said dates.
19. In compliance with Commission regulations pertaining to the procedures for the issuance of counter checks at the gaming tables, each time Mr. Caltagirone negotiated a counter check at a gaming table the original and the redemption copy of each counter check were expeditiously transported to the cashiers cage where the original and redemption copy were maintained and controlled by the Check Bank located within the casino cage at BRC. Said original and redemption copy of each counter check were placed within a "counter check envelope" by BRC's Check Bank personnel. Attached hereto and incorporated herein and marked as Exhibit C is a true copy of the Counter Check Envelope pertaining to Mr. Caltagirone.
20. At the beginning of gaming date May 18, 1981, Mr. Caltagirone had an outstanding credit balance owing to BRC of \$1,200,000 as reflected on Mr. Caltagirone's credit card and counter check envelope. Said balance consisted of the \$1.4 million in outstanding counter

checks less a \$200,000 payment in chips credited to Mr. Caltagirone's account on May 15, 1981.

21. At the beginning of gaming date May 18, 1981, all of the outstanding counter checks negotiated by Mr. Caltagirone were properly being controlled and maintained by the Check Bank within the casino cage at BRC.
22. On the morning of May 18, 1981, Mr. Caltagirone called Alessandro Fornasiero, the BRC pit boss who had been acting as an interpreter for Mr. Caltagirone, and indicated to Mr. Fornasiero that he desired to settle his credit account that morning in his hotel suite.
23. Following the phone call from Mr. Caltagirone described in paragraph 22, supra, Mr. Fornasiero informed Larry Woolf, then BRC's Vice President of Casino Operations, and Bernard Resnik, then BRC's Assistant Casino Manager, of Mr. Caltagirone's phone call indicating his desire to settle his credit account in his hotel suite.
24. At this time Messrs. Fornasiero, Woolf, and Resnik went to the casino cage area. While at the casino cage area, Mr. Woolf called Larry Bertsch, then BRC's Vice President of Finance, from a telephone located near the credit window adjacent to the casino cage. Mr. Woolf explained to Mr. Bertsch that Mr. Caltagirone wished to settle his credit account in his hotel suite.
25. Mr. Bertsch then informed Mr. Woolf that he would send a representative of the Financial Department, Charles

Horton, then BRC's Assistant to the Treasurer, down to the casino cage to meet him there.

26. At this time Mr. Woolf requested to speak with Casino Cage Shift Supervisor, Lucia Van Pelt, who was working the day shift on May 18, 1981. Mr. Woolf requested that Ms. Van Pelt release all of the outstanding counter checks of Mr. Caltagirone so that they could be brought to the customer's hotel suite since Mr. Caltagirone desired to settle his account.
27. Ms. Van Pelt obtained Mr. Caltagirone's original outstanding counter checks from the Check Bank and she released them to Messrs. Woolf, Resnik, and Horton for the purpose of transporting them to Mr. Caltagirone's hotel suite.

D. VIOLATIONS REGARDING THE ACCEPTANCE OF PERSONAL CHECKS IN THE HOTEL SUITE

28. Upon receiving the original counter checks, Messrs. Woolf, Resnik, and Horton transported the original counter checks to Mr. Caltagirone's suite. They were accompanied by Mr. Fornasiero who was acting as their interpreter.
29. While in the hotel suite, Mr. Caltagirone presented three (3) personal checks which he wished to exchange for his counter checks. Check #1 was not dated, check #2 was dated October 10, 1981 and check #3 was dated March 15, 1982. All three (3) of the personal checks were made payable to Mr. Caltagirone and they were unrestrictively

endorsed by him. Each check was drawn in the amount of \$400,000 which, when totalled, represented his outstanding debt to BRC of \$1.2 million. Attached hereto and incorporated herein and marked as Exhibit D are true copies of the three (3) checks presented by Mr. Caltagirone to the BRC representatives in the hotel suite.

30. While in the hotel suite, the BRC representatives indicated to Mr. Caltagirone that they could not, under New Jersey law, accept postdated checks to consolidate and redeem outstanding counter checks. The BRC representatives requested that Mr. Caltagirone replace the postdated checks proffered with currently dated ones.
31. While in the hotel suite, there ensued an argument during which Mr. Caltagirone refused to pay his outstanding debt by any other method. The BRC representatives were unable to convince Mr. Caltagirone that New Jersey law required that they reject his payment proposal.
32. After consultation among themselves and attempts to confer with other executives of BRC, including Peter Boynton, Larry Bertsch, and Alfred Cade, the representatives of BRC present in Mr. Caltagirone's hotel suite accepted the three (3) personal checks. While in Mr. Caltagirone's hotel suite, the representatives of BRC gave the original counter checks to Mr. Caltagirone and he ripped them up.

33. On or about May 19, 1981, Respondent Larry Jean Woolf and BRC Senior Vice President Al Cade met with then Commission Chairman Joseph Lordi and Francis X. Fee, then Director, Division of Financial Evaluation and Control, of the Commission. Messrs. Cade and Woolf informed Chairman Lordi and Mr. Fee that BRC had accepted post-dated checks in payment of Mr. Caltagirone's outstanding debt on May 18, 1981. Chairman Lordi suggested that Messrs. Cade and Woolf notify the Division immediately. Attached hereto and incorporated herein and marked as Exhibit E is a true copy of a memorandum dated May 20, 1981 prepared by Francis X. Fee pertaining to said meeting.
34. On or about May 19, 1981, Mr. Cade telephoned then Deputy Director Guy S. Michael of the Division requesting a meeting regarding the acceptance of checks from Mr. Caltagirone. Mr. Michael met with Mr. Cade and Respondent Woolf on May 20, 1981 whereat Messrs. Woolf and Cade conveyed to Mr. Michael the information communicated to Chairman Lordi and Mr. Fee the previous day.
35. On or about May 19, 1981, BRC representatives dated the previously undated personal check of Mr. Caltagirone in the amount of \$400,000 and made arrangements to hand deliver said check to the payer bank for the purpose of presenting it for payment. Mr. Fornasiero was bonded by

BRC for such purpose, whereupon he travelled to Europe and presented and collected upon said \$400,000 check.

36. On or about June 12, 1981, a woman presented herself at BRC and represented that she desired to pay the outstanding balance of \$800,000 on Mr. Caltagirone's credit account. Whereupon, payment in full was rendered consisting of \$600,000 in cash and a \$200,000 check. Said payments were recorded on Mr. Caltagirone's credit card and counter check envelope.

**E. SUBSEQUENT FACTS - PROCEDURAL**

37. At the present time, Respondent Bernard W. Resnik is employed by BRC in the capacity of Assistant Vice-President.
38. At the present time, Respondent Lucia A. Van Pelt is employed by BRC in the capacity of Casino Cage Supervisor.
39. At the present time, Respondent Larry Jean Woolf is employed by Caesars World, Inc. in the capacity of President and Chief Operating Officer of Caesar's Tahoe Resort, Stateline, Nevada.
40. At the present time, Respondent Charles Horton is employed by Atlantis Hotel and Casino in the capacity of Collection Manager.

**F. THE SETTLEMENT AGREEMENT**

WHEREAS the parties have endeavored to submit to the Commission a detailed and comprehensive submission of all of the material and relevant facts pertinent to the allegations contained

in Complaint #83-87. Additionally, the parties submit for purposes of this Settlement Agreement various exhibits described in the Table of Exhibits attached hereto, including casino documentation regarding Mr. Caltagirone, deposition transcripts and recorded testimony taken in the matter of State v. BRC (Docket No. 81-32); and

WHEREAS Respondent Lucia A. Van Pelt acknowledges that her conduct in permitting the removal of original counter checks from the casino cage constituted a violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i), recodified as N.J.A.C. 19:45-1.25(h)(6)(i); and

WHEREAS Respondent Lucia A. Van Pelt recognizes the seriousness of the violations committed in that by releasing the original counter checks to BRC management personnel she allowed \$1.2 million in negotiable instruments to leave the secure area of the cage and to go to an unsecure area, Mr. Caltagirone's hotel suite; and

WHEREAS Respondents Woolf, Resnik, and Horton acknowledge that their acceptance of the three (3) personal checks from Mr. Caltagirone while in the hotel suite violated the Act and Commission regulations in that they were not payable to the casino licensee as required by N.J.S.A. 5:12-101(b)(1) and N.J.A.C. 19:45-1.25(c)(3); one of the checks was not dated at the time of receipt as required by N.J.S.A. 5:12-101(b)(2) and N.J.A.C. 19:45-1.25(c)(4); and the other two checks were not currently dated as required by N.J.S.A. 5:12-101(b)(2), N.J.S.A. 5:12-101(c), N.J.A.C. 19:45-1.26(e), and N.J.A.C. 19:45-1.25(c)(4); and

Woolf, Resnik, and Horton acknowledge that  
ed violations of the above-cited provisions  
mission regulations pertaining to the  
r checks and they recognize the seriousness  
s Woolf, Resnik, Horton, and Van Pelt have  
n the Act and the regulations promulgated  
the significance of any departure therefrom.  
greed and stipulated by and among the parties

Larry Jean Woolf agrees to pay a civil penalty

pursuant to N.J.S.A. 5:12-129(5) in the amount of Seven  
Thousand Five Hundred Dollars (\$7,500);

- B. Respondent Bernard W. Resnik agrees to pay a civil  
penalty pursuant to N.J.S.A. 5:12-129(5) in the amount of  
Two Thousand Dollars (\$2,000);
- C. Respondent Charles Horton agrees to pay a civil penalty  
pursuant to N.J.S.A. 5:12-129(5) in the amount of Two  
Thousand Five Hundred Dollars (\$2,500) to be paid over  
two years in equal monthly installments;
- D. Respondent Lucia A. Van Pelt agrees to pay a civil  
penalty pursuant to N.J.S.A. 5:12-129(5) in the amount of  
One Thousand Five Hundred Dollars (\$1,500);
- E. This Stipulation of Facts and Settlement Agreement, if  
approved by the Commission, shall constitute a full and  
complete resolution of the allegations contained within  
Complaint #83-87.

This Stipulation may be executed in two or more counter-parts by the parties hereto, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

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

Kevin F. O'Toole  
Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

Anthony R. Mautone, Esquire  
Attorney for Respondent,  
Bernard W. Resnik

J. Michael Nolan, Jr.  
J. Michael Nolan, Jr., Esquire  
Pitney, Hardin, Kipp and Szuch  
Attorney for Respondents,  
Larry Jean Woolf and Lucia A.  
Van Pelt

Brian J. Molloy, Esquire  
Wilentz, Goldman and Spitzer  
Attorney for Respondent,  
Charles Horton

djs  
A73185/25

TABLE OF EXHIBITS

- Exhibit A - Copy of Mr. Caltagirone's credit card at BRC setting forth gaming transactions between May 15, 1981 and May 19, 1981.
- Exhibit B - Copies of thirty-seven (37) counter checks negotiated by Mr. Caltagirone at BRC on May 15, 16, and 17, 1981.
- Exhibit C - Copy of counter check envelope of Mr. Caltagirone which also itemizes gaming transactions between May 15, 1981 and May 19, 1981.
- Exhibit D - Copies of three (3) personal checks presented by Mr. Caltagirone on May 18, 1981, each in the amount of \$400,000 and payable to Mr. Caltagirone.
- Exhibit E - Copy of two (2) page memorandum dated May 20, 1981 prepared by Francis X. Fee pertaining to meeting on May 19, 1981 with Chairman Lordi and representatives of BRC.
- Exhibit F - Deposition of Alessandro G. Fornasiero taken in the matter of State v. BRC (81-32) on August 25, 1981.
- Exhibit G - Deposition of Larry Woolf taken in the matter of State v. BRC (81-32) on August 25, 1981.
- Exhibit H - Deposition of Lucia A. Van Pelt taken in the matter of State v. BRC (81-32) on August 25, 1981.
- Exhibit I - Deposition of Charles Horton taken in the matter of State v. BRC (81-32) on August 25, 1981.
- Exhibit J - Deposition of Bernard W. Resnik taken in the matter of State v. BRC (81-32) on August 26, 1981.
- Exhibit K - Recorded testimony of Francis X. Fee taken in the matter of State v. BRC (81-32) on February 17, 1982.
- Exhibit L - Recorded testimony of Larry Woolf taken in the matter of State v. BRC (81-32) on March 12, 1982.



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 4658-83

AGENCY DKT. NO. 83-87

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

Petitioner,

v.

**LARRY JEAN WOOLF, CHARLES  
HORTON, BERNARD W. RESNIK,  
LUCIA A. VAN PELT,**

Respondents.

---

**APPEARANCES:**

**Kevin F. O'Toole**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**J. Michael Nolan, Jr., Esq.**, for respondents Larry Jean Woolf and Lucia A. Van Pelt (Pitney, Hardin, Kipp & Szuch, attorneys)

**Brian J. Molloy, Esq.**, for respondent Charles Horton (Wilentz, Goldman & Spitzer, P.C., attorneys)

**Charles A. Matison, Esq.**, for respondent Bernard W. Resnik (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, P.A., attorneys)

Record Closed: April 5, 1984

Decided: May 9, 1984

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Larry Jean Wolf, Charles Horton, Bernard W. Resnik and Lucia A. Van Pelt, respondents, each of whom is the holder of a casino key employee license. The Division alleged that the respondents had committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of penalties against the respondents' casino key employee licenses, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondents opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letters dated April 5, 1983, the Commission notified the respondents of the pending action and advised them of their right to request a hearing. Respondent Horton filed an answer and statement of request for a hearing with the Commission on May 12, 1983. Respondents Wolf and Van Pelt filed a notice of defense and statement of request for a hearing with the Commission on May 16, 1983. Respondent Resnik filed an answer with the Commission on May 16, 1983. On June 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 31, 1983, but was continued pending settlement negotiations. The record closed on April 5, 1984, upon receipt of the stipulations of settlement.

FINDINGS OF FACT AND CONCLUSION

The parties have agreed to a settlement, which has been set forth in a Stipulation of Settlement for each respondent, which is attached hereto and fully incorporated herein.

I have reviewed the submissions and the terms of the settlement and I FIND:

1. The parties have voluntarily agreed to the settlements as evidenced by the stipulations of settlement, which contain the signatures of counsel for each of the parties and of each respondent.
2. The settlements fully dispose of all issues in controversy.

I CONCLUDE that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is ORDERED that the parties comply with the settlement terms and that these proceedings be CONCLUDED, and it is further ORDERED that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

May 9, 1984  
DATE

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

11 MAY 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

MAY 15 1984  
DATE

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

ml/E

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**IRWIN I. KIMMELMAN**  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: **Kevin F. O'Toole**  
Deputy Attorney General  
(609) 984-6197

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION**

STATE OF NEW JERSEY, )  
DEPARTMENT OF LAW AND )  
PUBLIC SAFETY, DIVISION )  
OF GAMING ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY JEAN WOOLF, )  
 )  
Respondent. )

**AGENCY DOCKET NO. 83-87  
STIPULATION OF SETTLEMENT**

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Kevin F. O'Toole, Deputy Attorney General, and J. Michael Nolan, Jr. of Pitney, Hardin, Kipp & Szuch, Esquires, Attorney for Respondent, Larry Jean Woolf, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds casino key employee license #00200-11 issued by the Casino Control Commission in June of 1979 and renewed in June of 1982; and

2. WHEREAS Respondent was employed by Boardwalk Regency Corporation ("BRC") as Vice-President of Casino Operations; and
3. WHEREAS Respondent is presently employed by BRC as Senior Vice-President of Operations; and
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gaming; and
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone established a credit line in the amount of \$1,500,000 for the purpose of obtaining casino gaming credit from BRC; and
6. WHEREAS Mr. Caltagirone drew counterchecks against his established credit limit from BRC resulting in an outstanding balance, as of May 18, 1981, of \$1,200,000; and
7. WHEREAS on or about May 18, 1981, BRC employees, including Respondent, removed from the casino cage all of the outstanding counterchecks drawn by Mr. Caltagirone and transported them to Mr. Caltagirone's hotel room at BRC in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and
8. WHEREAS on or about May 18, 1981, Mr. Caltagirone, in his hotel room, presented to BRC employees, including Respondent, three personal checks each in the amount of \$400,000 for the purpose of making payment upon or in consolidation of his outstanding gaming debt; and

9. WHEREAS all three checks presented to BRC employees by Mr. Caltagirone were made payable to Gaetano Caltagirone and not to BRC in violation of N.J.S.A. 5:12-101(b)1 and N.J.A.C. 19:45-1.25(c)3; and one of the checks was not dated at the time of receipt in violation of N.J.S.A. 5:12-101(b)2 and N.J.A.C. 19:45-1.25(c)4; and the other two checks were postdated in violation of N.J.S.A. 5:12-101(b)2, N.J.S.A. 5:12-101(c), N.J.A.C. 19:45-1.26(e) and N.J.A.C. 19:45-1.25(c)4; and
10. WHEREAS BRC employees, including Respondent, accepted, on behalf of BRC, the three checks presented by Mr. Caltagirone in consolidation of Mr. Caltagirone's outstanding gaming debt in violation of N.J.S.A. 5:12-101(b) and (c), N.J.A.C. 19:45-1.25(d)1 and N.J.A.C. 19:45-1.26(d) and (e), and transported them from Mr. Caltagirone's hotel room to the casino cage; and
11. WHEREAS BRC employees, including Respondent, knew or should have known that their actions constituted violations of the Casino Control Act and regulations promulgated thereunder; and
12. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)) and N.J.A.C. 19:45-1.26(d) and (e); and
13. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c); N.J.A.C. 19:45-1.25(c)3 and 4,

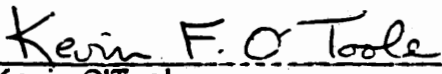
N.J.A.C. 19:45-1.25(d)(1), N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)) and N.J.A.C. 19:45-1.26(d) and (e) did occur; and


14. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder, and Larry Jean Woolf has agreed to comply with the aforementioned statutory and regulatory provisions.

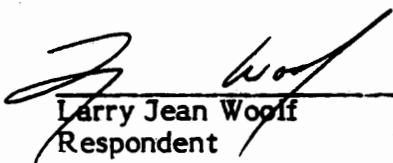
It is therefore agreed and stipulated by and between the parties hereto that;

- A. Respondent agrees to pay to the Casino Control Commission a fine of Seventy-Five Hundred Dollars (\$7,500) in 12 equal monthly installments;
- B. This settlement shall be in full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
-----  
Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
-----  
J. Michael Nolan, Jr.  
Pitney, Hardin, Kipp & Szuch  
Attorney for Respondent

  
-----  
Larry Jean Woolf  
Respondent



3. WHEREAS Respondent was employed by BRC in that same capacity until his termination on or about February 3, 1984<sup>and</sup> ~~and~~ Respondent is presently unemployed, and **KFO**
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gaming; and
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone established a credit line in the amount of \$1,500,000 for the purpose of obtaining casino gaming credit from BRC; and
6. WHEREAS Mr. Caltagirone drew counterchecks against his established credit limit from BRC resulting in an outstanding balance, as of May 18, 1981, of \$1,200,000; and
7. WHEREAS on or about May 18, 1981, BRC employees, including Respondent, removed from the casino cage all of the outstanding counterchecks drawn by Mr. Caltagirone and transported them to Mr. Caltagirone's hotel room in BRC in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and
8. WHEREAS on or about May 18, 1981, Mr. Caltagirone, in his hotel room, presented to BRC employees, including Respondent, three (3) personal checks each in the amount of \$400,000 for the purpose of making payment upon or in consolidation of his outstanding gaming debt; and
9. WHEREAS all three checks presented to BRC employees by Mr. Caltagirone were made payable to Gaetano Caltagirone and not to

BRC in violation of N.J.S.A. 5:12-101(b)1 and N.J.A.C. 19:45-1.25(c)3. One of the checks was not dated at the time of receipt in violation of N.J.S.A. 5:12-101(b)2 and N.J.A.C. 19:45-1.25(c)4. The other two (2) checks were post-dated in violation of N.J.S.A. 5:12-101(b)2, N.J.S.A. 5:12-101(c), N.J.A.C. 19:45-1.26(e), and N.J.A.C. 19:45-1.25(c)4; and

10. WHEREAS BRC employees, including Respondent, accepted, on behalf of BRC, the three (3) checks presented by Mr. Caltagirone in consolidation of Mr. Caltagirone's outstanding gaming debt in violation of N.J.S.A. 5:12-101(b) and (c), N.J.A.C. 19:45-1.25(d)1 and N.J.A.C. 19:45-1.26(d) and (e), and transported them from Mr. Caltagirone's hotel room to the casino cage; and
11. WHEREAS BRC employees, including Respondent, knew or should have known that their actions constituted violations of the Casino Control Act and regulations promulgated thereunder; and
12. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e); and
13. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e) did occur; and
14. WHEREAS the parties recognize the need to comply with the

Casino Control Act and the regulations promulgated thereunder, and Charles Horton has agreed to comply with the aforementioned statutory and regulatory provisions.

It is therefore agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Two Thousand-Five Hundred dollars (\$2,500), in 24 equal monthly payments commencing on the first day of the first month following Casino Control Commission approval of this Stipulation.
- B. This settlement shall be full and final settlement of all matters contained herein.
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

The undersigned consent to the form and entry of the Stipulation of Settlement.

Kevin F. O'Toole  
Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

Brian J. Molloy  
Brian J. Molloy  
Wilentz, Goldman and Spitzer  
Attorney for Respondent

Charles L. Horton  
Charles Horton  
Respondent

**IRWIN I. KIMMELMAN**  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey

By: **Kevin F. O'Toole**  
Deputy Attorney General  
(609) 984-6197

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION**

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

Plaintiff,

vs.

**BERNARD W. RESNIK,**

Respondent.

**AGENCY DOCKET NO. 83-87**

**STIPULATION OF SETTLEMENT**

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Bernard W. Resnik, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds Casino Key Employee License #00187-11, issued by the Casino Control Commission in June, 1979 and renewed in June, 1982; and,

2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Assistant Casino Manager; and,
3. WHEREAS Respondent is presently employed by BRC in the capacity of Assistant Vice-President; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 15, 1981, Mr. Caltagirone was observed traversing the interior of Pit No. 1 at BRC on multiple occasions as defined in N.J.A.C. 19:45-1.1 and playing roulette from within said pit from a position approximately adjacent to the dealer in violation of N.J.S.A. 5:12-96 and Condition Paragraph 29 of the Certificate of Operation issued to BRC by the Commission; and,
6. WHEREAS Respondent became aware of Mr. Caltagirone's activities described in paragraph 5, supra, and failed to take corrective action to insure that said activities would not occur and failed to cooperate with a Commission inspector's request to take corrective action, in violation of N.J.S.A. 5:12-80(d).
7. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d) and (g), N.J.S.A. 5:12-96, and

Condition Paragraph 29 of BRC's Certificate of Operation issued by the Commission; and,

8. WHEREAS Respondent acknowledges that a violation of N.J.S.A. 5:12-80(d) did occur; and,
9. WHEREAS on or about May 17, 1981, Respondent attempted to have a Senior Commission inspector move a Commission inspector from the outside of the gaming table area by requesting to the Senior Commission inspector that the Commission inspector observe Mr. Caltagirone's gaming activities from inside the pit, in violation of N.J.S.A. 5:12-80(d); and,
10. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-80(d); and,
11. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-80(d) did occur; and,
12. WHEREAS on or about May 15, 1981, Mr. Caltagirone established a credit line in the amount of \$1,500,000 for the purpose of obtaining casino gaming credit from BRC; and,
13. WHEREAS Mr. Caltagirone drew counter checks against his established credit limit from BRC resulting in an outstanding balance, as of May 18, 1981, of \$1,200,000; and,
14. WHEREAS on or about May 18, 1981, BRC employees, including Respondent, removed from the casino cage all of the outstanding counter checks drawn by Mr. Caltagirone and transported them to Mr. Caltagirone's hotel room in BRC in violation of N.J.S.A. 5:12-

101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and,

15. WHEREAS on or about May 18, 1981, Mr. Caltagirone, in his hotel room, presented to BRC employees, including Respondent, three (3) personal checks each in the amount of \$400,000 for the purpose of making payment upon or in consolidation of his outstanding gaming debt; and,
16. WHEREAS all three (3) checks presented to BRC employees by Mr. Caltagirone were made payable to Gaetano Caltagirone and not to BRC in violation of N.J.S.A. 5:12-101(b)1 and N.J.A.C. 19:45-1.25(c)3. One of the checks was not dated at the time of receipt in violation of N.J.S.A. 5:12-101(b)2 and N.J.A.C. 19:45-1.25(c)4. The other two (2) checks were post-dated in violation of N.J.S.A. 5:12-101(b)2, N.J.S.A. 5:12-101(c), N.J.A.C. 19:45-1.26(e), and N.J.A.C. 19:45-1.25(c)4; and,
17. WHEREAS BRC employees, including Respondent, accepted, on behalf of BRC, the three (3) checks presented by Mr. Caltagirone in consolidation of Mr. Caltagirone's outstanding gaming debt in violation of N.J.S.A. 5:12-101(b) and (c), N.J.A.C. 19:45-1.25(d)1, and N.J.A.C. 19:45-1.26(d) and (e), and transported them from Mr. Caltagirone's hotel room to the casino cage; and,
18. WHEREAS BRC employees, including Respondent, knew or should have known that their actions constituted violations of the Casino Control Act and regulations promulgated thereunder; and,
19. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging

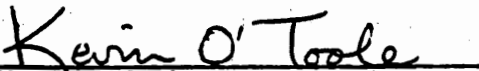
violations of N.J.S.A. 5:12-101(b)1 and (b)2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e); and,

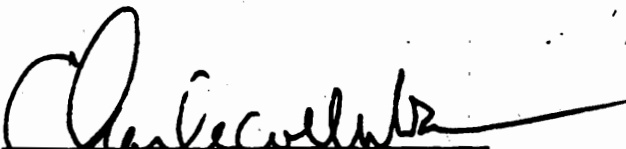
20. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-101(b)1 and (b) 2 and (c), N.J.A.C. 19:45-1.25(c)3 and 4, N.J.A.C. 19:45-1.25(d)1, N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)), and N.J.A.C. 19:45-1.26(d) and (e) did occur;
21. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder, and Bernard W. Resnik has agreed to comply with the aforementioned statutory and regulatory provisions.

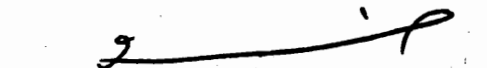
IT IS THEREFORE agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Seven Thousand Dollars (\$7,000);
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and,
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent

  
Bernard W. Resnik  
Respondent.

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**IRWIN I. KIMMELMAN**  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: **Kevin F. O'Toole**  
Deputy Attorney General  
(609) 984-7123

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION**

STATE OF NEW JERSEY )  
DEPARTMENT OF LAW & PUBLIC )  
SAFETY, DIVISION OF GAMING )  
ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LUCIA A. VAN PELT, )  
 )  
Respondent. )

**AGENCY DOCKET NO. 83-87**

**STIPULATION OF SETTLEMENT**

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Kevin F. O'Toole, Deputy Attorney General, and J. Michael Nolan, Jr. of Pitney, Hardin, Kipp & Szuch, Esquires, Attorney for Respondent, Lucia A. Van Pelt, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS Respondent presently holds a valid casino key employee license, #00245-11, issued by the Casino Control Commission in March of 1979; and

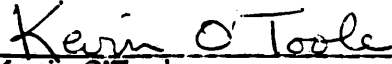
2. WHEREAS Respondent was employed by the Boardwalk Regency Corporation ("BRC") at all times mentioned herein in the capacity of Casino Cage Shift Manager; and
3. WHEREAS Respondent is presently employed by BRC in the same capacity; and
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gaming; and
5. WHEREAS on or about March 15, 1981, Mr. Caltagirone established a credit line in the amount of \$1,500,000 for the purpose of obtaining casino gaming credit from BRC; and
6. WHEREAS Mr. Caltagirone drew counterchecks against his established credit limit from BRC resulting in an outstanding balance, as of May 18, 1981, of \$1,200,000; and
7. WHEREAS on or about May 18, 1981, Respondent permitted all of the outstanding counterchecks drawn by Mr. Caltagirone to be removed from the casino cage and transported to Mr. Caltagirone's hotel room in BRC in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and
8. WHEREAS Respondent knew or should have known that her actions constituted violations of the Casino Control Act and regulations promulgated thereunder; and
9. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and


- N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)); and
10. WHEREAS Respondent acknowledges that violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.14, and N.J.A.C. 19:45-1.25(f)(6)(i) (now N.J.A.C. 19:45-1.25(h)(6)(i)) did occur; and
11. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated thereunder; and Lucia A. Van Pelt has agreed to comply with the aforementioned statutory and regulatory provisions.

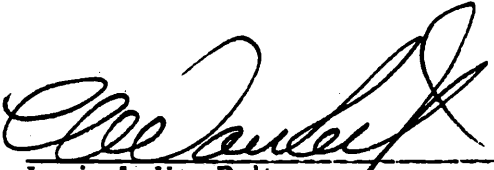
It is therefore agreed and stipulated by and between the parties hereto that:

- A. Respondent agrees to pay to the Casino Control Commission a fine of Fifteen Hundred Dollars (\$1,500) in 24 equal monthly installments.
- B. This settlement shall be full and final settlement of all matters contained herein.
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of Respondent's Casino Key Employee License; and
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

  
\_\_\_\_\_  
Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

  
\_\_\_\_\_  
J. Michael Nolan, Jr.  
Pitney, Hardin, Kipp & Szuch  
Attorney for Respondent

  
\_\_\_\_\_  
Lucia A. Van Pelt  
Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-88  
LICENSE NO. 989-11  
OAL DOCKET NO. CCC 2545-85  
(ON REMAND)

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

Complainant, :

v. : FINAL ORDER

JOSEPH SEBASTIAN MANCARI, :

Respondent. :

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Proceedings in this matter having been held before the Office of Administrative Law; and an initial decision approving the parties proposed stipulation of settlement having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 8, 1986,

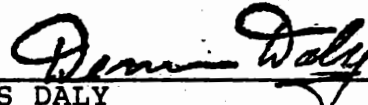
IT IS on this *24<sup>th</sup>* day of February 1986, ORDERED that the initial decision and stipulation of settlement are approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that Joseph Sebastian Mancari pay a civil penalty in the amount of \$1,000, which is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 2545-85

(CCC 4659-83 ON REMAND)

AGENCY DKT. NO. 83-38

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

Petitioner,

v.

**JOSEPH SEBASTIAN MANCARI,**

Respondent.

---

**Kevin F. O'Toole, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**J. Michael Nolan, Jr., Esq., for the respondent (Pitney, Hardin, Kipp & Szuch, attorneys)**

**Record Closed: November 15, 1985**

**Decided: November 27, 1985**

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, filed charges against Joseph S. Mancari, respondent, and the holder of a casino key employee license. The Division alleged that the respondent had committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of a penalty against the respondent's casino key employee license, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letter dated April 5, 1983, the Commission notified the respondent of the pending action and advised him of his right to request a hearing. On May 16, 1983, the respondent filed an answer and requested a hearing. On June 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

An Initial Decision - Settlement, dated May 9, 1984, was issued, which adopted a prior settlement agreement between the parties. However, the Commission rejected the settlement, and, on May 6, 1985, remanded the matter to the Office of Administrative Law.

A second prehearing conference was held on May 31, 1985, and the matter was scheduled for hearing. The record closed on November 15, 1985, upon receipt of a new stipulation of settlement.

FINDINGS OF FACT AND CONCLUSION

The parties have again agreed to a settlement, which has been set forth in a Stipulation of Facts and Settlement Agreement, which is attached hereto and fully incorporated herein. I have reviewed the submissions and the terms of the settlement and I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by the stipulation which contains the signatures of counsel for both parties.
2. The settlement fully disposes of all issues in controversy.

I CONCLUDE that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

November 27, 1985  
DATE

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

Receipt Acknowledged:

12-2-85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 4 1985  
DATE

Ronald J. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

bc

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Plaintiff  
Richard J. Hughes Justice Complex  
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Trenton, New Jersey 08625

By: KEVIN F. O'TOOLE  
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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. CCC 2545-85  
AGENCY DOCKET NO. 83-88

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

Plaintiff, )

vs. )

JOSEPH SABASTIAN MANCARI, )

Respondent. )

Civil Action

STIPULATION OF FACTS  
AND  
SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and J. Michael Nolan, Jr. of Pitney, Hardin, Kipp and Szuch, attorney for Respondent, Joseph Sabastian Mancari, set forth below are the facts and proposed terms of settlement that have been agreed upon and stipulated to:

1. Scope and Purpose of Stipulation. (a) The Stipulation and agreements contained herein are entered into for purposes of this action only and for purposes of settlement; (b) each part of this Stipulation is made in consideration of the execution of the entire Stipulation by the parties hereto; and (c) the Stipulation

is entered into as a full and final settlement of all matters encompassed by the Complaint;

2. Each Part Contingent Upon Commission Approval. Each part of this Stipulation is contingent upon the approval of this Stipulation in its entirety by the Casino Control Commission ("Commission") and is also contingent upon the entry of the entire Stipulation as the final judgement. Should any part of this Stipulation not be approved by the Commission or not be included in a final judgement in this action, or for any other reason be invalidated, voided, overruled or overturned, then the entire Stipulation shall be null and void.

3. Section Headings. The section headings contained in this Stipulation are for reference purposes only and shall not in any way affect the meaning or construction of this Stipulation.

A. PRELIMINARY FACTS - PROCEDURAL

4. Respondent, Joseph Sabastian Mancari, is a resident of Nevada residing at 3988 Topawa Drive, Las Vegas, Nevada 89103.

5. Respondent, Joseph Sabastian Mancari, presently holds inactive casino key employee license #00989-11, originally issued by the Casino Control Commission in January of 1981.

6. Respondent, Joseph Sabastian Mancari, at all times referenced herein, was employed by Caesars World, Inc., the parent corporation to the Boardwalk Regency Hotel and Casino ("BRC") and was assigned to BRC in the capacity of Surveillance Director, in which capacity he had acted on behalf of BRC as a duly authorized agent or employee thereof.

7. Respondent, Joseph Sabastian Mancari, is currently employed by Caesars World, Inc., in the capacity of Corporate

Surveillance, at Caesars Palace, Las Vegas, Nevada.

8. On April 4, 1983, Plaintiff, the Division of Gaming Enforcement ("Division"), filed with the Commission the instant Complaint against the Respondent alleging violations of the Casino Control Act ("Act") and Commission regulations pertaining to the failure to cooperate with Commission inspectors.

9. Said violations of the Act and Commission regulations stemmed from Respondent's conduct with regard to a gaming patron, Gaetano Caltagirone, while Mr. Caltagirone was gaming at BRC between the dates of May 15, 1981 and May 18, 1981.

10. The casino licensee, BRC, was also alleged by the Division to have violated the Act and Commission regulations with regard to Respondent's activities relating to Mr. Caltagirone's stay at BRC between the dates of May 15, 1981 and May 18, 1981. State of New Jersey v. Boardwalk Regency Corporation, CCC Docket No. 81-32, was decided by the Casino Control Commission on January 4, 1983.

#### B. PRELIMINARY FACTS - SUBSTANTIVE

11. On May 15, 1981, Mr. Caltagirone, a resident of Rome, Italy, checked into the hotel at the BRC. There were approximately ten persons in Mr. Caltagirone's party. The party received complimentary rooms, food and beverages.

12. On May 15, 1981, Mr. Caltagirone completed a credit application and was granted \$1,500,000 in credit. Mr. Caltagirone was known by BRC to have had a \$1,500,000 credit line at Caesars Palace in Las Vegas, Nevada. He was considered by BRC to be a preferred patron.

13. Pursuant to the Act and Commission regulations, located on the licensed premises of BRC is the surveillance room which contains surveillance equipment including eight (8) 15-inch monitors (i.e., closed circuit television screens) and eight (8) 9-inch monitors. These monitors are connected, via a closed circuit, to television cameras located above the casino floor and enclosed in plastic turrets which enable the cameras to move within the turret and provide direct overhead surveillance without the knowledge of persons on the casino floor. The 15-inch monitors can be switched to different cameras while the 9-inch monitors have a fixed image. BRC's surveillance room also has the capacity to videotape what is seen on the monitors.

14. Pursuant to the Act, Commission regulations and BRC's Certificate of Operation, BRC was at all times required to have a Commission booth on the casino floor.

15. In May of 1981 the Commission booth on BRC's casino floor was an octagonal-shaped podium containing documents, regulation booklets and the Act. There were two chairs within the booth for Commission inspectors to sit.

16. Two (2) 9-inch monitors were recessed within the interior edge of the booth. These monitors were on the same closed circuit as the monitors in the surveillance room of BRC. The Commission was dependent upon BRC surveillance personnel to connect its monitors with the BRC surveillance cameras.

17. When the hard and soft counts were in progress, BRC's surveillance department sent the video to the Commission booth. During the times there were no hard or soft count in progress,

BRC's surveillance department would switch the Commission monitors to the table games on the casino floor.

C. FAILURE TO COOPERATE WITH COMMISSION INSPECTORS

18. On May 18, 1981, Mr. Caltagirone was playing roulette on roulette table #4. He was wagering substantial amounts of money.

19. A Commission inspector observed that the dealer at roulette table #4 was failing to call "no more bets." This failure heightens the possibility of a patron "past posting" bets. "Past posting" is the placing of a bet after the winning number has been determined.

20. The Commission inspector who observed the failure to call "no more bets" informed her supervisor, Senior Commission Inspector Gloria Ford.

21. At 2:05 p.m., Senior Inspector Ford telephoned the surveillance department of BRC. Margaret Jenkins, a BRC surveillance employee, answered the phone. Ms. Jenkins noted this phone call on a note pad. Attached hereto and incorporated herein and marked as Exhibit A is a true copy of the note prepared by Margaret Jenkins regarding the telephone call from Senior Inspector Ford.

22. Senior Inspector Ford asked Margaret Jenkins to put the game on roulette table #4 on the Commission's monitor.

23. Margaret Jenkins told Senior Inspector Ford that she would have to call her back. Ms. Jenkins said that she would have to speak to her supervisor, who was Respondent Joseph S. Mancari.

24. Respondent Mancari telephoned Senior Inspector Ford and inquired as to the reason why she wanted to monitor the gaming activity on roulette table #4. He asked her if she had a valid

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reason. After Senior Inspector Ford stated that she did have a valid reason, Respondent Mancari informed her that he would not put the game on the monitor unless she told him the reason. He said that BRC had a policy of not putting high rollers on the Commission's monitor because the screen was exposed to public view and he did not know what Mr. Caltagirone's reaction would be if his game was shown to anyone.

25. Senior Inspector Ford asked Respondent Mancari when BRC implemented the policy of not sending down to the Commission booth the video of a high roller's gaming activity. Respondent Mancari could not tell her.

26. Respondent Mancari told her that if she had a specific reason why she wanted the gaming activity on roulette #4 shown to Commission inspectors then she should have her supervisor call him. Senior Inspector Ford agreed to have her supervisor contact him.

27. Whereupon, Senior Inspector Ford telephoned her supervisor, Principal Inspector Robert C. Plumb, who was in his office on the second floor of the premises at BRC, which is located adjacent to the Division offices at BRC.

28. Shortly thereafter, Respondent Mancari was in communication with the Division's office located on the premises of BRC. Respondent Mancari spoke with a Detective assigned with the Division. He told the Detective that Senior Inspector Ford had requested that roulette table #4 be put on the Commission's monitor and that he did not know what the reason was for the request.

29. The Division Detective told Respondent Mancari that Principal Inspector Plumb had come into the Division's office at that moment and Respondent Mancari should speak with him.

30. When Principal Inspector Plumb got on the phone, Respondent Mancari said, "You want ... Roulette No. 4, punched up. Your inspector called." Principal Inspector Plumb told Mr. Mancari that he did want that gaming activity put on the Commission monitor.

31. Respondent Mancari asked if there was a specific reason and Principal Inspector Plumb said there was a reason, there was a procedural problem in the operation of the roulette game involving Mr. Caltagirone. Principal Inspector Plumb said, "I would like a tape run", which meant that he would like the gaming activity on roulette table #4 videotaped.

32. Respondent Mancari inquired of Principal Inspector Plumb what kind of view (camera perspective) he wanted and Mr. Plumb told Mr. Mancari that he wanted the camera to have a view which would videotape the entire table.

33. The video monitoring of the gaming activity of Mr. Caltagirone on roulette table #4 was commenced at 2:18 p.m., approximately thirteen (13) minutes after Senior Inspector Ford's initial request. Attached hereto and incorporated herein and marked as Exhibit B is a true copy of BRC's surveillance log for May 18, 1981 prepared by Margaret Jenkins indicating a videotape of roulette table #4 commenced at 2:18 p.m. per the instructions of Joseph Mancari.

#### D. THE SETTLEMENT AGREEMENT

WHEREAS the parties have endeavored to submit to the Casino Control Commission a detailed and comprehensive submission of all of the material and relevant facts pertinent to the allegations contained in Complaint #83-88. Additionally, the parties submit

for purposes of this settlement agreement various exhibits described in the Table of Exhibits attached hereto, including Commission documentation, deposition transcripts and recorded testimony taken in the matter of State v. BRC (Docket No. 81-32).

WHEREAS Respondent Joseph Sabastian Mancari acknowledges that his failure to promptly comply with the request of the Commission inspector to display the video of Mr. Caltagirone's gaming activity at roulette table #4 constituted action violative of N.J.S.A. 5:12-80(d).

WHEREAS the parties represent that in agreeing upon the sanction set forth below consideration was given to the fact that Mr. Mancari's compensation from Caesars World, Inc. was reduced from approximately \$38,700 annually to approximately \$26,400 annually when he was reassigned to the Corporate Surveillance at Caesars Palace, Las Vegas, Nevada in or about August of 1982 and that presently Mr. Mancari's compensation is approximately \$28,800 annually.

WHEREAS Respondent Joseph Sabastian Mancari has agreed to comply with the Act and the regulations promulgated therefrom, recognizing the significance of any departure therefrom.

IT IS THEREFORE agreed and stipulated by and between the parties that:

- A. Respondent Joseph Sabastian Mancari agrees to pay a civil penalty pursuant to N.J.S.A. 5:12-129(5) in the amount of One Thousand Dollars (\$1,000);
- B. This Stipulation of Facts and Settlement Agreement, if approved by the Commission, shall constitute a

full and complete resolution of the allegations  
contained within Complaint #83-88.

This stipulation may be executed in two or more counter-parts  
by the parties hereto, each of which when so executed will be an  
original, but all of which together will constitute one and the  
same instrument.

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

Kevin F. O'Toole

Kevin F. O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

J. Michael Nolan, Jr.

J. Michael Nolan, Jr. Esquire  
Pitney, Hardin, Kipp and Szuch  
Attorney for Respondent  
Joseph Sabastian Mancari

TABLE OF EXHIBITS

- Exhibit A- Note prepared by Surveillance Operator Margaret Jenkins regarding the telephone call from Senior Inspector Ford on 5/18/81.
- Exhibit B- BRC's surveillance log for 5/18/81 prepared by Margaret Jenkins indicating a videotape of roulette table #4 commenced at 2:18 p.m. per the instructions of Joseph Mancari.
- Exhibit C- Casino Control Commission documentation pertaining to BRC surveillance personnel's delay in placing patron Gaetano Caltagirone's gaming activity on roulette table #4 on the Commission monitor-Inspector's Daily Narrative prepared by Senior Inspector Gloria Ford on 5/18/81.
- Exhibit D- Deposition of Joseph Sabastian Mancari taken in the matter of State v. BRC (81-32) on 8/26/81.
- Exhibit E- Deposition of Senior Inspector Gloria Ford taken in the matter of State v. BRC (81-32) on 9/1/81.
- Exhibit F- Deposition of Principal Inspector Robert Plumb taken in the matter of State v. BRC (81-32) on 9/1/81.
- Exhibit G- Recorded testimony of Gloria Ford taken in the matter of State v. BRC (81-32) on 2/17/82.
- Exhibit H- Recorded testimony of Gloria Ford taken in the matter of State v. BRC (81-32) on 3/4/82.
- Exhibit I- Recorded testimony of Robert C. Plumb taken in the matter of State v. BRC (81-32) on 3/5/82.
- Exhibit J- Recorded testimony of Margaret Jenkins taken in the matter of State v. BRC (81-32) on 3/11/82.
- Exhibit K- Recorded testimony of Joseph Sabastian Mancari taken in the matter of State v. BRC (81-32) on 3/11/82.



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 4659-83

AGENCY DKT. NO. 83-88

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

Petitioner,

v.

**JOSEPH SEBASTIAN MANCARI,**

Respondent.

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**APPEARANCES:**

**Kevin F. O'Toole**, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

**Charles A. Matison**, Esq., for the respondent (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, P.A., attorneys)

Record Closed: April 5, 1984

Decided: May 9, 1984

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

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Joseph Sebastian Mancari, respondent, the holder of a casino key employee license. The Division alleged

that Mr. Mancari had committed violations of the Casino Control Act and the regulations adopted thereunder, for which the Division sought the imposition of a penalty against the respondent's casino key employee license, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1983. By letter dated April 5, 1983, the Commission notified the respondent of the pending action and advised him of his right to request a hearing. On May 16, 1983, the respondent filed an answer and requested a hearing. On June 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 31, 1983, but was continued pending settlement negotiations. The record closed on April 5, 1984, upon receipt of the Stipulation of Settlement.

FINDINGS OF FACT AND CONCLUSION

The parties have agreed to a settlement, which has been set forth in a Stipulation of Settlement, which is attached hereto and fully incorporated herein.

I have reviewed the submissions and the terms of the settlement and I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by the Stipulation of Settlement, which contains the signatures of all parties.
2. The settlement fully disposes of all issues in controversy.

I CONCLUDE that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

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

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

May 9, 1984  
DATE

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

11 MAY 1984  
DATE

Receipt Acknowledged:  
[Signature]  
CASINO CONTROL COMMISSION

MAY 16 1984  
DATE

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

ml/E

**IRWIN I. KIMMELMAN**  
**Attorney General of New Jersey**  
**Attorney for the State of New Jersey**  
**Richard J. Hughes Justice Complex**  
**CN-047**  
**Trenton, New Jersey**

**By: Kevin F. O'Toole**  
**Deputy Attorney General**  
**(609) 984-6197**

**STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION**

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

**Plaintiff,**

**vs.**

**JOSEPH SEBASTIAN MANCARI,**

**Respondent.**

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**AGENCY DOCKET NO. 83-88**

**STIPULATION OF SETTLEMENT**

The matters involved in the above captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin O'Toole, Deputy Attorney General, and Charles A. Matison of Cooper, Perskie, April, Niedelman, Wagenheim and Weiss, attorney for Respondent, Joseph Sebastian Mancari, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. **WHEREAS Respondent presently holds Casino Key Employee License #00989-11, issued by the Casino Control Commission in January 1981; and,**

2. WHEREAS Respondent, at all times mentioned herein, was employed by Caesar's World, Inc., the parent corporation to the Boardwalk Regency Hotel and Casino ("BRC") and was assigned to BRC in the capacity of Surveillance Director; and,
3. WHEREAS Respondent is presently employed by Caesar's World, Inc., in the capacity of Corporate Surveillance at Caesar's Palace, Las Vegas; and,
4. WHEREAS on or about May 15, 1981, Mr. Gaetano Caltagirone arrived at BRC for the purpose of engaging in casino gambling; and,
5. WHEREAS on or about May 18, 1981, while reviewing the casino gaming activities of Mr. Caltagirone, Commission inspectors requested that the Surveillance Department at BRC place Mr. Caltagirone's gaming activities on the closed circuit TV monitor located at the Casino Control Commission inspector's station on the casino floor. For a period of time this request was not honored by BRC employees, including Respondent, in violation of N.J.S.A. 5:12-80(d) and the Certificate of Operation; and,
6. WHEREAS BRC employees, including Respondent, knew or should have known that not honoring the Commission inspector's surveillance request for a period of time constitutes a violation of the Casino Control Act and the regulations promulgated thereunder and the Certificate of Operation; and,
7. WHEREAS on April 4, 1983, the Division of Gaming Enforcement filed an administrative complaint against Respondent alleging

violations of N.J.S.A. 5:12-80(d) and the Certificate of Operation;  
and,

8. WHEREAS, Respondent acknowledges that violations of N.J.S.A. 5:12-80(d) and the Certificate of Operation did occur; and,
9. WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Joseph Sebastian Mancari has agreed to comply with the aforementioned statutory and regulatory provisions. Furthermore, it is recognized that Respondent has already suffered an economic detriment due to his transfer to Las Vegas in or about August of 1982 and reduction in annual compensation from Caesar's World, Inc.;

IT IS THEREFORE agreed and stipulated by and between the parties hereto  
that:

- A. Respondent's Casino Key Employee License #00989-11 shall be suspended for a period of six (6) months to commence from the date of the Administrative Law Judge's Initial Decision.
- B. This settlement shall be full and final settlement of all matters contained herein;
- C. Neither this settlement nor the underlying matters giving rise thereto shall be the basis for objection, by the Division of Gaming Enforcement, to the renewal of respondent's Casino Key Employee License; and,
- D. If in the future the Respondent is found to have violated any provision of the Casino Control Act, the Casino Control Commission shall only consider this settlement in determining the extent of the penalty to be assessed against the Respondent.

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

Kevin F. O'Toole

Kevin O'Toole  
Deputy Attorney General  
Attorney for Plaintiff

Charles A. Matison

Charles A. Matison, Esquire  
Cooper, Perskie, April, Niedelman,  
Wagenheim and Weiss  
Attorney for Respondent

Joseph Sebastian Mancari

Joseph Sebastian Mancari  
Respondent

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
CCC DOCKET NOS. 83-86; 83-87;  
83-88

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

Complainant,

v.

BERNARD W. RESNIK, ROBERT GERALD  
PARKER, GARY JOHN SMITH, ERVIN W.  
SISKA, JOHN F. GROOM AND  
ANTHONY PETER LEONE,

Respondents.

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

Complainant,

COMMISSION DECISION:  
MOTIONS TO DISMISS  
COMPLAINTS

v.

LARRY JEAN WOOLF, CHARLES HORTON,  
BERNARD W. RESNIK AND LUCIA A.  
VAN PELT,

Respondents.

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

Complainant,

v.

JOSEPH S. MANCARI,

Respondent.

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Appearances: J. Michael Nolan, Jr., Esquire (Pitney, Hardin, Kipp & Szuch), for respondents Larry Jean Woolf and Lucia Van Pelt.

Brian J. Molloy, Esquire (Wilentz, Goldman & Spitzer), for respondent Charles Horton.

Charles A. Matison, Esquire (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim), for respondents Bernard W. Resnik, Robert Gerald Parker, Gary John Smith, Ervin W. Siska, John F. Groom, Anthony Peter Leone, and Joseph S. Mancari.

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

Nancy Q. Shickler, Assistant Counsel, for the New Jersey Casino Control Commission.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement (DGE) filed complaints with the Commission against the above respondents on April 4, 1983. Those complaints allege violations of the Casino Control Act, Commission regulations and the Certificate of Operation held by Boardwalk Regency Corporation. The respondents were casino key employees employed by Boardwalk Regency Corporation in May 1981, and were alleged to have participated in a series of incidents which also formed the basis of an earlier complaint against the casino licensee, State v. Boardwalk Regency Corporation, Docket No. 81-82 (1983). After appropriate hearings, the complaint against the casino licensee was resolved by the Commission in January 1983 with the imposition of monetary civil penalties totalling \$257,000.

After complaints and answers were filed in the instant matters, the Commission transmitted the three cases to the Office of Administrative Law on June 22, 1983, with the request that the matters be consolidated for purposes of a hearing. Soon after transmittal, an Administrative Law Judge (ALJ) scheduled a prehearing conference in part to address the affirmative defenses raised in answers filed by the respondents which included laches, lapse of the statute of limitations, violations of the respondents' due process rights and estoppel. However, the conference was carried after the DGE and respondents advised the ALJ that they were entering settlement negotiations. On May 15, 1984, the OAL filed initial decisions concluding that the matters would no longer be contested cases and that the parties should comply with the terms of the executed settlement agreements, subject, of course, to review and acceptance by the Commission. At the public meeting of June 27, 1984, the Commission unanimously rejected all the recommended settlement agreements. During the Commission's discussion of the settlements, all five Commissioners indicated their dissatisfaction with the restrictions to be imposed on the Commission's ability to review the subject matter of the complaints upon renewal of the respondents' licenses and with the absence of a sufficient factual recitation to evaluate the adequacy of the proposed sanctions. The parties were

advised that the Commission wished this matter to be handled expeditiously and directed them either to return with new stipulation agreements or to litigate the complaints.

The present motions to dismiss were filed on February 27, 1985 (respondents Woolf and Van Pelt), March 6, 1985 (respondent Horton) and March 11, 1985 (respondents Resnik, Parker, Smith, Groom, Leone, Mancari and Siska). The Division of Gaming Enforcement filed a brief in opposition to the motion on March 25, 1985. At the request of the Commission staff, the Division filed a supplemental memorandum of law on March 28, 1985. Counsel on behalf of respondent Horton filed replies on March 25, 1985 and April 1, 1985.

The Commission heard argument on the motions at its public meeting of April 3, 1985, and at its meeting of April 17, 1985, announced its decision denying the motions. Thereafter, on May 9, 1985, respondents Woolf and Van Pelt filed a motion for leave to appeal with the Superior Court, Appellate Division. Respondent Charles Horton joined the motion for leave to appeal on May 13, 1985. The remaining respondents joined the motion before the Court on May 14, 1985.

#### EFFECT OF DELAY

The respondents in these matters have requested that the Commission dismiss the complaints filed against them

because of the delay between the time of the alleged violative conduct and the filing of the complaints, a period of some twenty-three months. The respondents claim that this delay, coupled with the time that has passed since the institution of the complaints against them, violates the principles of fundamental fairness applied to administrative proceedings.

Administrative proceedings on contested matters are required to conform with principles of fundamental fairness. In re Arndt, 67 N.J. 432 (1975). However, the required procedural standards are more flexible and less formal than those imposed in court proceedings. In re Kallen, 92 N.J. 14, 26 (1983). Therefore, the Commission is required to determine if principles of basic fairness have been violated because of the delays occasioned in these cases. We find that the respondents have failed to demonstrate actual prejudice to the preparation or presentation of their cases as a result of the delays encountered in bringing and processing these complaints. In the absence of such prejudice, we conclude that the public interest in the proper regulation of the sensitive casino industry compel the adjudication and final disposition of these matters on their merits.

The respondents argue that the standards applied in civil forfeiture cases, as articulated in United States v.

\$8,850, 461 U.S. 555 (1983) and State v. One Ford Van Econoline, 154 N.J. Super 326 (App. Div. 1977), certif. den., 77 N.J. 474 (1978), are the appropriate framework to analyze the requirements of fundamental fairness applicable to the instant cases. Further, the respondents cite In re Arndt, supra, as controlling precedent for the instant motions.

Initially, we find that the forfeiture cases are not dispositive of the issues in these cases. The respondents have not been deprived of any property right comparable to the seizure of goods or money in a forfeiture action. In section 1(b)(8) of the Casino Control Act (N.J.S.A. 5:12-1(b)(8)), the Legislature specifically precluded the creation of any property right in any license issued by the Commission. Indeed, none of the respondents has suffered a suspension or any discontinuance of the licensure privilege and the legal ability to work in the casino industry. Moreover, the respondents have not been subject to such restraints on liberty as may result from a public accusation. United States v. Marion, 404 U.S. 307, 321 (1971). The fact that respondents were subject to a lengthy investigation, with the expense, disruption and stress that may accompany it, does not constitute a formal charge. United States v. MacDonald, 456 U.S. 1, 9 (1983); United States v. Marion, supra, at 320.

Nor do we find In re Arndt, supra, to be controlling. There the New Jersey Supreme Court vacated an order suspending the appellant's driver's license because of unjustified pre- and post-hearing delays by the Director of the Department of Motor Vehicles totalling approximately 30 months. The Court read the enabling statute to require the Director to institute suspension proceedings within a reasonable time after notification of refusal of a breath chemical test. The Court found the proceedings as a whole were conducted in unfair disregard of the rights of the motorist. In the Court's view, the delays contravened the public policy and interest in the prompt removal of unfit drivers from the highways.

The driver's license suspension procedures are mandated after a motorist refuses to submit to the breath chemical test. The Director is obligated to suspend the motorist's driver's license upon receipt of a properly sworn report from the arresting officer, unless the driver requests a hearing. The sole issue at the hearing is whether the arresting officer had probable cause to believe that the motorist was driving his vehicle while under the influence of intoxicating liquors. See N.J.S.A. 39:4-50.4. The license suspension proceeding serves to supplement the parallel criminal proceedings; drivers are encouraged to take the breath test, upon pain of losing his or her license for six

months. The results of the test may then be used in the criminal proceeding. Similarly, as a result of a conviction on the criminal charge, the judge has the power to suspend the motorist's driving privileges. Further, the criminal action may be maintained without regard to the administrative suspension matter. Thus, the criminal and civil proceedings originate from the same incident and run concurrently to achieve the same valid law enforcement objectives.

The administrative complaints before us do not present an analogous model. One of the Commission's essential functions is to ensure the continued public confidence in the integrity of the regulatory process and of casino operations. See N.J.S.A. 5:12-(1)(b)(6), -63. These complaints raise serious allegations concerning individuals who hold key employee licenses, the highest employee credential authorized by the Act. See N.J.S.A. 5:12-9, -89. It is the Commission, and no other body in New Jersey, which determines the qualifications of those who wish to participate in the casino industry. Thus, while Arndt may be instructive for the proposition that ministerial actions intended by the Legislature to serve as prompt, initial responses to societal problems should be processed without unexplained and unreasonable delay, it should not be controlling in the instant context.

The decision in Arndt has not been interpreted to find that delay alone is sufficient to obviate otherwise valid proceedings. In a subsequent case, In re Garber, 141 N.J. Super. 87, certif. den. 71 N.J. 494 (1976), the Appellate Division found that the decision in Arndt is consistent with the general rule that delay alone will not generally affect the validity of an administrative determination where no prejudice is shown. 141 N.J. Super. at 91. This decision has been cited with approval by the Supreme Court in a subsequent administrative law case, In re Kallen, 92 N.J. 14, 27 (1983).

The respondents argued that the Casino Control Act mandates prompt action by the Division in investigating and prosecuting alleged regulatory violations and that, in this instance, the Division has disregarded that requirement to the detriment of their rights. The Division of Gaming Enforcement is established as a separate agency under section 55 of the Act. N.J.S.A. 5:12-55. Pursuant to section 76, N.J.S.A. 5:12-76, the Division is directed to fulfill its responsibilities "promptly and in reasonable order." By so directing, the statute does not place a specific time frame on the Division's actions. The Legislature could easily have established such a limitation had it chosen to do so. Moreover, we do not read section 76 as creating additional substantive rights which may be asserted by particular

respondents before this Commission. Rather, any respondent may contend, as the present movants have, that they are entitled to the extraordinary remedy of dismissal under the same criteria generally applicable to such administrative proceedings.

Applying the analytical framework to the facts as alleged in these motions, we find that the respondents have not demonstrated the necessary prejudice to warrant dismissal of the complaints. As noted above, the respondents have not had their licenses suspended and have continued to work in the industry since May 1981.<sup>1</sup> Furthermore, we reject any suggestion that the Commission has prejudged these matters by virtue of having decided the prior case against the casino licensee. In alleging prejudice on the part of this administrative tribunal, the respondents have the burden of overcoming "a presumption of honesty and integrity in those serving as adjudicators." Withrow v. Larkin, 421 U.S. 35, 47 (1975). Without a showing to the contrary, state administrators are presumed to be persons of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances. See United States v. Morgan, 313 U.S. 409, 421 (1941). No Commissioner has exhibited the personal involvement or prejudgment which would necessitate recusal. See, e.g., In

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1 All respondents with the exception of Mr. Mancari have filed timely renewals of their casino key employee licenses. Final action on these renewals have been deferred until the existing complaints are resolved.

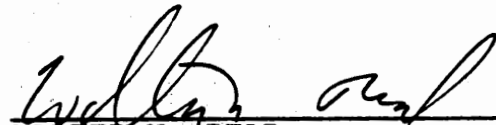
re Allstate Insurance Company, 161 N.J. Super. 564 (App. Div. 1978). The determination of these contested cases will be reached solely upon the record as developed at a hearing or as presented in a stipulation of settlement.

At the very heart of the Casino Control Act is the maintenance of the public confidence and trust in the credibility and integrity of the regulatory process and in casino operations in New Jersey. To further public confidence and trust, the Commission is required to scrutinize and, if required, exclude not only persons with criminal backgrounds, but those who lack the necessary business judgment or probity or who engage in improper activities in the conduct of casino gaming. N.J.S.A. 5:12-1(b)(7). Because of the public's vital interest in casino operations, participation in this industry has been deemed a revocable privilege. N.J.S.A. 5:12-1(b)(8).

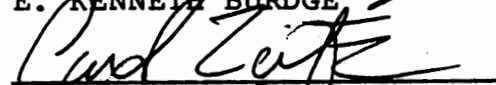
The regulatory violations alleged in these complaints are serious. If proven, they are more than mere technical improprieties. There is a strong public policy in having these matters resolved in a public forum promptly and completely. While all parties concerned would undoubtedly have desired a speedier resolution of this matter, we cannot say at this juncture that the proceedings as a whole have been conducted with unfair disregard of respondents' rights. See In re Arndt, supra, 67 N.J. at 437. We are, however,


sensitive to the concerns raised by the respondents in these motions and believe they can be allayed by having the matters tried in the first instance before an administrative law judge in the Office of Administrative Law.

Therefore, for the reasons stated, we deny the motions to dismiss in these complaints and remand the matters to the Office of Administrative Law for the conduct of a hearing on an expedited basis.

  
\_\_\_\_\_  
WALTER N. READ

  
\_\_\_\_\_  
E. KENNETH BURDGE

  
\_\_\_\_\_  
CARL ZEITZ

  
\_\_\_\_\_  
JOEL R. JACOBSON

May 15, 1985  
DATE

DISSENTING OPINION OF COMMISSIONER ARMSTRONG

I must respectfully dissent from the opinion of my fellow Commissioners.

The issue presented in this matter requires a delicate balancing of the right of a litigant to fundamental fairness during an administrative proceeding versus the strong public policy expressed in the Casino Control Act (Act) of preserving the integrity of the regulatory process which may necessitate the imposition of sanctions against corporate entities and individual licensees who violate the Act.

N.J.S.A. 5:12-76 requires the Division of Gaming Enforcement (Division) to promptly prosecute before the Casino Control Commission (Commission) all proceedings for violations of the Act or regulations. I support the proposition that the Division is accorded under the Act broad discretion in order to fulfill its investigative and regulatory functions. Moreover, licensees and registrants should not be drawn into violation proceedings as respondents, stand publicly accused and have their credentials placed in jeopardy unless the Division is reasonably certain that the respondents have been implicated in violative conduct.

In this case, the complaint against the corporate entity (BRC) was filed promptly in June 1981 as a result of incidents which occurred at BRC in May 1981. However, there was justification to delay the filing of the complaints against the

individual respondents allegedly involved in the BRC incident. After the Division took the respondents' depositions in August 1981, there was no further investigation of the respondents' involvement in the May 1981 incidents at any time subsequent to the depositions or the filing of the complaints in April 1983.

The Commission's final decision in the BRC matter adopted the findings of fact of the Administrative Law Judge (ALJ). While the Commission increased the sanctions imposed against BRC by the ALJ, the initial and final decisions concluded that the sanction was imposed against BRC due to violations of the Act committed by some or all of the respondents. The BRC final decision is replete with references to specific violations of the Act by the individual respondents, which the Commission determined justified the \$257,000 fine.

To permit the filing of complaints against the individual respondents after the final decision was rendered constitutes under the unique facts of this case, blatant prejudice. My concern is not with the length of the delay prior to filing the complaints against the respondents, rather, it is the timing of the filing of the complaints which creates fundamental unfairness. The prejudice to respondents results from the following.

First, the depositions of the respondents were taken in August 1981, without the right to legal counsel. This fact alone would not constitute sufficient grounds for dismissal. The Division was in the midst of conducting an investigation

and therefore, the presence of counsel was not required at the depositions. See, In re Tufi Application, 182 N.J.Super. 631, 643 (App. Div. 1981).


However, I am disturbed by the fact that the depositions were taken without counsel present when coupled with the subsequent actions by the Division. At the BRC hearing before the ALJ, the depositions were introduced into evidence by the Division and several of the respondents were called to testify by BRC, their employer. They had no right to cross-examine witnesses testifying adversely to their interests since they were not parties to the proceeding.

The final decision in the BRC matter unquestionably concludes that the individual respondents' actions violated the Act to such a serious extent that BRC was fined \$257,000. The sanctions imposed on BRC resulted directly from findings of violations committed by respondents, among others, as employees of BRC, acting on behalf of the corporation.

Conceding that the proceedings against the respondents will now advance, the factual findings in the BRC initial and final decisions cannot legally or logically be treated as though they do not exist. The fact that a plenary hearing will be held before an ALJ does not cure the prejudice, since the final decision will be rendered by the same Commission which has previously determined that the respondents violated the Act.

The respondents' alleged violative actions have already been judged and condemned at a proceeding during which they were unrepresented by legal counsel and had no right to cross-examination. I am not suggesting that my fellow Commissioners are biased against or have prejudged any of these individuals. I do think that because of the manner in which this case has developed, the Commission is bound in some manner by the prior findings in the BRC case, to the detriment of these respondents. Additionally, one must query as to the legal ramifications of the possibility of factual findings resulting from the prosecution of respondents, which findings may be inconsistent with the findings in the BRC Final Decision. Can BRC request a refund of a portion of the \$257,000 sanction if new factual findings reveal that fewer violations of the Act were committed by respondents? Can this Commission logically conclude that the facts are now different?

In re Kallen, 92 N.J. 14, 25 (1983), affirmed that administrative hearings in contested cases must operate fairly and in conformity with due process. Respondents' rights to fundamental fairness have been violated in this case. I would grant the motion to dismiss.

  
VALERIE H. ARMSTRONG  
Commissioner

May 15, 1985  
Date

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-186  
OAL DOCKET NO. CCC 0815-86

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

Complainant,

FINAL ORDER

v.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

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This matter having been opened to the Casino Control Commission (Commission) upon the filing of an initial decision incorporating a stipulation of settlement; and the parties having orally amended the stipulation of settlement by providing additional information concerning the number of bottles inspected, the nature of the adulteration and measures taken by Resorts International Hotel, Inc., to prevent a recurrence of the problem; and the Commission having considered the entire record of these proceedings at its public meeting of May 28, 1986,

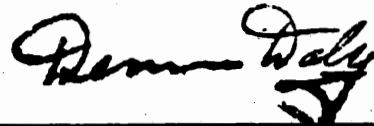
IT IS on this 17<sup>th</sup> day of June 1986, ORDERED that the initial decision/stipulation of settlement, as orally modified, is affirmed; and

IT IS FURTHER ORDERED that Resorts International Hotel, Inc., pay a civil penalty in the amount of \$2,550 as provided in the stipulation of settlement, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that copies of this final order be served upon Resorts International Hotel, Inc., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 0815-86

AGENCY DKT. NO. 85-186

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

Petitioner,

v.

RESORTS INTERNATIONAL HOTEL,  
Respondent.

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Wendy Way, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Paul M. O'Gara, Esq., on behalf of respondent (Sterns, Herbert and Weinroth,  
attorneys)

Record Closed: April 9, 1986

Decided: April 17, 1986

BEFORE SOLOMON A. METZGER, ALJ:

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

The parties have now reached a settlement of the matter which is evidenced by the attached "Stipulation of Settlement." Having reviewed the terms of the settlement

agreement and it appearing that it fully disposes of all issues in controversy and was entered into voluntarily, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the terms of settlement and that these proceedings be and hereby are concluded.

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

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

4/17/86  
DATE

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

Receipt Acknowledged:

4/18/86  
DATE

*Bernadette J. Frisco*  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 22 1986  
DATE

*Ronald J. Parker* & S.  
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS

None

RECEIVED  
STATE OF N.J.  
OFFICE OF ADM. LAW  
APR 11 2 47 PM '86

W. CARY EDWARDS  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the State of New Jersey  
Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: Wendy Way  
Deputy Attorney General

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-186

STATE OF NEW JERSEY )  
DEPARTMENT OF LAW AND )  
PUBLIC SAFETY, DIVISION )  
OF GAMING ENFORCEMENT, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RESORTS INTERNATIONAL )  
HOTEL, INC. )  
 )  
Defendant. )

STIPULATION OF SETTLEMENT

WHEREAS, the New Jersey Division of Gaming Enforcement has caused an Amended Complaint to be filed in the above-captioned matter; and

WHEREAS, the Complaint charges that in February, July and November of 1985 the Division discovered thirty-four (34) bottles of alcoholic beverages in various C.H.A.B. licensed areas throughout Resorts' casino hotel facility to have been adulterated; and

WHEREAS, on January 15, 1986, Resorts filed an Answer to the above-mentioned Complaint which denied the charges thereof; and

WHEREAS, the Division contends and Resorts admits that the aforesaid thirty-four (34) bottles of alcoholic beverages were adulterated; and

WHEREAS, the Division has consulted with the New Jersey Department of Alcoholic Beverage Control and concluded that an appropriate administrative sanction in the above-captioned matter is a sanction in the amount of \$75.00 per alleged adulterated bottle; and

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

NOW THEREFORE, be it resolved that Resorts International Hotel, Inc. agrees to pay the sum of \$2,550.00 to the Casino Control Fund in full settlement of the above-captioned Complaint, and upon the payment of such sum, the matter shall be deemed fully adjudicated and resolved.

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

Dated: April 9, 1986

BY:   
Wendy Way  
Deputy Attorney General

STERNS, HERBERT & WEINROTH, P.A.  
Attorneys for Resorts International  
Hotel, Inc.

Dated:

BY:   
Paul M. O'Gara

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-330  
LICENSE NO. 16548-22  
OAL DOCKET NO. CCC 1418-85

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

COMPLAINANT, : FINAL ORDER

v. :

EVELYN A. SANTOS, :

RESPONDENT. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 18, 1985,

IT IS on this 23<sup>rd</sup> day of January 1986, ORDERED that the initial decision in this matter is modified as follows:

1. From the evidence in the record, the Commission finds that, on May 4, 1984, the respondent did possess a controlled dangerous substance to wit cocaine, with intent to distribute, in violation of N.J.S.A. 24:21-19a.1;
2. The respondent is therefore disqualified from licensure pursuant to sections 86(c)(3) and (g) of the Act rather than section 86(c)(4);
3. The respondent has not demonstrated her rehabilitation by clear and convincing evidence pursuant to section 90(h); and

4. The respondent has not established her good character, honesty and integrity pursuant to sections 89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license of Evelyn A. Santos is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Evelyn A. Santos, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. CCC 1418-85**

**AGENCY DKT. NO. 84-330**

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

Petitioner,

v.

**EVELYN A. SANTOS,**

Respondent.

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**William E. Mountford, Deputy Attorney General, and Norma Plenty, Law Clerk, for  
the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey,  
attorney)**

**Donald D. Phillips, Esq., for the respondent**

**Record Closed: September 5, 1985**

**Decided: October 4, 1985**

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

This matter concerns the complaint that the Division of Gaming Enforcement (Division) filed with the Casino Control Commission (Commission) on October 5, 1984, seeking the revocation of the respondent's license as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

Based on the complaint filed by the Division, the Commission ordered the temporary suspension of the respondent's license on October 19, 1984, and this order was vacated by the Commission on March 8, 1985.

The respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 23, 1985, at which time the parties agreed that the issues in this matter are:

- A. Whether the respondent is disqualified from licensure due to certain alleged criminal activities pursuant to the provisions of N.J.S.A. 5:12-86c or 5:12-86d.
- B. Whether the respondent's continued licensure is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).
- C. Whether the respondent can establish her reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).
- D. Whether the respondent can establish that she has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h.

At the prehearing conference, the respondent was represented by Vincent James Milita, II, Esq. The hearing took place on August 19, 1985, and at that time, the respondent was represented by Donald D. Phillips, Esq. After the lapse of time for the receipt of additional exhibits, and comments thereon, the record in this matter closed on September 5, 1985.

I **FIND** that the pertinent facts in this matter are not in dispute.

On May 4, 1984, the respondent was arrested by Detective James Hipple of the Atlantic City Police Department, for the possession of a controlled dangerous substance and for the possession of a controlled dangerous substance with the intent to distribute (P-1). While on a narcotic surveillance, Detective Hipple, at approximately 1:00 a.m. on May 4, 1984, observed Charles Algarin, two other men and a woman later identified as Evelyn A. Santos leave a tavern and go into a nearby alley. While they were in the alley, Detective Hipple observed Mr. Algarin take out a marijuana-type cigarette and Ms. Santos take out of her purse a match and a plastic baggie. Mr. Algarin lit the cigarette and both

he and Ms. Santos smoked it. As Detective Hipple approached them, Mr. Algarin dropped the cigarette and Ms. Santos put the baggie back into her purse. Detective Hipple searched Ms. Santos and found one large plastic baggie and five small plastic baggies in her purse. The contents of these baggies were field tested by Detective Hipple and were determined to be cocaine.

Detective Hipple, who has had training in narcotics detection, stated that cocaine is normally sold in packets containing up to one gram and in his opinion, the large packet found in the possession of Ms. Santos was to be cut up for later sale. On May 4, 1984, Detective Hipple did not see a sale of narcotics.

On May 29, 1984, Ms. Santos was indicted by the Atlantic County Grand Jury for possession of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-20a(1), and possession of a controlled dangerous substance (cocaine) with intent to distribute, a violation of N.J.S.A. 24:21-19a(1), based on the May 4, 1984 incident (P-2).

On June 1, 1984, Ms. Santos was arrested for the possession of a controlled dangerous substance and for possession of narcotic paraphernalia (P-3). Detective Larry Ross, of the Atlantic City Police Department, testified that on June 1, 1984, he executed a search warrant at the respondent's residence, and found two plants that were field tested to be marijuana, a plastic bag containing white powder which was field tested to be cocaine, a silver tube or sniffer which is used to snort cocaine, two blue "bongs" which are used to smoke marijuana, and two scales which are used to weigh narcotics. Detective Ross stated that the respondent and her son lived at the residence and that he had no information as to any other person living there.

On cross-examination, Detective Ross stated that the search warrant was based on the respondent's prior arrest and a tip from an informer, and that a surveillance at the residence had shown a substantial number of people, both juveniles and adults, going in and out of the house.

On June 21, 1984, the respondent was indicted by the Atlantic County Grand Jury for the possession of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-20a(1), based on the June 1, 1984 arrest (P-4).

Based on a plea bargaining agreement regarding the two indictments filed against the respondent, Ms. Santos pled guilty to the possession of a controlled dangerous substance charge as set forth in the June 21, 1984 indictment (P-4), and the other indictment was dismissed (P-2). The respondent was sentenced to a year of probation, a fine of \$300, a penalty of \$25 and was required to submit a urine analysis report every three months during the period of her probation (P-5).

Prior to the initiation of the hearing and after the presentation of the Division's witnesses, Mr. Phillips objected to any reference to the charges contained in the dismissed indictment. Mr. Phillips argued that the Division is collaterally estopped, that the respondent is entitled to rely on the finality in the criminal proceedings and that the Division's reference to these charges in this administrative proceeding is a violation of the respondent's constitutional rights.

In response, Ms. Plenty argued that the Division has the right to present the facts underlying the indictment notwithstanding the fact that the indictment was dismissed. She noted that there is a difference in burdens of proof between civil and criminal proceedings, and in this matter, the Division has the right to show by a preponderance of evidence that Ms. Santos committed the violations contained in the dismissed indictment.

Having heard the arguments, I denied Mr. Phillip's motion to limit the evidence and concurred with Ms. Plenty's presentation.

At the request of Mr. Phillips, copies of the State Police reports regarding the laboratory analysis of the narcotics allegedly in the possession of Ms. Santos at the time of her May 4, 1984 arrest and in her home on June 1, 1984, were submitted by the Division after the hearing. These reports confirm the field tests of the two police officers and show that the baggies found in the possession of Ms. Santos on May 4, 1984, contained a total of 6.110 grams of cocaine. Mr. Phillips did not submit any comments regarding these reports within the ten-day period allowed to him.

At the hearing, Ms. Santos testified that she was married at the age of 15 and that after the marriage broke up, she raised her two children. Except for one year while she was receiving welfare benefits, Ms. Santos has supported herself and her two children. Currently only her son is living with Ms. Santos.

Ms. Santos stated that she does not use any type of narcotics and that she never had any drugs in her possession with intent to distribute. Ms. Santos stated that she would not be able to perform her casino job if she were on drugs. Ms. Santos did not deny that drugs were found in her house on June 1, 1985, and indicated that her son is using drugs.

The respondent stated that she was employed as a beverage server by the Caesars Hotel and Casino (Caesars) for a two-year period and that she had a good employment record while she was employed there. Ms. Santos left this job in November 1981 in order to take a better paying position at the Tropicana Hotel and Casino (Tropicana) as a waitress on the floor of the casino, and she has maintained her good employment record.

Michael Celestino, her immediate supervisor at Caesars, submitted a letter indicating that Ms. Santos was a conscientious employee and had a good attendance record while she worked there (R-6).

Sharon L. Weimar, the respondent's supervisor at Tropicana, submitted a letter dated June 10, 1985, in which she said that the respondent is an outstanding employee, has a good attendance record and is a hard worker (R-2).

In addition, Ms. Santos submitted letters from a number of her co-workers, all of whom stated that she is a friendly and dependable fellow employee (R-3, R-4, R-5, R-6, R-7).

Brenda Ferguson, a probation officer, submitted a letter dated June 18, 1985, on behalf of respondent stating that Ms. Santos is paying the court-imposed fine in installment payments, and that her progress during her probation period is good and that her three quarterly drug screening reports submitted to date have been negative (R-1).

In closing, Mr. Phillips argued that the Division had not shown that the respondent is guilty of a statutory disqualifier, nor had it shown that her continued licensure would be inimical to the policies of the Casino Control Act. Mr. Phillips argued that Ms. Santos, through her testimony and the letters submitted on her behalf, has shown that she is a person of good character, honesty and integrity, that she has raised her children without assistance and that she has tried to lead a useful life. Mr. Phillips noted the letter from her probation officer regarding her successful progress and her negative drug tests.

Ms. Plenty, on behalf of the Division, argued that Ms. Santos had not shown that she was a person of good character, honesty and integrity in view of her prior arrests and that an insufficient period of time has passed since her conviction to show that she has been rehabilitated.

Based on the facts in this matter, I **CONCLUDE** that pursuant to N.J.S.A. 5:12-86c(3), the respondent did not plead guilty to a charge which is a statutory disqualifier. Also, I **CONCLUDE** that the Division has not shown that the respondent had cocaine in her possession with the intent to distribute on May 4, 1984, and therefore has not established a statutory disqualifier pursuant to N.J.S.A. 5:12-86(d). Although I recognize that 6.110 grams of cocaine is a substantial amount, there was not proof that Ms. Santos intended to sell it.

However, based on the narcotic possession charge to which she pled guilty and the proof that she had a substantial amount of cocaine in her possession on May 4, 1984, I **CONCLUDE** that the Division has shown that the respondent's continued licensure is inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4), and that because of these criminal activities, the respondent has not shown that she is a person of good character, honesty and integrity as required for licensure by N.J.S.A. 5:12-89b(2). Lastly, I **CONCLUDE** that an insufficient period of time has lapsed for the respondent to show that she has been rehabilitated pursuant to the standards set forth in N.J.S.A. 5:12-90h.

Therefore, I **ORDER** that the respondent's license as a casino employee be **REVOKED** and that this matter be **DISMISSED**.

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

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

October 4, 1985  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-7-85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 9 1985  
DATE

Ronald J. Parker / S.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Investigation and Arrest Reports of the Atlantic City Police Department relating to Evelyn Santos, dated May 4, 1984
- P-2 Indictment No. 0770-5-84-C filed against Evelyn Santos
- P-3 Investigation and Arrest Report of the Atlantic City Police Department relating to Evelyn Santos, dated June 1, 1984
- P-4 Indictment No. 0926-6-84-C filed against Evelyn Santos
- P-5 Disposition on the indictments filed against Evelyn Santos, including a copy of the plea bargain agreement
- P-6 New Jersey State Police Laboratory Reports, dated July 20, 1984 and June 1, 1984 (received by mail on August 26, 1985)

**FOR THE RESPONDENT:**

- R-1 Letter from Brenda Ferguson to James Milita, dated June 18, 1985
- R-2 Letter from Sharon L. Weimar regarding Evelyn Santos, dated June 10, 1985
- R-3 Comments regarding Evelyn Santos from Patricia Scimera, John L. Walters, Jr. and Diane DeMaio
- R-4 Comments regarding Evelyn Santos from Kathy Draper, Marisa Davis, Glenda Bayer, Daniel DeFelice, Christine Tuleno and Rita Johnston
- R-5 Letter regarding Evelyn Santos from Jean Popovich
- R-6 Letter regarding Evelyn Santos from Michael Celestino
- R-7 Letter regarding Evelyn Santos from Mary Rita Bullions, dated June 1, 1985

WITNESSES

**FOR THE PETITIONER:**

Detective James Hipple  
Detective Larry Ross

**FOR THE RESPONDENT:**

Evelyn Santos

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 83-338  
OAL DOCKET NO. CCC 5625-85  
LICENSE NO. 40059-21

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

Complainant,

v.

RUDOLFO JOHN SCERBO,

Respondent.

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: FINAL ORDER  
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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this 21<sup>st</sup> day of May 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement for revocation of the casino employee license held by Rudolfo John Scerbo is dismissed for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Rudolfo John Scerbo, the Division of Gaming

Enforcement and the Office of Administrative Law within ten  
(10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**FILED**

APR 2 - 1986

CASINO CONTROL COMMISSION  
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 5625-85

AGENCY DKT. NO. 83-338

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

Petitioner,

v.

**RODOLFO SCERBO,**

Respondent.

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**William E. Mountford**, Deputy Attorney General, on behalf of the petitioner  
(**W. Cary Edwards**, Attorney General of New Jersey, attorney)

**Alfred J. Bennington, Jr., Esq.**, on behalf of respondent

Record Closed: February 13, 1986

Decided: March 26, 1986

**BEFORE RALPH J. TOLOMEO, ALJ:**

PROCEDURAL HISTORY

On September 28, 1983, the State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement, petitioner, filed a complaint against Rodolfo Scerbo, respondent, with the Casino Control Commission. The complaint alleged that respondent was indicted by the Atlantic County Grand Jury and charged with offenses of possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1) and possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). The complaint, alleging violation of 24:21-19a(1), indicates the same is a disqualifying offense pursuant to Section 86(c)(3) of the Casino Control Act. Petitioner's complaint further alleges that the acts in question are of such a nature as to

be inimical to the policies of the Casino Control Act and to casino operations under Section 86(c)4 and, further, that the alleged conduct indicates that respondent does not have the good character, honesty and integrity necessary for continued licensure, pursuant to Sections 89(b)2 and 90(b) of the Casino Control Act. Thereafter, petitioner requested and obtained a suspension of respondent's casino employee license on October 20, 1983. Respondent requested, pursuant to the provisions of N.J.S.A. 5:12-110(b), that the determination of revocation be stayed pending a determination of the criminal charges and this request was acknowledged. Following the disposition of criminal charges, the Casino Control Commission forwarded the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was received by the Office of Administrative Law on September 6, 1985, and a prehearing conference was scheduled and conducted on October 25, 1985. The matter was scheduled for hearing on January 23, 1986, at which time a hearing was conducted. The record remained open at the request of respondent's counsel in order to allow submissions to the court. The record closed on February 13, 1986.

#### STATEMENTS AND FINDINGS OF FACT

The basic facts in this matter are undisputed and are set forth hereafter as findings of fact. When a dispute arises herein, the same shall be set forth and resolved.

Respondent, Rodolfo Scerbo, presently holds a casino employee license no. 40059-21 issued by the Casino Control Commission on March 3, 1982. Respondent had been employed by Caesar's Boardwalk Regency Hotel Casino as a craps dealer; however, as of July 5, 1983, respondent was placed on an investigative suspension and, on October 20, 1983, respondent's license was suspended by the Casino Control Commission at the request of petitioner.

All of these events occurred as a result of activities hereinafter described. According to a New Jersey State Police report prepared by New Jersey State Police Detective W.T. Trump, dated June 1983, a "confidential source" informed Detective Trump in April 1983, about several Caesar's Casino employees trafficking in narcotics. The report further stated that Rodolfo Scerbo, respondent, was selling cocaine within the casino and at his residence, 815 Spruce Street, Pleasantville, New Jersey. The report stated that the "source" made contact with respondent discussing the purchase of cocaine and made arrangements to purchase cocaine from Scerbo. Thereafter, the "source"

arrived at the State Police office and met with Detective Trump and Detective Wild for the "purpose of making a controlled narcotic buy."

The report then describes the activities and police procedures that followed.

It states:

The source and the cs's vehicle was [sic] searched. The source was given \$50 to purchase an amount of cocaine from the suspect at 815 Spruce Street, Pleasantville, New Jersey. The undersigned proceeded to 815 Spruce Street with the source. Det. Wild followed the undersigned and the source to the residence. About one block from 815 Spruce Street, the undersigned exited the cs's vehicle and proceeded with Det. Wild. The source was observed parking the vehicle in the driveway at 815 Spruce Street and entering the house. About ten minutes later, the source was observed to exit the house and enter said vehicle and drive away. The undersigned and Det. Wild followed. About one block away, from the residence, the cs's vehicle stopped and the undersigned reentered the vehicle. The source turned over to the undersigned a white piece of paper in a druggist fold, marked Pyramid Papers. The source advised the white paper contained cocaine, it cost \$50 and the source purchased it from Rodolfo Scerbo. At this time, the undersigned, the source and Det. Wild returned to Cardiff office.

The report concludes with the following language:

The specific dates and times of the aforementioned visit by the source to Scerbo's house have not been detailed to protect the sources's [sic] identity.

The pink envelope containing the white powder substance was submitted to the New Jersey State Police Special and Technical Services section and was tested. The test results are contained in a laboratory report, dated August 12, 1983 (P-2 Evid.). The lab report states that the examination of the substance indicates that it was a controlled dangerous substance, namely cocaine, the weight of which was 0.43 grams.

Thereafter, and based on the information stated above, investigating authorities obtained a search warrant and executed the same at the premises 815 Spruce Street, Pleasantville, New Jersey. Law enforcement personnel who participated in the execution of the warrant were State Police detectives Bay, Littles, Trump, Wild and

Medolla. A search of the premises disclosed certain items found in respondent's bedroom described as two bags of green vegetation in the top dresser drawer which, according to a New Jersey State Police laboratory report, dated July 26, 1983, were determined to be marijuana. Additionally, there was a small red and white paper in a druggist fold containing white powder found in the bedroom, and the laboratory report (P-2 Evid.) indicates the same to be 0.3 grams of cocaine, a controlled dangerous substance. Also found in the kitchen cabinet area of the residence were a red plastic cutting card with white powder, a small plastic bag containing green vegetation, a glass bottle with what was described as "residue," and a brown bottle with white powder. The glass bottle with white powder was determined to contain trace amounts of cocaine and an additional small bottle with white powder was determined to have trace amounts of cocaine which were as well unmeasurable as to quantity. The total weight of the marijuana was 14.6 grams and the total weight of the cocaine seized was 0.3 grams. There were other items seized that were described as pills, which the laboratory analysis determined not to be controlled dangerous substances.

Also confiscated was a triple-beam balance scale found on the top of the kitchen cabinet and in the walk-in closet of respondent's bedroom there was a red box containing gold scales. Also found in respondent's bedroom were silver scales in a plastic bag in the right center dresser drawer. Additionally, there was a cigar box containing "cutting and packaging paraphernalia" in the walk-in closet.

The police investigation of this matter determined that respondent was a tenant of A.J. Clayton, the owner of the house, and both respondent and Clayton lived there. Upon the seizure of the items described, respondent was placed under arrest and advised of his rights by being read his "Miranda" warnings. Respondent admitted to the investigating officers that all of the items found and described above were his and did not belong to Mr. Clayton.

As a result of this investigation, on August 23, 1983, the Atlantic County Grand Jury returned indictment no. 8-1021-83, charging respondent in two counts with offenses of possession of a controlled dangerous substance, to wit, cocaine, in violation of N.J.S.A. 24:21-20a(1); and possession of a controlled dangerous substance, to wit, cocaine, with intent to distribute the same, contrary to N.J.S.A. 24:21-19a(1). Thereafter, respondent entered a plea of guilty to the first count which charged him with simple possession and moved for a conditional discharge. The conditional discharge application

was granted and both counts of the indictment dismissed after the appropriate probationary period of the conditional discharge requirement as well as respondent completing 100 hours of community service, wherein he worked with the Graffiti Division of the Department of Public Works of Jersey City, New Jersey (R-1 Evid.).

With the exception of the items seized on July 1, 1983, at the residence of respondent, all of the above evidence came from reports offered by petitioner and received into evidence.

Testimony regarding the items seized at the premises came from New Jersey State Police Detective Sergeant John Medolla, presently assigned to the Division of Gaming Enforcement, Casino Investigation Bureau. Detective Medolla testified that he participated in the execution of the search warrant which occurred on July 1, 1983. He further testified, over objection, that respondent made a statement that "he was, you know, that he only dealt small amounts, you know. He didn't make any other type of admissions to us at that time that I was aware of." Detective Medolla also testified that respondent "advised us that Mr. Clayton had no knowledge of him selling a little drugs and that all the drugs and paraphernalia that were in the house were his and his only."

When questioned on cross-examination, Detective Medolla stated that the small quantity of drugs seized in execution of the warrant was not surprising to him in that "he (respondent) could have had it in there the day before and could have sold it all. Anything could have happened prior to us getting there. The fact that the scales were there indicated there could have been more there. The fact that there wasn't doesn't surprise me." When further asked whether he believed that respondent had been "tipped off," Detective Medolla answered that he didn't believe so. Detective Medolla further acknowledged that no tests were done of the scales to determine whether there was residue from use for narcotics purposes.

When cross-examined further, Detective Medolla was asked whether he remembered discussing with respondent on July 1, 1983, the fact that he (respondent) was also in the jewelry business. Detective Medolla answered in the affirmative. Detective Medolla also testified during cross-examination that the law enforcement authorities solicited respondent to become an informant for the purposes of gathering undercover

information concerning illicit action within the casino industry and that respondent said he didn't want to cooperate or do anything like that.

Detective Medolla further testified that in 1983, \$50 would buy approximately a half gram of cocaine, and based on information contained in the report prepared by Detective Trump (P-1 Evid.) and his presence at the scene of the execution of the search warrant, in his opinion, respondent was "trafficking in cocaine." On recross-examination by counsel for respondent, Detective Medolla indicated that he had been with the New Jersey State Police for 15 years and had participated in less than 10 narcotic cases.

Respondent testified and acknowledged that the items found in the premises on July 1, 1983 were his, and at the time of their seizure he was aware that the possession of the CDS was illegal. His testimony further describes himself as an occasional user of both cocaine and marijuana at a time prior to the execution of the warrant. Respondent denied that he ever distributed narcotics to anyone.

Respondent testified that he believed the person described as the "confidential source" by law enforcement authorities was a woman who stayed at his house on occasion and the owner of the house (Mr. Clayton) and other individuals were romantically involved with her. Respondent further testified that this woman was arrested prior to July 1, 1983, for drugs and told respondent that the State Police wanted her to turn somebody in and they would give her a break. Respondent believes that she used him as a fall guy because after her arrest, she was under suspension from her job, and as soon as respondent was arrested, she returned to work.

Respondent denied that he was ever asked to cooperate with law enforcement, and had he been asked, he would have cooperated by telling them anything he knew. Respondent denied that he ever worked as a craps dealer under the influence of marijuana or cocaine, and when he did imbibe, it would be at his home. Occasionally, there would be guests who would also use marijuana and cocaine as well. Respondent indicated that since his arrest on July 1, 1983, he no longer uses any drugs and offered a report, dated January 29, 1986, from Dr. J. Gonzales, Department of Pathology of Jersey City Medical Center, stating that a complete urine and blood screening performed on Mr. Scerbo on January 24, 1986, was negative (R-3 Evid.).

With respect to the confiscated scales, respondent testified that at the time he was in the jewelry business on a part-time basis. He described the business as the buying and selling of gold and silver and offered a business card (R-2 Evid.) as corroboration of the fact. He testified that the scales that he had were used for that business, since weighing the precious metals was necessary to determine the price that he would pay or offer for sale. Respondent denied ever selling cocaine to anyone for \$50. Respondent also denied ever telling the law enforcement authorities that he sold drugs to anyone on July 1, 1983. Respondent testified that the confiscated scales were never used for weighing drugs and were only used in the jewelry business.

Additionally, respondent testified that he learned from this situation that he had made a big mistake and ruined his life. He desires to work in the casino industry and, since his arrest on July 1, 1983, he satisfactorily completed 100 hours of community service. Respondent recognizes that he did something wrong and became involved with a bad crowd. He stated that doing this was not his upbringing and was something he did on occasion as part of life but is not something he does any more. He is no longer that way and would like to be given a chance to get back into the casino business and straighten out his life if he were given the chance.

#### ISSUES

Based on the foregoing evidence, petitioner urges the revocation of respondent's casino hotel license, arguing that the offenses of distribution and possession with intent to distribute, both statutory disqualifiers, have been proven by a preponderance of the credible evidence. Petitioner further contends that these acts are inimical to the policies of the Casino Control Act and to casino operations under Section 86(c)4 and, lastly, petitioner argues that the conduct established indicates that respondent does not have the good character, honesty and integrity necessary for continued licensure pursuant to Sections 89(b)2 and 90(b) of the Casino Control Act.

Respondent argues that the evidence offered to prove the distribution to the "confidential source" is double hearsay and, therefore, not reliable. Respondent further argues that if the offenses are proven by a preponderance of the credible evidence, he has, by clear and convincing evidence, established that he has been rehabilitated. Additionally, respondent argues that the use of drugs and the seizure of those found on

July 1, 1983, does not constitute conduct which is inimical to the Casino Control Act and the casino industry. Lastly, respondent argues that he has established by clear and convincing evidence that he has the good character, honesty and integrity to maintain his licensure.

LEGAL ANALYSIS

In order to render a decision in this matter, it is necessary to evaluate the proofs offered by the parties hereto. Petitioner relies on a two-page report prepared by Detective Trump (P-1 Evid.) to establish by a preponderance of the credible evidence that respondent distributed a controlled dangerous substance sometime in the spring of 1983. This report in reality is double hearsay, and, although admissible, is to be viewed very scrupulously in light of respondent's testimony denying any distribution of CDS at any time. It must be noted that Detective Trump, the preparer of the report and the person knowledgeable with respect to the information, is no longer a member of the New Jersey State Police due to an injury sustained in an automobile accident.

There was no offering by petitioner as to the whereabouts of Detective Wild, who accompanied Detective Trump and presumably could have testified from first-hand knowledge as to the information contained in the Trump report. Notwithstanding that deficiency, I FIND the report is deficient in other respects. It does not mention a description of the person who allegedly distributed the cocaine to the "confidential source" nor the circumstances surrounding the distribution within the premises 815 Spruce Street. Further, the testimony of Detective Medolla, who participated in the execution of the search warrant at the premises on July 1, 1983, did not indicate knowledge of Rodolfo Scerbo's identity and this information was obtained from the owner of the premises prior to the law enforcement entry into the premises. This lack of information, coupled with respondent's testimony, which I FIND credible, having had the opportunity to evaluate his demeanor and also considering his interest in the outcome of these proceedings, which indicates his relationship with a woman who was arrested for drug offenses and allowed to return to work after cooperating with the law enforcement authorities, seriously taints the quality of the information contained in the Trump report.

Therefore, I **DO NOT FIND** that it satisfies the interest of justice and I **CONCLUDE** that it does not establish by a preponderance of the credible evidence that respondent distributed a controlled dangerous substance on a unspecified date to an unspecified individual. It should further be observed that no indictment charging Rodolfo Scerbo with a distribution offense was returned by the Atlantic County Grand Jury.

Insofar as the remaining statutory disqualifying charge of possession with intent to distribute a controlled dangerous substance, the facts relied on by petitioner are that there was a quantity of marijuana and cocaine found on the premises when a search warrant was executed. Respondent acknowledged that the controlled dangerous substances and the "paraphernalia" were exclusively owned and possessed by him. In the opinion of Detective Medolla, respondent was "trafficking in narcotics," based on his knowledge of the prior "controlled buy" and what was seized at the premises on July 1, 1983. Detective Medolla believed that the discovery of the scales in the premises indicated that an individual possessing them was "trafficking in narcotics." He further testified that he was not surprised at the small quantity found because it was possible that respondent had distributed drugs earlier upon their arrival, although he testified that he didn't believe the respondent was "tipped off" about the raid.

Respondent testified that the scales were his and in his possession and utilized for the purpose of his part-time jewelry business. He testified that he told the authorities this information at the time of the raid and this was corroborated by Detective Medolla. His explanation for the possession and use of the scales is believable and, coupled with all other evidence presented, satisfies me that his explanation is as plausible as that of the opinion of Detective Medolla. Therefore, I **CONCLUDE** that petitioner has not established by a preponderance of the credible evidence that respondent possessed the controlled dangerous substances with the intent to distribute the same on July 1, 1983.

The undisputed facts further disclose that respondent pled guilty to a charge of possession of controlled dangerous substances, namely, the 0.3 grams of cocaine found and acknowledged as possessed by him on July 1, 1983. He applied for and was granted a conditional discharge when he remained free from any criminal involvement and performed 100 hours of community service. In addition, respondent has offered a current drug screening report that indicates negative results. Also, respondent has provided letters of reference and recommendation (R-4, (a) through (f)) which were written by

business acquaintances, neighbors, friends and relatives. These letters describe respondent as an honest and sincere person who recognizes that he made a mistake but who all writers feel should be given a chance.

I **FIND** that respondent's possession of a controlled dangerous substance on July 1, 1983, and his admission of use of cocaine and marijuana, does raise a question as to his good character, honesty and integrity. However, I **FIND** that this occurred in 1983, over two and a half years ago and, since that time, respondent has successfully completed a conditional discharge program, including the performance of 100 hours of community service; has maintained gainful employment on a part-time basis as a bartender; and was found to be drug-free in a drug screening test in January 1986. These factors, coupled with the laudatory comments of seven letter writers as to his character and attitude, establish by clear and convincing evidence that he has at the present time the good character, honesty and integrity which is requisite for casino employee licensure.

Lastly, it is acknowledged that respondent is 33 years of age, that the incident in question is the only act of criminal conduct presented and established and, further, that he otherwise has an unblemished record in the casino industry. The use and possession of controlled dangerous substances at his residence with no indication of use in the casino facility, when viewed in light of all the circumstances, indicates that participation by respondent in the industry would not either justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would not 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. Therefore, I **CONCLUDE** that respondent's conduct as found is not inimical to the Casino Control Act or the casino industry.

ORDER

Therefore, based on all the foregoing, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against respondent with the Casino Control Commission be and is hereby **DISMISSED**. It is further **ORDERED** that respondent be permitted to retain his casino employee license.

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

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

March 26, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

3/31/86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 1 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 New Jersey State Police Investigation Report, for Rodolfo J. Scerbo, dated June 1983 (2 pages)
- P-2 New Jersey State Police Laboratory Report, dated August 12, 1983 (2 pages)
- P-3 New Jersey State Police Supplementary Investigation Report for Rodolfo J. Scerbo, dated August 2, 1983 (3 pages)
- P-4 Superior Court of New Jersey Indictment No. 8-1021-83, dated August 23, 1983 (4 pages)

**FOR THE RESPONDENT:**

- R-1 Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Order to Dismiss Conditional Discharge for Rodolfo J. Scerbo (3 pages)
- R-2 Business card of Rudy's Jewelry Creations
- R-3 Letter "To Whom it May Concern," from Dr. J. Gonzales, Department of Pathology of Jersey City Medical Center, with 2 attachments
- R-4 Letter "To Whom it May Concern," from Leonard Epstein, Senior Instructor, Casino Career Institute
- R-4b Letter "To Whom It May Concern," from Ezio Scerbo
- R-4c Letter "To Whom It May Concern," from Alfred Burgagni
- R-4d Letter "To Whom It May Concern," from Richard J. Pozzioli (2 pages)
- R-4e Letter "To Whom It May Concern," from Laurie Ciappa
- R-4f Letter "To Whom It May Concern," from Mr. & Mrs. Kenneth M. and Margaret Larsen (2 pages)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-161  
OAL DOCKET NO. CCC 6674-85  
APPLICATION NO. 48559

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APPLICATION OF ANDREW S. SCHLOTTERBECK :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER  
(JUNKET REPRESENTATIVE - SOLE OWNER/ :  
OPERATOR) :

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A hearing in these matters having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of May 14, 1986,

IT IS on this 16<sup>th</sup> day of June 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Andrew J. Schlotterbeck for a casino employee license is granted substantially for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Andrew J. Schlotterbeck, the Office of

Administrative Law and the Division of Gaming Enforcement  
within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 6674-85

AGENCY DKT. NO. 85-EA-161

**ANDREW J. SCHLOTTERBECK,**  
Petitioner,

v.

**STATE OF NEW JERSEY,**  
**DIVISION OF GAMING ENFORCEMENT,**  
Respondent.

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**Seth Grossman, Esq., (Grossman & Wagner, attorneys) on behalf of petitioner**

**Anthony V. D'Elia, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: February 24, 1986

Decided: April 2, 1986

**BEFORE SOLÖMON A. METZGER, ALJ:**

This matter arises out of objections filed by respondent with the Casino Control Commission recommending that petitioner be denied a junket representative-sole owner/operator license, pursuant to N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Respondent's objections go to petitioner's financial stability, his business ability and at least in some measure to his good character, honesty and integrity. N.J.S.A. 5:12-89(b), N.J.S.A. 5:12-90 and N.J.S.A. 5:12-102. It sees certain debts that he has accumulated and certain prior conduct in the junket business as undermining petitioner in his affirmative obligation to establish entitlement to a license by clear and convincing evidence.

a. Financial Stability

Many of the facts with respect to this charge have been stipulated. Petitioner was the founder and president of a wholly-owned corporation known as the Cincinnati Office Supply Company. The business came into being in 1969 and was dissolved in February 1982. In September 1982, the Bank One of Cincinnati obtained a civil judgment against petitioner in the amount of \$5,423. Petitioner had cosigned a company note in order to purchase four automobiles for the business.

In January 1983, the S & D Leasing Company obtained a judgment against petitioner in the amount of \$5,000. The Cincinnati Office Supply Company had leased certain copying equipment from S & D and in turn subleased that equipment. When the sublessee defaulted, S & D sought recourse against petitioner, who again was individually responsible.

Both of the above judgments remain unsatisfied. Petitioner also defaulted on his home mortgage and in November 1984, the bank foreclosed.

Petitioner testified that the Cincinnati Office Supply Company sold office supplies, office furniture and copiers to commercial accounts. When he began the business he was alone and in the first full year of operations had gross sales of approximately \$150,000. In 1981, he employed 35 people and gross sales were slightly in excess of one million dollars. The company had grown at a rate of about 15 percent a year from its inception until 1981. Petitioner testified that he borrowed regularly for operating capital and that the business was always able to pay its debts. In 1981, the company experienced a major reversal. He had entered into a contract with SCM (Smith-Corona-Marshon) Corporation, a major copy machine supplier, in which he was to purchase their local servicing operation and they in turn would provide him with their national customer list for the area. He gave SCM a check for \$41,365 upon execution of the contract. Not more than six months later, SCM decided to go out of the copy machine business. These national customers, which included organizations like Sears-Roebuck and Standard Oil Company, became concerned with his ability to continue servicing their copiers without the support of SCM. They quickly abandoned him. His cash flow plummeted just as he was gearing up to accommodate this new business. At the same time interest rates peaked at about 20 percent and the recession had reduced the rest of

his business. At the time of its failure, the business had debts of about \$250,000. The banks took over his inventory and receivables.

Petitioner testified that he chose not to take personal bankruptcy because he eventually wanted to pay off the two personal judgments to Bank One of Cincinnati and to S & D Leasing Company. He presently has no money to pay these debts. His income declined from approximately \$52,000 in 1981 to \$18,000 in 1982, to \$10,000 in 1983, and to \$15,000 in 1984. Petitioner testified that he still lives in the same community with his wife and children and intends to rebuild his financial position.

**b. Business Ability/Good Character**

Many of the facts with respect to this issue are also stipulated or undisputed. In May 1982, after petitioner's business had failed and as he was casting about seeking a new enterprise, he visited Atlantic City in an effort to gain entry into the junket business. He went to a number of hotels and eventually met Hal Birmingham of the Marketing Department at the Tropicana. Petitioner thought that he could organize a tour for sometime in September. Mr. Birmingham advised him that a license was required to bring a junket into Atlantic City, but as that would take time, he would permit petitioner to use his own license or that of the casino once. Petitioner ran the trip sometime in September 1982. Thereafter, he sought to bring another group into the Tropicana. By this time Mr. Birmingham was no longer employed by the Tropiciana and his replacement indicated that petitioner could not bring a tour in without a license. Petitioner applied for a license in January 1983, and after being required to resubmit it for reasons not relevant here, he was granted a temporary license as a sole owner/operator in October 1983. He then ran two more trips into the then Playboy Casino in the latter part of 1983. He charged a service fee of \$100 per person of which he retained \$30; the other \$70 was paid in cash to Jimmy Orr Enterprises, then a licensed junket business.

In 1984, petitioner ran three junkets to Las Vegas casinos. He is not licensed in Nevada.

Petitioner testified that he welcomed Mr. Birmingham's suggestion that he bring his first group in through Mr. Birmingham's license or the casino's license and did not question it. Neither did he realize that fee sharing was impermissible for a sole

owner/operator. Jimmy Orr Enterprises was licensed and it seemed reasonable to run trips through it and pay for that privilege. He also did not realize that he needed a junket license to bring groups into Las Vegas. Here too, these trips were run through Jack Lawson of Milwaukee, who was a licensed promoter. There is no dispute that each of these instances constitutes a violation of the Act and regulations. See, N.J.S.A. 5:12-102; N.J.A.C. 19:49-2.1 et seq.

This is the substance of the record. It is petitioner's burden to establish his financial stability, business ability and good character by clear and convincing evidence. Though respondent has raised some legitimate areas of concern, I believe that this burden has been met.

Petitioner was a credible witness. He explained that he built a substantial business from nothing over the course of 13 years, and that a major reversal in 1981 combined with the poor business climate at the time led to its failure. Petitioner has not sought to evade his creditors; he still lives in the same general area, and as soon as he has recovered financially plans to pay these debts. Considering his income over the last few years, it is not surprising that he has not yet accomplished this goal. Respondent presented no evidence to dispute petitioner's presentation, and there is no reason to believe that his business practices or financial dealings were of a character to be of concern to the Commission.

With respect to the junkets which petitioner ran prior to licensing in New Jersey and Nevada, it appears that he might have used greater discretion and was certainly obliged to educate himself in the rules governing such enterprises. Yet, there is no evidence that he intended any deception by this. The same is true with respect to his fee sharing arrangement with Jimmy Orr Enterprises. Nothing in the record indicates that petitioner had much experience before 1982 with casino gambling in Nevada or Atlantic City and in his mind he was simply an entrepreneur attempting to bring trips into casinos with the assistance of licensed individuals in other cities. In deciding whether these infractions should prevent his entry into the junket business we must evaluate them in light of his entire background. Petitioner was an individual trying to make his way back from financial ruin. He was not in the junket business on a full-time basis; rather he took a few preliminary steps to assess whether he could make a success of it. The violations are not necessarily ones which common sense or general prudence would prevent. He did file an application in New Jersey after his first junket and is planning to do the same in

Nevada. He operated a successful business for many years and nothing in the record raises any suspicion about his background or associations. He is now more experienced and in my estimation is not a likely candidate to seriously breach his business and regulated responsibilities.

Based on the foregoing, it is my conclusion that petitioner has established his good character, financial stability and business ability by clear and convincing evidence and it is ORDERED that he be awarded a junket representative-sole owner/operator license.

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

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

4/2/86  
DATE

  
SOLOMON A. METZGER, ALJ


April 9, 1986  
DATE

Receipt Acknowledged:

  
CASINO CONTROL COMMISSION

APR 7 1986  
DATE

Mailed to Parties:

  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESS

Andrew J. Schlotterbeck, petitioner

EXHIBIT

J-1      Answers to interrogatories

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-118  
OAL DOCKET NO. CCC 5100-85  
APPLICATION NO. 54211-22

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APPLICATION OF THOMAS SCIPPPIO, JR.  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 2, 1986,

IT IS on this <sup>9<sup>th</sup></sup> day of April 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Thomas Scippio, Jr. for a casino employee license is denied for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

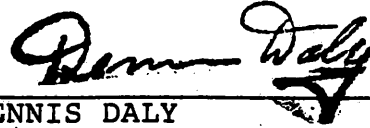
IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Thomas Scippio, Jr., the Division of Gaming

Enforcement, the Office of Administrative Law and all  
operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 5100-85

AGENCY DKT. NO. 85-EA-118

**THOMAS SCIPPPIO, JR.,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY,**

Respondent.

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**Kenneth N. Rubin, Esq.,** for the petitioner

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

Record Closed: January 31, 1986

Decided: February 14, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns the application of petitioner, Thomas Scippio, Jr., for licensure as a casino employee, permitting him to work as a non-gaming cleaning and maintenance employee. The Division of Gaming Enforcement (Division) opposes petitioner's application for casino licensure based upon allegations that respondent failed to reveal facts material to qualification within the meaning of Sections 86b and 90e of the Casino Control Act (Act). In addition, the Division contends that petitioner does not possess the requisite good character, honesty and integrity, pursuant to Section 89b(2) of the Act as incorporated by Section 90b of the Act.

PROCEDURAL HISTORY

The petitioner filed a Personal History Disclosure Form 2-A with the Casino Control Commission (Commission) on May 21, 1984. By letter report filed with the Commission on June 17, 1985, the Division opposed petitioner's application for licensure. Petitioner's attorney, Terry Bruce Stomel, Esq., requested a hearing on July 12, 1985. On August 15, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on October 5, 1985, and the matter was scheduled for hearing on November 22, 1985. The attorney for petitioner requested a continuance prior to November 22, 1985, because of a conflict, and the matter was rescheduled for hearing on January 31, 1985. The hearing was held on January 31, 1985, at the Pleasantville Municipal Building, Pleasantville, New Jersey, with Kenneth N. Rubin, Esq., substituting for Mr. Stomel.

ISSUES

At the prehearing conference on October 3, 1985, the issues were deliniated as follows:

- A. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Section 89b(2) of the Casino Control Act as incorporated in Section 90 of the Act.
- B. Whether the petitioner, with specific reference to his record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria within the meaning of Sections 86b and 90e of the Act.
- C. Whether petitioner's unprosecuted conduct for sexual assault in violation of N.J.S.A. 2C:14-2a is a statutory disqualifier, pursuant to N.J.S.A. 5:12-86g.

- D. If relevant, whether respondent may show rehabilitation pursuant to Section 90 of the Casino Control Act.

By letter dated October 8, 1985, Deputy Attorney General Joanne Cocchiola requested a modification of the issues, to wit:

- A. Whether Mr. Scippio can establish his good character, honesty and integrity by clear and convincing evidence (pursuant to Section 89(b)(2) of the Act) in light of his arrest history and the nature of the charges therein;
- B. Whether Mr. Scippio intentionally failed to disclose information regarding his arrest history pursuant to Section 86(b) of the Act.

Counsel for petitioner did not object to the modification of the issues, and they were adopted at the hearing on January 31, 1986.

#### FINDINGS OF FACT

Petitioner, Thomas Scippio, Jr., is 46 years of age and resides in Bridgeton, New Jersey, with his aunt and uncle. Mr. Scippio has resided in New Jersey since 1976. Petitioner was employed by Trump Casino Hotel in the Hotel's environmental services department from May 26, 1984 to November 1, 1985. Mr. Scippio is an active member of the Elks Club.

On December 19, 1960, the petitioner was arrested and was charged with breaking and entering and grand larceny by the Miami, Florida Police Department. Petitioner was found guilty of grand larceny on February 13, 1962, and was sentenced to one year's probation. The charge of breaking and entering was dismissed. The arrest and conviction for grand larceny was disclosed on petitioner's Personal History Disclosure Form 2-A. Petitioner testified as to the circumstances underlying this arrest and conviction. Petitioner went to purchase cigarettes from a vending machine in a bar. The machine was broken and it failed to return his money. Petitioner smashed the cigarette machine in order to recoup his money.

On September 14, 1963, the petitioner was arrested and was charged with grand larceny by the Hialeah, Florida Police Department. The charge was reduced to petty larceny on October 10, 1963, and the petitioner was found not guilty (R-2). This arrest was not disclosed on petitioner's Personal History Disclosure Form 2-A. Petitioner testified as to the circumstances underlying this incident. In 1963, he was the owner/operator of a cleaning service. He was charged with taking an adding machine from one of his customers, an accusation which he strongly denied. Petitioner further explained that he simply forgot to record the arrest on his Personal History Disclosure Form 2-A. Petitioner readily admitted to the arrest after Agent Yolette Ross, a Division investigator, confronted him about it during a telephonic interview she was conducting with him.

On March 20, 1975, petitioner was arrested and charged with possession of narcotics by the Miami, Florida Police Department (R-3). The charge was dismissed. This arrest was not disclosed on petitioner's Personal History Disclosure Form 2-A. However, petitioner testified as to the underlying circumstances concerning the apparent failure to disclose. Petitioner explained that to the best of his recollection, he disclosed every arrest. He explained that he did not intentionally fail to disclose his arrest record, but rather that he had forgotten about the two arrests in 1963 and 1975. He readily admitted his arrest record after Agent Ross confronted him with said record.

On September 28, 1979, the petitioner was arrested and was charged by the New Jersey State Police for sexual assault, in violation of N.J.S.A. 2C:14-2A, and lewdness, in violation of N.J.S.A. 2C:14-4 (R-5). Petitioner was accused of having sexual intercourse with a 15-year-old female and for having exposed himself in front of a 14-year-old female. Petitioner was indicted by the Cumberland County, New Jersey Grand Jury in May 1980 (R-6). However, as a result of a negotiated plea, the petitioner pled guilty to a down-graded charge of lewdness, a disorderly persons offense, and was placed on probation for one year (R-7). This arrest and conviction were disclosed on petitioner's Personal History Disclosure Form 2-A.

Petitioner testified that on the evening in question, he escorted his friend, Inez Green, to a bar until 2:00 a.m. From approximately 2:00 a.m. to 5:30 a.m., they were at a bar in Mitzpah, New Jersey. When petitioner returned with Ms. Green to his trailer home at approximately 6:00 a.m., he discovered two girls, K.J. and J.S. asleep in his car. The girls allegedly had no place to sleep and petitioner invited them to sleep in his trailer.

He took Ms. Green home. According to petitioner, K.J. and J.S. clogged the trailer's sink, which caused water to damage the carpet in the trailer. Petitioner testified that he was upset and that he instructed the females to leave. K.J. then threatened to "get him." Petitioner denied having sexual intercourse with K.J.

Agent Ross, Division investigator, testified that she had an unsworn telephonic interview with petitioner on May 23, 1985, in which Mr. Scippio admitted having sex with K.J. According to Agent Ross, petitioner claimed that several men had had sex with K.J. and that Mr. Scippio complained that he was the only one charged.

Petitioner presented a letter from Donald L. Patterson, director of security, Trump Casino Hotel (P-2), attesting to petitioner's honesty and exemplary performance as an employee of the environmental services department. He also presented a letter from McKinley Ross and Marta L. Galan (P-3), work associates of petitioner, stating that petitioner is a good worker.

With the exception of the dramatically different versions of what occurred on September 21-22, 1979, the above testimony is unrefuted and credible and is thus **FOUND AS FACT.**

#### DISCUSSION OF LAW AND CONCLUSIONS

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

Under Section 86b of the Act, Mr. Scippio was required to provide information, documentation and assurances required by the Act or requested by the Commission, and failure of the petitioner to reveal any facts material to qualification or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria could result in the denial of petitioner's casino employee application.

It is acknowledged that Mr. Scippio failed to disclose the arrests of October 10, 1963 and March 20, 1975, on his Personal History Disclosure Form 2-A. However, I am persuaded by clear and convincing evidence from the circumstances underlying the arrests from 1963 and 1975, along with the age of said arrests, that the failure to disclose was inadvertent and that petitioner's failure to disclose a portion of his arrest record was not done intentionally or with conscious disregard for the regulatory process Marino v. Division of Gaming Enforcement, 2 N.J.A.R. 176 (1980).

I CONCLUDE that petitioner disclosed his arrest record to the best of his knowledge and ability on the New Jersey Casino Control Commission's Personal History Disclosure Form 2-A.

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

Pursuant to Section 89b(2) of the Act as incorporated in Section 90b, Mr. Scippio's application for a casino employee license requires that he establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. When the Division opposes licensure under Section 89b(2) of the Act, it is incumbent upon the applicant to present clear and convincing proof of fact upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corp. and the Gemm Co. for Casino Licenses, Casino Control Comm. (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of the applicant be scrutinized closely. Boardwalk Regency at 2.

Respondent's evidence of good character, honesty and integrity consisted of the letter from Donald L. Patterson, director of security, Trump Casino Hotel (P-2), a joint letter from McKinley Ross and Marta L. Galan (P-3), and petitioner's own testimony. Only Mr. Patterson's letter deals with Mr. Scippio's reputation for good character, honesty and integrity. Mr. Scippio's testimony provided the balance of the evidence concerning good character, honesty and integrity. Although Mr. Scippio's admission to Agent Ross on May 23, 1985, was unsworn hearsay, Agent Ross's sworn testimony as to statements made by Mr. Scippio raise substantial concerns over Mr. Scippio's good character, honesty and integrity and are admissible in an administrative proceeding. Petitioner's version of what transpired on September 21-22, 1975, just does not have "the ring of truth." That perception combined with the admission made to Agent Ross persuade me that evidence of Mr. Scippio's reputation for good character, honesty and integrity falls whoafully short of clear and convincing.

I CONCLUDE that petitioner has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

ORDER OF DISPOSITION

It is **ORDERED** that Mr. Scippio's application for licensure as a casino employee, permitting him to work as a non-gaming cleaning and maintenance employee, be **DENIED**. It is further **ORDERED** that Mr. Scippio be permitted to retain his hotel employee registration (registrion no. 53549-40).

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

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

2-17-86  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2-18-86  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 19 1986  
DATE

Clive A. [Signature]  
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

- P-1 Rap sheet of Thomas Scippio, Jr., not moved into evidence
- P-2 Letter from Donald Patterson, director of security, Trump Casino Hotel
- P-3 Letter from McKinley Ross and Marta L. Galan
- P-4 Statement made to New Jersey State Police Trooper Sowers on September 28, 1979, not moved into evidence
  
- R-1 Personnel History Disclosure Form - 2A
- R-2 Records and Identification Division, City of Hialeah Police Department
- R-3 Felony Complaint Affidavit and All Related Charges
- R-4 Investigation Report
- R-5 Arrest Report
- R-6 New Jersey Superior Court, Cumberland County, Law Division (Criminal) Grand Jury decision
- R-7 Judgment of Conviction

WITNESS LIST

For the petitioner

Thomas Scippio

For the respondent:

Agent Yolette Ross

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-247  
OAL DOCKET NO. CCC 7642-84

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : AMENDED  
 : FINAL ORDER  
JOHN STERR, WALT MOORE, JOHN SUTOR, :  
WILLIAM PIEHL, RICHARD BREWER, :  
AND GNOC CORP., :  
Respondents. :

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The hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 20, 1985,

IT IS on this 27<sup>th</sup> day of February 1986, ORDERED that the initial decision in this matter is modified as follows:

- (1) (a) GNOC Corp. violated N.J.A.C. 19:45-1.11(c)(7) on at least three separate occasions, namely: when the Security Department initially involved the Casino Department in the handgun incident; when the Casino Department reregistered room 410 to a preferred patron; and, when the Casino Department arranged

for and effected the return of the gun to an individual claiming to be its owner.

- (b) The penalty to be imposed upon John E. Sutor is to be based upon net rather than gross pay as hereinafter set forth; and

IT IS FURTHER ORDERED that the following penalties be imposed upon the individual respondents:

- (a) John E. Sutor, (01359-11; 17419-21) - A civil penalty in the amount of \$734.72;
- (b) William J. Piehl, (01153-11) - A suspension of his casino key employee license for ten working days to be effective as follows: December 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, 1985;
- (c) Richard W. Brewer, (00798-11) - A suspension of his casino key employee license for ten working days to be effective as follows: November 25, 26, 27, 28, 29, December 2, 3, 4, 5 and 6, 1985;
- (d) John L. Sterr, (01228-11) - A suspension of his casino key employee license for ten working days to be effective as follows: February 24, 25, 26, 27, 28, March 1, 2, 3, 4 and 5, 1986;
- (e) Walter B. Moore, (01156-11) - A suspension of his casino key employee license for fourteen working days to be effective as follows: March 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, 1986.
- (f) GNOC Corp. - A civil penalty in the amount of \$75,000; and

IT IS FURTHER ORDERED that during the period of their suspensions the individual named respondents shall not be

entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon John L. Sterr, Walter B. Moore, John E. Sutor, William J. Piehl, Richard W. Brewer, GNOC Corp., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7642-84

AGENCY DKT. NO. 84-247

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

Plaintiff,

v.

**JOHN STERR, WALT MOORE,  
JOHN SUTOR, WILLIAM PIEHL,  
RICHARD BREWER, AND GNOC, CORP.,**

Respondents.

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**James C. Fogarty, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)**

**Thomas C. Brown, Esq., for John Sterr**

**G. Michael Brown, Esq., for Walter Moore (Brown & Michael, attorneys)**

**H. Corley White, Esq., for respondent Sutor (Starkey, Kelly, Blaney & White,  
attorneys)**

**Robert W. Gluck, Esq., for William Piehl (Gluck & Kelso, attorneys)**

**Robert F. Gallo, Esq., for Richard Brewer**

**Alfred J. Luciani, Esq., for GNOC, Corp.**

**Record Closed: August 20, 1985**

**Decided: September 12, 1985**

BEFORE JEFF S. MASIN, ALJ:

On July 30, 1984, the Division of Gaming Enforcement (DGE) filed a complaint with the Casino Control Commission (Commission) charging that various employees of the GNAC, Corp., which operates the Golden Nugget Casino/Hotel in Atlantic City, had violated various portions of the Casino Control Act and the regulations issued thereunder in connection with an incident which occurred on February 27, 1983 at the Golden Nugget Hotel. The incident revolved around the discovery of a loaded handgun in Hotel Room No. 410. The details of the incident will be discussed more fully below.

The DGE's complaint alleged that John Sterr, Walt Moore, John Sutor, William Piehl and Richard Brewer, all employees of the Golden Nugget, had each played some role in connection with the discovery, handling and eventual transfer of the handgun to an individual identified as Bob Moore, which transfer occurred at approximately 7:55 p.m. on February 27, 1983 in the security office of the Golden Nugget. The Division contended that the actions of the individual respondents violated various sections of the Casino Control Act, specifically N.J.S.A. 5:12-70(j) and N.J.A.C. 19:45-1.11(c)(6), which regulation established standards to be followed by the Golden Nugget's Security Department. In addition, the complaint charged that the individuals had violated various portions of the Golden Nugget's "Security Procedural Manual" which had been submitted by the corporate respondent pursuant to N.J.S.A. 5:12-99(a)14. Finally, the complaint charged the GNAC, Corp., and its successor, GNOC, Corp., with violating the aforementioned regulations in that it was responsible for the conduct of the individual employees.

Following the filing of the complaint, respondents filed answers and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.A.C. 52:14F-1 et seq. A prehearing conference was held on December 18, 1984 and a prehearing order was issued on December 28, 1984. Thereafter, the parties entered into discussions in an attempt to settle the issues in dispute between them. These discussions eventually resulted in the formulation of a Stipulation of Facts, Admissions of Liability and Settlement Agreement, J-1 in evidence. The Stipulation was submitted on June 20, 1985. Pursuant to the Stipulation, the individual respondents each stipulated certain facts concerning their actions in connection with the February 27 handgun incident and in

addition agreed to their liability for having failed to undertake their responsibilities in connection with the proper handling of the handgun. The individual admissions will be referred to below.<sup>1</sup>

In addition to stipulating certain facts and admissions as to liability, the individual respondents each also agreed to a stipulated penalty to be imposed upon them as a result of their wrongdoing. These stipulated penalties, in the form of suspensions without pay for respondents Piehl, Brewer, Sterr and Moore and a fine for respondent Sutor (who is no longer employed in the industry or licensed) will be detailed below.

As part of the Stipulation, GNOC, Corp. stipulated to the facts concerning the actions of its individual employees, as agreed to by those individuals, and further admitted certain facts concerning its actions and its failure to properly prepare its employees to properly handle an incident such as the one in question. With respect to the penalty to be imposed upon the corporation, the parties did not stipulate a specific penalty, but agreed to "a fine in an amount to be determined by the Casino Control Commission."

Following a review of the Stipulation, Administrative Law Judge Jeff S. Masin, who had been assigned to decide the case, advised the parties on July 15, 1985 that certain additional information would be necessary in order to allow the Judge to properly assess the responsibility of the corporation and the appropriate fine to be imposed thereon. This information essentially dealt with matters of corporate policy concerning the independence of the Security Department, policies respecting the handling of preferred patrons, and the role, if any, of individuals superior to the individual respondents in connection with this specific handgun incident. In addition, the Judge requested information concerning prior violations which had been determined against the Golden Nugget and penalties imposed with respect to said violations.

On July 29, 1985, the DGE responded with an affidavit from Allan Anderson, Assistant Casino Manager, as well as information indicating that it was in the process of assembling data concerning the Golden Nugget's prior violation history. On August 20, 1985, counsel for the Golden Nugget Corporation responded with affidavits from

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<sup>1</sup> The stipulations do not specify the sections of N.J.A.C. 19:45-1.11(c)(6) which were violated by the individual respondents.

respondent Brewer and Moore, as well as an affidavit from Anderson and from Joseph Petuskey, Director of Security. In addition, the corporation submitted transcripts of testimony given by Brewer and Moore to the Division in the course of its investigation.

The record with respect to this proposed settlement closed upon receipt of the Golden Nugget's submission on August 20, 1985.

### THE INCIDENT

The following recitation of the events of February 23, 1983 is taken from the stipulated facts contained in Exhibit J-1. A review of the affidavits and transcripts provided as supporting evidence supports the factual statements contained in the Stipulation.

In the early morning hours of February 27, 1983 a loaded handgun was found in Room 410 of the Golden Nugget Hotel and Casino. This room had been registered to Albert Sulla, who was a preferred patron of the hotel/casino. Sulla had last occupied the room on a complementary basis but at the time the gun was found he had checked out. The gun was found by a housekeeping person who reported it to the Golden Nugget's Security Department. John Sutor, a security officer for Golden Nugget, went to Room 410 and took custody of the loaded handgun at approximately 6:00 a.m. He then advised William Piehl, Assistant Casino Shift Manager, of the discovery of the weapon and discussed with Piehl what should be done with the gun. At approximately 7:30 a.m. Piehl registered the room to Sulla, who at the time was apparently not present in Atlantic City and who had not requested Piehl to reregister him in the room. In fact, at the time, there is no indication that Sulla knew that anyone from the Golden Nugget had found a weapon in Room 410. At about the time that Piehl reregistered Sulla, respondent Sutor returned the still loaded gun to Room 410.

William Piehl, after reregistering the room to Albert Sulla, unsuccessfully attempted to contact Sulla and advise him of the discovery of the weapon. After he was unable to contact Sulla, Piehl advised respondent Richard Brewer, who at the time was the casino shift manager and Piehl's supervisor, about the weapon. Piehl told Brewer of the discovery of the weapon in Room 410 and the fact that Piehl had unsuccessfully tried to contact Sulla. In addition, Brewer was advised, or was otherwise aware, that Room 410

was registered to Sulla on a complementary basis and that Sulla was a preferred patron. Following his discussions with Piehl, Brewer successfully contacted Sulla and told him that a handgun had been left in Sulla's room. Arrangements were then made between Sulla and Brewer for the gun to be picked up later in the day. The exact details of these arrangements are not set forth in the Stipulation.

At approximately 4:30 p.m. on February 27, 1983 Lieutenant John Sterr, a member of the Golden Nugget Security Department, took possession of the same handgun which had been previously discovered in Room 410. Sterr took possession of the weapon, and the separated clip of ammunition, following the rediscovery of the gun in Room 410 by a second housekeeper. At the time, Sterr determined that the room was registered to Albert Sulla on a complementary basis and also determined, or was otherwise aware, that Sulla was a preferred patron of the hotel casino. Upon examining the ammunition, Sterr determined that the clip contained "dum-dum" or hollow-nose bullets. Sterr disposed of the ammunition and advised respondent Walter Moore, who at the time was the assistant director of security for the Golden Nugget, and a supervisor of Sterr's, of the discovery of the weapon. Sterr then returned the gun to Room 410. Thereafter, between 7:00 and 8:00 p.m. Sterr retrieved the weapon from Room 410 and turned it over to Walter Moore in the Golden Nugget Security Office.

In addition to his previous involvement detailed above, Richard Brewer again became involved with this weapon when, sometime in the early evening of February 27, 1983 he met an individual who identified himself as Bob Moore. He escorted Moore to the Security Office for the purpose of picking up the handgun which had been found in Room 410. Brewer was present when the handgun was given to Bob Moore by Walter Moore (no relation).

Walter Moore first learned of the presence of the handgun in Room 410 at approximately 4:30 p.m. on February 27. He became aware that the room was registered to Albert Sulla. In addition, he became aware that Sulla was a preferred patron. Moore knew that the weapon was returned to Room 410 by respondent Sterr and later was aware that it was retrieved by Sterr from the same room. He also was aware that the bullets were disposed of by Sterr. Moore made arrangements for the gun to be picked up, took possession of the gun from Sterr in the Security Office and gave the gun to an individual identifying himself as Bob Moore.

As part of the Judge's consideration of the propriety of the settlement, especially in connection with determining the extent of liability and penalty to be imposed upon the corporation, the Judge requested information as to whether any individuals on a higher level than those charged had been involved in this incident. Based upon information provided by the parties, it appears that Allan Anderson, who was then a casino manager, was made aware of the incident during its occurrence by Walter Moore and Richard Brewer. Anderson testified in an statement given to the Division on September 2, 1983 that he was first contacted by Walter Moore who told him about "a problem with a very good player that left a weapon in his room." This conversation also included information concerning Richard Brewer's contact with Sulla. During the evening of February 27 a "young fellow" came into the casino and was looking for Brewer. This individual, who was apparently Bob Moore, first saw or was referred to Anderson and Anderson pointed out Brewer to Bob Moore. At that point Anderson, went home and was not further involved.

In addition to the above stipulated facts, the parties agree, in accordance with applicable law, that the possession of hollow point ammunition is illegal, being a violation of N.J.S.A. 2C:39-3. Further, as part of his admissions, respondent Walter Moore agrees that during his contact with Bob Moore he failed to identify Moore through proper identification and in addition did not determine who the rightful owner of the gun was. He also failed to make "reasonable inquiry" to determine whether Moore was permitted by law to possess a handgun and failed to make "reasonable inquiry" concerning the relationship between Moore and Albert Sulla, to whom the room in which the gun was found had been registered prior to its initial finding by the first housekeeper in the early morning hours of February 27.

According to the complaint filed by the Division, inquiry by the Division following the report of the above incident by Joseph Petuskey, director of security of the Golden Nugget, to the Division, determined that neither Bob Moore nor Albert Sulla had been issued a permit to carry a gun in the State of New Jersey pursuant to N.J.S.A. 2C:39-5(b) and further determined that the address which was provided by Bob Moore to Walter Moore at the time that the gun was turned over to Bob Moore was a fictitious address. The parties have not entered into any stipulation concerning the allegation that Moore and Sulla had no permit to carry a handgun or that Moore's address was fictitious.

APPLICABLE REGULATION

N.J.S.A. 5:12-70(j) requires the Commission to proscribe minimum security standards for the operation of a casino licensee. Pursuant thereto, the Commission adopted N.J.A.C. 19:45-1.11(c)(6). This regulation requires that a licensee security department provide for the

- i. The enforcement of the law;
- ii. The physical safety of patrons in the establishment;
- iii. The physical safety of personnel employed by the establishment;
- iv. The physical safeguarding of assets transported to and from the casino, slot and cashiers' cage departments;
- v. The protection of the patrons' and the establishments' property from illegal activity;
- vi. The detainment for probable cause of persons that may be involved in illegal acts for the purpose of notifying law enforcement or Commission authorities;
- vii. . . .; and
- viii. The recordation of any and all unusual occurrences within the casino for which the assignment of a security department employee is made . . .

THE ADMISSIONS OF LIABILITY

In the Stipulation (J-1) John Sutor admits that upon discovery of the loaded handgun in Room 410 at approximately 6:00 a.m. on February 27, 1983 he should have immediately notified law enforcement authorities. He admits that he exercised poor judgment in failing to do so. He further admits that as a security officer for the Golden

Nugget he had an obligation to act "independently" from any other department in the Golden Nugget and states that he "failed to fulfill this obligation in that his judgment was influenced by the fact that Sulla was known to casino representatives and known further as a preferred patron of the hotel/casino.

Sutor further admits that he should have taken custody of the handgun and properly secured it and that his failure to do so was improper.

It should be noted that Sutor did prepare an Incident Report "in the normal course."

William Piehl, the assistant casino shift manager, admits in his Stipulation that his conduct in connection with the incident "resulted in an interference with the independence of the Security Department." While Piehl's Stipulation does not spell out the exact conduct which "interfered" it appears that this must have been his reregistration of Sulla which gave the appearance that the room was actually registered to Sulla despite the fact that Sulla had left the room and had not requested to be reregistered, an appearance which might have clouded the judgment of security personnel in dealing with the weapon, particularly when it found in the room later on in the day after the registration.

Richard Brewer, the casino shift manager, admits that his conduct also resulted in an interference with the independence of the Security Department. Apparently Brewer specifically refers to his conduct in contacting Sulla and arranging with Sulla to have the gun picked up. In addition, Brewer escorted Moore to the Security Office where the gun was turned over to Moore.

John Sterr, who was a lieutenant of security at the time, admits that upon finding the weapon at 4:30 on February 27 he should have immediately notified law enforcement authorities and that he exercised poor judgment in failing to do so. Further, Sterr admits that as an officer of rank it was his obligation to act independent of all other departments and that he failed to do so. In making this admission Sterr states that "his judgment was influenced by the fact that Sutor was known to casino representatives and known further as a preferred patron of the hotel/casino."

Lieutenant Sterr also admits that he should have taken custody of the weapon and bullets once he came in contact with them and that he did not properly secure these items. Further, he should have known that hollow point ammunition was illegal and it was a violation of the criminal code of the State of New Jersey for anyone to possess such ammunition. Finally, Sterr admits that he should have been aware of the events surrounding the gun's initial discovery earlier in the morning and that although he did properly prepare an Incident Report and Property Receipt the reports "failed to account for the bullets and inaccurately state that the handgun was given to Bob Moore in the hotel room."

Walter Moore, at the time assistant director of security, admits that he should have made oral notification to law enforcement authorities immediately upon discovery of the handgun and bullets, that as an assistant director of security he had an obligation to act independently from other Golden Nugget departments and that he failed to do so because of the influence upon his judgment of the fact that Sulla was a preferred patron and known to casino representatives, that he should have taken custody of the weapon and bullets and secured them properly, that he should have been aware of the illegality of possession of hollow point ammunition and that he should have been aware of the events surrounding the gun's initial discovery. Finally, Walter Moore admits, as noted above, his failure to properly identify Bob Moore, to identify the rightful owner of the gun, to make reasonable inquiry as to Moore's right to possess a handgun and failure to make reasonable inquiry concerning the relationship, if any, between Moore and Sulla.

In view of the above admissions, I **CONCLUDE** that respondents' actions with respect to the weapon, and particularly the ammunition, as well as in connection with the transfer to Moore, failed to comply with Subsection vi of the regulation since Moore, who was claiming the weapon as his, should have been detained on the basis of his claim of possession of a weapon which had been found to contain hollow point bullets.

#### STIPULATED PENALTIES FOR THE INDIVIDUALS

As previously noted, the parties have stipulated the penalties to be imposed by the Commission upon the individual respondents.

Although the Stipulations and Admissions of Liability entered into by the individual respondents and the Division do not specify the specific portions of the regulations which the respondents violated, I **CONCLUDE** that their admissions concerning failures to properly secure the handgun, to report the incident to law enforcement authorities, to properly identify the owner of the weapon (if possible), and to secure the ammunition and notify law enforcement authorities of the discovery thereof, involved violations of the requirements of N.J.A.C. 19:45-1.11(c)(6)i which requires the Security Department to be established so as to properly "enforce the law." In addition, the actions of the various individuals threatened to compromise the effectiveness of the Security Department and thus generally constitute a violation of the requirement for an effective Security Department in each casino/hotel. While N.J.A.C. 19:45-1.11(c)(6) does not specifically require that a Security Department "be effective" certainly the spirit and the meaning of both the statute requiring the Commission to prescribe security standards, N.J.S.A. 5:12-70(j), and the regulations themselves necessitate that such a department be established and run in a manner which will be effective for the promotion of the security interests of both the entity and the Commission.

William Piehl, Richard Brewer and John Sterr are each to receive a ten day suspension without pay. Walter Moore, the assistant director of security and the highest ranking individual involved as a respondent in this matter, is to receive a 14 day suspension without pay. John Sutor is to receive a fine equal to ten days pay for the period encompassing February 27, 1983. Sutor is no longer employed in the casino industry and not currently licensed.

#### THE CORPORATION'S RESPONSIBILITY

As previously noted, the corporate respondent has stipulated that it was responsible for the conduct of the individual respondents, all of whom were at the time employees of the corporation. In addition, the corporation has admitted fostering an atmosphere of deference to preferred patrons which encouraged the incident to occur, failing to insure the separation and independence of the Security Department from other departments, failing to instruct its Security Department personnel in the proper handling of weapons, securing of same, etc., and failing to provide initial and/or recurring training with respect to weapons laws and the New Jersey Code of Criminal Justice. The facts

stipulated by the individuals, as well as the overall information provided in the testimonial evidence provided by the parties, appears to generally support the stipulated admissions of the corporation. It appears that a matter which should have been solely the responsibility of the Security Department, that is the finding of a weapon in a hotel room, completely separate and apart from the casino itself, became at least peripherally the business of various casino officials. It is quite clear that the fact that Mr. Sulla was a preferred patron, a "high-roller", and an individual known at least generally to the supervisory personnel from the casino who became involved herein was responsible for the kind of treatment Sulla received. Although one cannot be entirely sure, there is little reason to believe that the average patron of the casino, who might have checked into the hotel and left a weapon in his room following a visit to the casino, would have received quite the same "courtesy" and "consideration" that Mr. Sulla received. It does appear that in an effort to bend over backwards to take care of a favored patron both the Security Department and the Casino Department went out of their way to attempt to effectuate the return of the weapon to Sulla, and ultimately continued on the same course in providing the weapon to Moore on the assumption that he had some relationship to Sulla and should therefore be "taken care of."

The corporation's Stipulation recognizes that the Security Department must operate completely independent of all other departments in the establishment if it is to properly do its job of assuring the various concerns set forth in N.J.A.C. 19:45-1.11(c)(6). While there may be circumstances where the Security Department must call upon other departments to aid it in connection with its duties, the primary and direct responsibility for enforcing the law, assuring the physical safety of patrons, the physical safety of personnel, the safeguarding of the assets of the establishment, the protection of patrons and property, and the recordation of unusual occurrences relating to the Security Department all must be handled by the Security Department without interference, pressure, or other forms of involvement by any other portion of the casino hotel structure. There is a significant danger that the type of "favoritism" which was accorded to Sulla and ultimately Moore may occur in other incidents, some of which may more directly involve the gambling operations of the casino. When matters of security are involved, when the laws of the State of New Jersey and/or the regulations of the Casino Commission appear to be trifled with, the Security Department must be able to act independently and without concern for whether a patron is one who gives the casino a great deal of business. The Security Department must be able to perform its function,

when necessary in connection with other law enforcement agencies, without worry or concern as to whether its actions will be approved of by those who are responsible for the gambling operations of the establishment. While reasonable consultation and coordination with other arms of the corporate structure may be necessary in order to allow the Security Department to effectively perform its primary functions, such cooperation must not result in the Security Department having to compromise its actions.

Based upon the Stipulation, I FIND that the GNOC, Corp. failed to operate its Security Department in such a way as to assure compliance with the standards and goals of N.J.A.C. 19:45-1.11(c)6, specifically Subsections i., ii., iii., and vi. I CONCLUDE that such violations constitute violations of the Casino Control Act and therefore are punishable by the imposition of penalties, pursuant to N.J.S.A. 5:12-129.

#### PENALTY

Establishing a monetary penalty for the corporation in connection with this incident is not a simple matter. There are no specific guidelines as to the dollar figures which should be considered. Obviously, certain factors come to mind. This incident involved a loaded handgun. In and of itself, that makes the incident serious. The gun, having been mishandled by the Security Department, in an atmosphere which was fostered by corporate policy or lack of direction as to the proper reaction of the Security Department to such a circumstance, was exposed to several hands, placed it in an empty room, and ultimately turned over to someone who, at least on the face of it, had no right to carry such a weapon and may not have been the lawful owner thereof. Each of these factors indicates that there was a potential for serious repercussions from the handling of this problem.

The incident does not involve the actual gaming functions of the casino. While Mr. Sulla was a preferred patron and therefore received favored treatment, the treatment did not deal with his gambling activities per se and the financial integrity of the casino, the public perception of the integrity of the casino operation and the regulatory process controlling the games and the financial structure thereof was not endangered.

The prior history of the corporation's violations indicate that on three occasions it has been involved in incidents which have resulted in the imposition of, or the agreement to stipulate a not yet imposed penalty, in the range of \$25,000 to \$35,000. As penalties go, these appear to be relatively minor. The details of the incidents have not been spread on the record in this case. It is uncertain whether any of them involved the type of interference with Security Department independence which can be said to characterize this incident.

It seems to this Judge that the concern of fostering the independence of the Security Department of a casino hotel is of sufficient importance as to merit a significant penalty. Having considered the nature of the incident involved, the substantial penalties accepted by the individuals, involving as they do suspensions without pay, and the prior violation history of the entity, a penalty of \$75,000 appears justified. Where the individuals involved, acting in accordance with policies and/or procedures which were admittedly affected by the corporate philosophy of favoring the "high roller" even in security situations such as this, are to suffer substantial financial loss, the entity, which was responsible for these policies and understandings, should also suffer some financial loss. In addition, the amount of the penalty is to some degree reflective of the need to impose increasing penalties upon an entity which has previously violated regulations.

It is hereby **ORDERED** that the respondent GNOC, Corp. pay a civil penalty in the amount of \$75,000.

#### CONCLUSION

With respect to the individual respondents the Stipulation of Settlement disposes of all matters in dispute between the parties. It is **ORDERED** that all parties comply with the terms and conditions set forth in the Stipulation of Settlement, including the imposition of the appropriate fines and suspensions. The contested case is **DISMISSED**.

The respondent GNOC, Corp. is hereby **ORDERED** to pay a civil penalty of \$75,000, which penalty shall be due and payable following the issuance of a final decision from the Casino Control Commission. The civil penalty is imposed upon the respondent based upon the admissions set forth in the Stipulation and the information provided by the parties in response to the request of the Administrative Law Judge.

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

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

September 12, 1985  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

September 16, 1985  
DATE

Nancy L. Hill  
CASINO CONTROL COMMISSION  
Assistant Counsel

Mailed to Parties:

September 17, 1985  
DATE

Ronald L. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

Joint exhibits:

J-1 STIPULATION OF FACTS, ADMISSIONS OF LIABILITY and  
SETTLEMENT AGREEMENT, dated June 17, 1985

On behalf of petitioner:

P-1 Transcript of interview of Alan Anderson, dated February 27, 1983

On behalf of respondent Sterr:

RST-1 Affidavit of Joseph Petuskey, dated April 16, 1985

On behalf of respondent Walt Moore:

RM-1 Affidavit of Joseph Petuskey, dated April 16, 1985

On behalf of respondent Richard Brewer:

RB-1 Affidavit of ALfred J. Luciani, Esq., dated June 17, 1985

On behalf of respondent GNOC, Corp.:

RGN-1 Affidavit of Alan Anderson, dated August 12, 1985

RGN-2 Affidavit of Walt Moore, dated August 8, 1985

- RGN-3 Affidavit of Joseph Petuskey, dated August 8, 1985
- RGN-4 Affidavit of Richard Brewer, dated June 20, 1983
- RGN-5 Transcript of interview of Richard Brewer, dated June 20, 1983
- RGN-6 Transcript of interview of Walter E. Moore, dated June 17, 1983
- RGN-7 Letter of August 12, 1985 from Alfred J. Luciani, Esq.

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

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A hearing in this matter having been held before the of the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision on May 8, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of June 18, 1986,

IT IS on this 24<sup>th</sup> day of June 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the casino employee license held by Joseph Tarsitano is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a party hereof; and

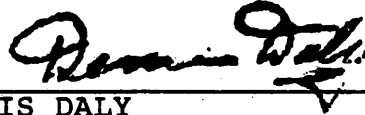
IT IS FURTHER ORDERED that Joseph Tarsitano is not eligible to apply for any license, registration, qualification

or approval under the Casino Control Act, pursuant to N.J.A.C. 19:41-8.8(a), unless Joseph Tarsitano 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 Joseph Tarsitano, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 7534-85

AGENCY DKT. NO. 85-55

**DIVISION OF GAMING  
ENFORCEMENT,**

Petitioner,

v.

**JOSEPH TARSIANO,**

Respondent.

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

**Joseph Tarsitano,** respondent, pro se

Record Closed: March 10, 1986

Decided: April 28, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on February 22, 1985, seeking judgement revoking the respondent's casino employee license, or some other sanction, pursuant to Sections 86c and g, 90 and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's arrest on January 28, 1985, for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to his arrest on January 28, 1985, for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, has committed an offense which would indicate that his

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licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty, and integrity, within the meaning of sections 89b(2) and 90b of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

The Divisions's revocation complaint was filed on February 22, 1985. By order dated March 8, 1985, the Casino Control Commission suspended the casino employee license of the respondent pending the final disposition of the complaint. By order dated November 19, 1985, the Commission granted the respondent's motion to vacate the previously entered suspension. On November 26, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A 52:14F-1 et seq. A prehearing conference was held on December 20, 1985, and the hearing was held on March 10, 1986.

#### FINDINGS OF FACT

The respondent is a 38 year old resident of Pleasantville, New Jersey. He holds casino employee license no. 04557-21, issued by the Casino Control Commission. Prior to January 1985, the respondent had been employed by the Golden Nugget Casino for over 5 years.

On January 28, 1985, the respondent was on duty as a slot supervisor at the Golden Nugget Casino. On that date, the Golden Nugget Surveillance Department videotaped the respondent's conduct on the casino floor. Ronald Bunkowski, a New Jersey State Police Detective assigned to the Division of Gaming Enforcement, testified at the hearing that he was called to the Golden Nugget by it's Surveillance Department to investigate an alleged theft involving the respondent.

When Detective Bunkowski arrived at the Golden Nugget, he reviewed the surveillance videotape. A composite videotape showing the conduct of the respondent which is relevant to this proceeding was admitted into evidence as Exhibit P-2. This composite tape was viewed at the hearing and was described by both Detective Bunkowski and by the respondent.

It is undisputed that the composite videotape shows the respondent at 20:08:58 opening a slot machine and adjusting something inside the machine. Within seconds thereafter, Tomos Tortiz walks up to that machine and receives a free handle pull. Tortiz then deposited 2 tokens and played the machine twice, although he did not win any tokens. Less than 30 seconds thereafter, the respondent again walked over to that machine, opened it and made an adjustment inside the machine. During this process, he took a "meal" card out of the machine, looked at it, then replaced it inside the machine without signing it. After the respondent closed the machine, Tortiz again returned to the machine, received a free handle pull, winning two tokens.

About 25 minutes after the first machine was opened, the respondent again walked over to another slot machine, opened it, and made some adjustment within the machine. The same patron as before, Tortiz, then went over to the machine and received a free handle pull, winning a large number of one dollar tokens.

Tortiz and the respondent were then escorted from the casino floor to the Division's Office at the Golden Nugget. They were given their Miranda Rights and they were questioned separately concerning their activities on the casino floor. Following these interviews, Tortiz and the respondent were charged with theft by unlawful taking, contrary to N.J.S.A 2C:20-3 (Exhibit P-3). It is undisputed that the respondent was found not guilty on this charge in the Atlantic City Municipal Court on August 20, 1985 (Exhibit P-1). Tortiz was convicted of this charge upon his entry of a guilty plea.

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

The factual dispute in this matter concerns whether the respondent acted improperly when he opened two different slot machines on the casino floor at the Golden Nugget on January 28, 1985. According to the testimony of Detective Bunkowski, the composite video tape (Exhibit P-2) reveals conduct of the respondent which was out of the

ordinary. He noted that the "tilt" lights on the machines did not appear to be lit before the machines were opened by the respondent. He indicated that a patron normally would not get a free pull after a machine is closed. However, on cross examination, Detective Bunkowski acknowledged that a "tilt" light would not always be lit when there was a problem with a particular machine. He also acknowledged that it was possible for a slot supervisor to permit a patron to have a free handle pull after a malfunction.

Detective Bunkowski testified that he interviewed Golden Nugget Slot Department Manager Donald Pors, Assistant Slot Department Manager Sandor Psenicnik, and slot attendant supervisor Joseph Wood. Each reviewed the surveillance video tape and agreed that the respondent was doing either of two things when he opened the slot machines and reached in. He was either placing a coin in the mechanism, or he was bending the pulse switch, causing tokens to leave the machine while bypassing the meter. Either action by the respondent would have been improper.

When Tortiz was questioned by Detective Bunkowski, he stated that the respondent owed him some money and that, since he did not have it with him, he would pay Tortiz back by fixing a slot machine so that Tortiz could win without spending any money. According to Detective Bunkowski, Tortiz stated that he and the respondent had done the same thing before, approximately one month earlier. A total of \$71 in Golden Nugget tokens was confiscated from Tortiz.

Detective Bunkowski also testified concerning his questioning of the respondent. According to the Detective, the respondent stated he opened the slot machine because there had been a malfunction. However, he would not tell the Detective what the malfunction was. The respondent also told the Detective that he did not sign the "meal" card in the machine because he rarely did so and he was too busy. The respondent denied being involved in a scheme with Tortiz to set up the machines for a payout.

Testifying on his own behalf, the respondent stated that he was approached by Tortiz and informed that the patron had a problem with a jammed slot machine. According to the respondent, he checked the machine and gave Tortiz a free pull. When the pull did not result in a win, the respondent reopened the machine to check it again, and he gave Tortiz another free pull. According to the respondent, he would follow this same procedure hundreds of times per day.

The respondent testified that he concluded that Tortiz had made a false claim. However, he acknowledged that he was again approached by Tortiz, who said that another slot machine had jammed. The respondent stated that he checked this machine and there was a coin jammed under the pulse switch. According to the respondent, the machine had a note in it that said it was subject to runaway. The respondent explained that his slot manager had told him that he had a \$100 limit on rectifying patron complaints, even if he did not feel that the complaint was justified. According to the respondent, he felt that Tortiz was a loser, a compulsive gambler who tried to get what he could from a slot person.

The respondent acknowledged that the "meal" card in the slot machine should be signed by the employee whenever the machine is opened. However, he stated that he was not in the habit of always signing the card. He indicated that his slot manager also was not in the habit of signing the cards when he opened the machines. According to the respondent, he got along well with his slot manager and the assistant slot manager. It was his feeling that he was set up by a slot attendant and that Tortiz lied about what happened to get the respondent in trouble. The respondent refused to identify the persons that he said could corroborate his feeling that he had been set up. According to the respondent, it is common knowledge that a casino can try to make a person look bad.

The testimony of Detective Bunkowski was straightforward and sincere. The accuracy of his recollection concerning the events in question has not been placed in doubt. Particularly significant was his recitation of the admissions against interest of Tomos Tortiz, who told Detective Bunkowski that the respondent was paying back a debt by opening the slot machines and fixing them so they would make payouts without having to spend any money. It is also significant that Tortiz pled guilty to the charge of theft by unlawful taking which arose from this incident. Detective Bunkowski also related that the respondent would not state the nature of the malfunction in the machine when he was questioned by the Detective on the day of the incident. This testimony was not denied by the respondent.

The respondent's conduct as shown on the video tape (Exhibit P-2) could well be described as furtive. In particular, the interaction between the respondent and Tortiz is odd. It does not appear to be the interaction one might expect between a patron claiming that a slot machine has jammed and a slot supervisor who must ascertain the problem and correct it. They seem to have minimal contact, although their conduct is

definitely interrelated. The respondent's version of these events is simply not credible. Based upon the foregoing discussion, I additionally **FIND AS FACT** that on January 28, 1985, the respondent improperly set up two slot machines and permitted a patron to obtain payouts without having to deposit any coins or tokens.

CONCLUSIONS OF LAW

Pursuant to section 1(b) 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 90e, 86c(4) and 129 of the Casino Control Act, the Commission may revoke the license of any licensee disqualified on the basis of his conviction of any offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the Act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. It is undisputed that the respondent was found not guilty on this charge after a trial in the Atlantic City Municipal Court. Nevertheless, the Division of Gaming Enforcement is entitled to attempt to prove, by a preponderance of the relevant and credible evidence, that the respondent committed the charged offense.

N.J.S.A. 2C:20-3a provides as follows:

A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with the purpose to deprive him thereof.

It is clear from the findings of undisputed and disputed facts that the respondent, while acting as a slot supervisor at the Golden Nugget Casino on January 28, 1985, opened two slot machines and set them up to make improper payouts to a patron of

the casino. This exercise of unlawful control over the property of the casino with the purpose of depriving the casino of one dollar tokens constitutes the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, and I so **CONCLUDE**.

The amount unlawfully paid out to the patron as a result of the respondent having improperly set up two slot machines is not certain. However, he was charged with having set up payouts in the amount of \$71. Pursuant to N.J.S.A. 2C:20-2b(3), if the amount involved in a theft was less than \$200, the offense constitutes a disorderly persons offense. Although the amount was relatively small, the theft committed by the respondent while performing as a slot supervisor on the casino floor is a serious offense. The respondent's continued participation in the legalized gaming industry would justifiably undermine the public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I **CONCLUDE** that the respondent's conduct demonstrates that his continued licensure would be inimical to the policy of the Casino Control Act and casino operations, within the meaning of N.J.S.A. 5:12-86c(4) and 86g.

The respondent's offense also adversely impacts upon his showing of good character, honesty and integrity. Based upon the foregoing discussion, I **CONCLUDE** that he does not possess these attributes to the degree necessary for licensure, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Finally, having concluded that the respondent's continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, I further **CONCLUDE** that his casino employee license should be revoked, pursuant to sections 86c(4) and 129 of the Act.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Joseph Tarsitano be **REVOKED**.

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

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

April 28, 1986  
DATE

Joseph J. Fidler  
JOSEPH FIDLER, ALJ

Receipt Acknowledged:

April 29, 1986  
DATE

Bernadette J. Flynn  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 1 1986  
DATE

Ronald L. Parkes & S  
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS INTO EVIDENCE

**For the petitioner:**

- P-1 Complaint and adjudication record
- P-2 Composite video tape
- P-3 Report of Detective Bunkowski

**For the respondent:**

None

WITNESSES

**For the petitioner:**

Ronald Bunkowski

**For the respondent:**

Joseph Tarsitano

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 85-EA-143  
and 85-130  
OAL DOCKET NOS. CCC 4884-85  
and CCC 2424-85 (CONSOLIDATED)  
REGISTRATION NO. 43947-40  
APPLICATION NO. 51765-22

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

Complainant, :

FINAL ORDER

v.

JAMES F. TROLLER, JR., :

Respondent. :

AND

APPLICATION OF JAMES F. TROLLER, :  
JR., FOR A CASINO EMPLOYEE LICENSE:

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 29, 1986,

IT IS on this <sup>24<sup>th</sup></sup> day of APRIL 1986, ORDERED that the initial decision of the Office of Administrative Law is modified as follows:

1. Because of the amount involved (\$55), the respondent's June 8, 1983, conviction for receiving stolen property in violation of N.J.S.A. 2C:20-7 constitutes a disorderly persons offense and is not a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). See In the Matter of the Application of Kevin M. Farrington for a Casino Employee License, Docket No. 82-EA-70 (Commission order February 13, 1985).
2. The application of the so called residium rule, N.J.A.C. 1:1-15.8, is inappropriate in this case. See In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities, Docket Nos. 82-EL-19 and 82-EL-20 (Commission decision May 25, 1984). Nevertheless, evaluating the evidence under N.J.S.A. 5:12-107(a) and (b), the Commission concurs with the ALJ's conclusion that the respondent's conduct on May 27, 1983, although not prosecuted, constitutes conspiracy to commit theft by extortion (N.J.S.A. 2C:5-2; N.J.S.A. 2C:20-5) which is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

IT IS FURTHER ORDERED that the casino hotel employee registration held by James F. Troller, Jr., be revoked and that his application for a casino employee license denied based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

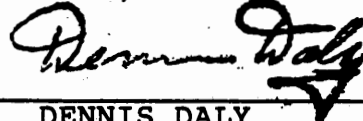
IT IS FURTHER ORDERED that James F. Troller, Jr., be prohibited from applying for any license, registration,

qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon James F. Troller, Jr., the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT NOS. CCC 4884-85

CCC 2424-85

(CONSOLIDATED)

AGENCY DKT. NO. 85-EA-143

85-130

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

Petitioner,

v.

**JAMES F. TROLLER, JR.,**

Respondent.

---

Joanne Cocchiola, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

James F. Troller, Jr., respondent, pro se

Record Closed: December 9, 1985

Decided: December 19, 1985

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Division of Gaming Enforcement (Division) Department of Law and Public Safety, seeks revocation of the respondent's casino hotel employee registration no. 43947-40, and opposes respondent's application for casino employee licensure based upon allegations that the respondent committed criminal acts within the meaning of Sections 86c and 86g of the Casino Control Act (Act). Furthermore, the Division contends that the respondent does not possess the requisite good character, honesty and integrity for casino

employee licensure within the meaning of Section 89b(2) of the Act. In addition, the Division alleges that respondent failed to reveal facts material to qualification or has supplied information which is untrue or misleading within the meaning of Sections 86b and 90e of the Act with regard to his application for casino employee licensure.

### PROCEDURAL HISTORY

Respondent was granted casino hotel registration no. 43947-40 in July 1982. Respondent filed a Personal History Disclosure Form 2-A in conjunction with an application for casino employee licensure on January 31, 1984. The Division filed its complaint with the Casino Control Commission (Commission) seeking revocation of respondent's casino hotel registration on March 28, 1985. The Commission notified respondent of the complaint on April 2, 1985. On April 20, 1985, the respondent requested a hearing. On April 25, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 10, 1985, and the matter was scheduled for a hearing on August 2, 1985. On July 1, 1985, the Division filed an objection letter to respondent's application for casino employee licensure. The August 2, 1985 hearing was subsequently cancelled and a second prehearing conference was held on October 15, 1985, after the matters had been consolidated for hearing. The hearing on the consolidated matters (CCC 2424-85 and CCC 4884-85), was held on December 9, 1985, at the Somers Point Municipal Building, Somers Point, New Jersey.

### FINDINGS OF FACT

The respondent, James F. Troller, Jr., is 21 years of age and currently resides with his parents at 608 West Revere Avenue, Linwood, New Jersey.

On March 27, 1983, the respondent was arrested and charged with a violation of N.J.S.A. 2C:5-2, conspiracy, and with a violation of N.J.S.A. 2C:20-5, theft by extortion by the Linwood City Police Department. Sergeant Ronald J. Welcher, Linwood Police Department, testified from his report (P-8) that Troller, Jr. left home at approximately 4:00 p.m. on March 27, 1983, after unsuccessfully attempting to borrow \$1,500 from Troller, Sr. for the purpose of "paying some bad people some money" (P-8 at 1). Troller, Jr. left with his brother-in-law to visit a friend. At approximately 5:00 p.m.,

the friend, Joseph Friel, called and related that Troller, Jr. never arrived at his house. At 6:00 p.m., Troller, Sr. received a call from his son stating "that the people he owed the money to were holding him. . . and they would kill him" (P-8 at 1).

When Troller, Jr. arrived at 6:08 p.m. at Revere Avenue to collect the ransom money, he was arrested and charged along with three of his friends with conspiracy and theft by extortion. Richard Carozzoni indicated to Sergeant Welcher that the purpose of the hoax was to obtain money for a party. Much of the preceding evidence is hearsay. However, Sergeant Welcher's personal observations and testimony provide a residuum of competent evidence to support the underlying charge. On May 20, 1983, the charges were dismissed at the request of the victim, James F. Troller, Sr.

On April 27, 1983, the respondent was charged in Northfield Municipal Court by Charles E. Mantler with a violation of N.J.S.A. 2C:20-7, receiving stolen property. The respondent entered a plea of not guilty and on June 8, 1983, was convicted of receiving stolen property (P-6). The respondent was fined \$150, \$25 court cost and sentenced to one year probation. Detective William J. O'Donnell, Northfield Police Department, testified to the circumstances underlying the arrest and conviction.

On April 23, 1983, respondent was arrested and charged with a violation of N.J.S.A. 2C:20-3, theft by unlawful taking in the Northfield Municipal Court by one James Eisenhard (P-3). On May 23, 1983, the charge was dismissed because the complaining witness did not appear at trial.

Sergeant Michael D'Amato, Linwood Police Department, testified that on June 8, 1983, the respondent was arrested and charged by Eileen Mantler with violations of N.J.S.A. 2C:12-3(a), terroristic threats; N.J.S.A. 2C:18-3(b), criminal trespass; and N.J.S.A. 2C:33-4, harassment. These charges were subsequently dismissed on July 28, 1983, for failure of prosecution.

On September 15, 1983, the respondent was arrested and charged with receiving stolen property by Sergeant Michael D'Amato of the Linwood Police Department. In October 1983, the charges were dismissed for lack of evidence.

On January 2, 1984, the respondent was arrested and charged with simple assault in violation of N.J.S.A. 2C:12-1(a). The charges were dismissed sometime in January 1984 for failure of prosecution.

On August 2, 1984, the respondent was arrested and charged with making terroristic threats in violation of N.J.S.A. 2C:12-3 and receiving stolen property in violation of N.J.S.A. 2C:20-7 by Charles E. Mantler.

The Division alleges that on August 23, 1984, the respondent was arrested and charged with a violation of N.J.S.A. 2C:12-1b(1), aggravated assault and N.J.S.A. 2C:12-3, terroristic threats. However, no evidence has been produced to that effect.

The Division alleges that on September 24, 1984, the respondent was arrested and charged with harassment in violation of N.J.S.A. 2C:33-4. However, no evidence has been produced to that effect.

Officer Elmer Trimble, Northfield Police Department, testified that he stopped respondent for a motor vehicle violation on August 30, 1985. After observing drug paraphernalia in an open glove compartment, Officer Trimble charged respondent with possession of drug paraphernalia. The alleged drug paraphernalia consisted of one pipe with residue, a pack of cigarette paper and a "marijuana butt." On November 13, 1985, the respondent failed to appear in court and the matter is pending.

On January 16, 1983, the respondent signed a New Jersey Casino Control Commission Personal History Disclosure Form 2-A in the presence of Lisa Marie Marabella, Notary Public of New Jersey. In response to question 16, "have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?," respondent answered, "Yes, 2C:20-7, Northfield, convicted, June 8, 1983, one year probation" (P-1 at 15).

On December 7, 1984, Agent Thomas Hollinger of the Division of Gaming Enforcement, Department of Law and Public Safety, conducted a telephonic interview with the respondent concerning his apparent failure to reveal his arrest record. After Agent Hollinger questioned respondent's understanding of number 16 on the Personal History Disclosure Form 2-A, respondent reportedly answered, "Yeah, what the hell do you think?" Respondent categorically denied having an arrest record until confronted with same. Respondent explained that he did not understand the question.

After having the opportunity to testify and rebut any and all of the Division's allegations, respondent explained that in 1983, he was suffering from a severe drinking problem which no longer exists. However, this does not explain his recent conduct, i.e., arrests in 1984 and 1985. Respondent contends that the testimony presented was inaccurate but did not specify. Therefore, the preceding evidence is worthy of belief and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) as incorporated in Section 91b of the Act mandates that a person who has been convicted of any offense which is enumerated in the section be disqualified from licensure. The Division contends that the respondent's conviction on June 8, 1983, of a violation of N.J.S.A. 2C:20-7, receiving stolen property, is a statutory disqualifier under Section 86c(1) of the Act. I agree.

I **CONCLUDE** that since respondent admits on his Personal History Disclosure Form 2-A that he has been convicted of receiving stolen property, the Division has established, by a preponderance of the credible evidence, that the respondent was convicted of a violation of N.J.S.A. 2C:20-7, receiving stolen property. That conviction disqualifies respondent from being a registrant and from obtaining a casino employee license, pursuant to Section 86c(1) of the Act.

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

Section 86g as incorporated in Section 91b of the Act mandates that a person who commits any offense delineated in Section 86c(1) of the Act be disqualified from licensure even though such conduct has not or may not be prosecuted under the criminal laws of this state. The Division asserts that respondent committed an act in violation of N.J.S.A. 2C:5-2, conspiracy to commit theft by extortion. I am persuaded from the testimony of Sergeant Ronald Welcher, Linwood Police Department, and the documentary evidence (P-8), by a preponderance of the credible evidence, that respondent conspired to commit theft by extortion on May 27, 1983.

I **CONCLUDE** that the respondent is disqualified from being a registrant and from obtaining a casino employee license pursuant to Section 86g of the Act.

(C) N.J.S.A. 5:12-91d and 90h

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d and 90h. These sections set the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Troller is registered as a hotel employee and has filed an application for casino employee licensure. As a registrant, he would not have responsibilities for actual gaming activities and would have limited contact with patrons of the casino. However, as a casino employee, he would have substantial contact with patrons of the casino.

Second, the respondent was convicted of receiving stolen property in violation of N.J.S.A. 2C:20-7 on June 8, 1983. In addition, I am persuaded that Mr. Troller did conspire to commit theft by extortion on March 27, 1983, and that said conduct was not prosecuted because the victim, respondent's father, requested that the charges be dismissed. Under Sections 86c(1) and 86g of the Act, the enumerated offenses are statutory disqualifiers. Each of the incidents of misconduct were extremely serious.

Third, the respondent admits to a drinking problem in 1983. However, I am not persuaded that respondent's drinking problem mitigates his misconduct to any significant degree.

Fourth, the respondent committed the offenses on March 27, 1983 and June 8, 1983. The last offense which would statorily disqualify respondent occurred approximately two and one-half years ago.

Fifth, the respondent committed the offenses at age 19. It is possible that his misconduct was, in part, due to immaturity.

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

Seventh, respondent attributes his misconduct to the extensive use of alcohol.

Eighth, the respondent has failed to demonstrate any rehabilitation whatsoever.

I am not persuaded that the respondent has met his statutory burden to establish his rehabilitation beyond clear and convincing evidence. It is apparent that respondent has done little, if anything, to rehabilitate himself. His demeanor was not impressive and his total indifference to the hearing process lead me to **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation pursuant to Sections 91d and 90h of the Act.

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

Under Section 89b(2) of the Act, Mr. Troller's application for a casino employee license requires that he establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. When the Division opposes licensure under Section 89b(2) of the Act, it is incumbent upon the applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Co. 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 the applicant be scrutinized closely. *Id.* at 2.

Respondent's indifferent attitude, his lack of candor, his failure to present any character witnesses or documents on his behalf, and his failure to demonstrate to any significant degree his reputation for good character, honesty and integrity lead me to **CONCLUDE** that respondent has failed to demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity for casino employee licensure within the meaning of Section 89b(2).

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

Under Section 86b of the Act, respondent was required to provide information, documentation and assurances required by the Act or requested by the Commission, and failure of the respondent to reveal fact material to qualification or the supplying of information which is untrue to misleading as to a material fact pertaining to the qualification criteria may result in the denial of respondent's casino employee application. I am not persuaded by respondent's claim that he "did not understand the question" when queried about his reported failure to disclose his arrest record. In fact, the evidence presented is to the contrary. Therefore, I **CONCLUDE** from the testimony and documentary evidence that the respondent failed to reveal facts material to qualification within the meaning of Section 86b by failing to disclose his arrest record on his Personal History Disclosure Form 2-A.

(F) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's hotel employee registration no. 43947-40. I am persuaded that the Division has established by a preponderance of the credible evidence that respondent has committed acts which constitute statutory disqualifiers within the meaning of Sections 86c(1) and 86g of the Act. Since respondent has failed to demonstrate his rehabilitation by clear and convincing evidence, I **CONCLUDE** that respondent's hotel employee registration must be revoked.

ORDER OF DISPOSITION

It is **ORDERED** that the hotel employee registration (no. 43947-40) held by James F. Troller, Jr. be **REVOKED**. It is further **ORDERED** that Mr. Troller's application for licensure as a casino employee be and is hereby **DENIED**.

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

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

12-19-85  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

December 23, 1985  
DATE

*Bernadette P. Freyer*  
CASINO CONTROL COMMISSION

Mailed to Parties:

**DEC 24 1985**  
DATE

*Ronald L. Parker & S.*  
OFFICE OF ADMINISTRATIVE LAW

bc/ee

DOCUMENTS IN EVIDENCE

- P-1 Personal History Disclosure Form - 2A
- P-2 Affidavit of Forgery, dated April 13, 1983
- P-3 Northfield Police Department Arrest Report
- P-4 Northfield Police Department Investigation Report
- P-5 Northfield Police Department Arrest Report
- P-6 Northfield Police Department Arrest Report
- P-7 Investigation Report, Linwood Police Department
- P-8 Investigation Report, Linwood Police Department

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-162  
OAL DOCKET NO. CCC 7401-85  
APPLICATION NO. 58261-21

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APPLICATION OF DENISE A. UMANSAY  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 21, 1986,

IT IS on this ~~27th~~ day of May 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Denise A. Umansay, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**FILED**

APR 17 1986

CASINO CONTROL COMMISSION  
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 7401-85

AGENCY DKT. NO. 85-EA-162

**DENISE A. UMANSAY,**

Petitioner,

v.

**STATE OF NEW JERSEY,**

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**Denise A. Umansay, petitioner, pro se**

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

Record Closed: March 13, 1986

Decided: April 10, 1986

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

This matter arises out of a report filed by respondent with the Casino Control Commission recommending the denial of petitioner's application for a license pursuant to N.J.S.A. 5:12-1 et seq. Petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The question presented is whether petitioner intentionally failed to disclose certain prior arrests on her Personal History Disclosure Form (PHDF) and during the course of a subsequent interview, in violation of N.J.S.A. 5:12-86(b). A second issue raised at the prehearing conference concerning petitioner's good character in light of her prior criminal record, was not pursued by respondent at the hearing.

Many of the facts have either been stipulated or are undisputed. Petitioner was last arrested on December 15, 1976, by the United States Secret Service in Philadelphia, on charges of check forgery, 18 U.S.C.A. 495, and obstruction of the mail, 18 U.S.C.A. 1701. She pled guilty to the obstruction charge, and the forgery count was dismissed. Petitioner was fined \$50, placed on probation for six months, and ordered to make restitution of \$78, the amount of the check. On January 9, 1975, petitioner was arrested in Haverford, Pennsylvania, for disorderly conduct and criminal trespass, analogous to N.J.S.A. 2C:33-2 and N.J.S.A. 2C:18-3, respectively. She was found guilty, placed on one year's probation and fined. Petitioner was arrested on March 24, 1974, in Philadelphia, for a violation of the Drug Act, analogous to N.J.S.A. 24:21-20a(4). She pled guilty to the offense, was placed on one year's probation and fined. On October 1, 1971, petitioner was also arrested for a violation of the Drug Act, analogous to N.J.S.A. 24:21-20a(4), in Norristown, Pennsylvania. She was fined \$200 with respect to this offense. Petitioner filed a PHDF with the Commission in November 1984. None of these arrests were disclosed.

On June 25, 1970, petitioner was arrested in Greenville, North Carolina, for possession of marijuana, analogous to N.J.S.A. 24:21-20a(4), and the charges were dismissed. Petitioner was arrested on April 16, 1970, by the Valley Forge Park Police, for a violation of the Drug Act, analogous to N.J.S.A. 24:21-20a(4), and these charges were also dismissed. Petitioner did disclose these two offenses.

Augustin Garcia, an investigator for respondent, spoke with petitioner over the telephone in May 1985. He was aware of her arrest record from a Federal Bureau of Investigation printout and was aware that she had failed to disclose four prior findings of guilt while disclosing two arrests which had resulted in dismissals. He first asked her whether she had any arrests beyond the two she had disclosed, and she responded that she did not. He then asked her about each of the undisclosed incidents. She acknowledged them and attempted an explanation with respect to each one. She said that she had not been arrested with respect to the stolen check incident of December 15, 1976. She explained that the January 9, 1975 incident had been a domestic dispute and she thought that it was her boyfriend who had been arrested. Investigator Garcia testified that petitioner told him that she did not disclose the remaining two incidents because they did not appear on the police records which she had obtained.

Petitioner testified that she reviewed and understood the PHDF and knew when she was filling it out that she had other arrests. However, as all of these occurred

many years ago, she did not recall any details concerning them and made inquiry of the Margate Police Department, where she then lived and of the police of Upper Merion Township, Pennsylvania, where she grew up. The Margate Police told her that they had no record of arrests for her, and the Upper Merion Township Police provided her with the two arrests which she disclosed. Petitioner testified that she relied on this information and assumed that the other offenses had either been expunged or were otherwise lost by time and did not require disclosure. Petitioner submitted a report form from the Upper Merion Township Police to support this testimony. The form, according to petitioner, is a more formal copy of the same information which she originally received and used to prepare her PHDF, but which has since been misplaced. The copy in evidence was obtained approximately two months prior to the hearing of this matter.

Petitioner testified that she has had no difficulty with the police since her last arrest in 1976. At about that time, she relocated to New Jersey and worked for four years at a firm known as Seaboard Appliance Company, then for four more years at the Atlantic City Shade Shop and most recently at Red's Paint Service. A character letter signed by her present employer was also submitted. She is now 34 years of age.

This is the substance of the record. I found petitioner to be a credible witness and though respondent has pointed out some inconsistencies and coincidences in the record it does not appear to me that her failure to disclose was intentional. We must recall first that all of the incidents in question occurred ten or more years ago. They all occurred when petitioner was between the ages of 19 and 24. Most of the incidents involve minor drug offenses, and the most serious one involves a single check forgery in the amount of \$78. She received probation for all of these offenses. That she has only a vague recollection of these incidents is not surprising. When faced with the question concerning prior arrests and convictions on the PHDF, she did not respond in the negative but went to two police departments to find out what her record was. She then listed these offenses. Respondent appeared to argue that the information contained in the police report produced for hearing was not received prior to November 1984 to prepare her PHDF, but was obtained by petitioner during the discovery phase of this hearing to support her selective disclosure. She made a limited disclosure, argues respondent, in order to hide what she probably perceived to be the more damaging parts of her past. While it is a plausible theory, respondent has not supported it with proofs. Petitioner named the police officer who gave her the information on both occasions, and his name also appears on the report in evidence from Upper Merion Township. He might have been called by respondent as a witness.

Investigator Garcia was fully credible and it appears that petitioner was not entirely direct with him. He apparently surprised her with the specifics of her earlier convictions and some of her explanations were strained. Yet, among these she did say that the incidents did not appear on her police records. This actually supports her testimony to the effect that she had gone to the police for this information in advance of filing her PHDF.

Based on the foregoing, it is my conclusion that petitioner's failure to disclose information was unintentional. It is ORDERED that she be awarded a casino employee license.

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

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

4/10/86  
DATE

  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

April 11, 1986  
DATE

  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 15 1986  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

ks/e

EXHIBITS

For the petitioner:

P-1A Request for Criminal History Record Information

P-1B Form 8A - Supplemental Report

P-1C Note to Denise Umansay

P-2 Recommendation note from Norman Wherry

For the respondent:

R-1 Personal History Disclosure Form

WITNESSES

Denise Umansay, petitioner

Augustin Garcia, Investigator

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-96  
OAL DOCKET NO. CCC 3960-85  
APP. NO. 54534-21  
REGISTRATION NO. 34872-40

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APPLICATION OF FRANCIS URBAN FOR A  
CASINO EMPLOYEE LICENSE

FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 30, 1986,

IT IS on this *20th* day of JUNE 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Francis Urban, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



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

**INITIAL DECISION**

OAL DKT. NO. CCC 3960-85

AGENCY DKT. NO. 85-EA-96

**FRANCIS M. URBAN,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**Mark Pfeffer, Esq.,** for petitioner (Goldenberg, Mackler & Sayegh, attorneys)

**Frances I. Sundheim,** Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: January 23, 1986

Decided: March 12, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the application of Francis M. Urban to the Casino Control Commission for licensure as a casino employee, permitting him to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner, with specific reference to his alleged theft of an automobile in 1982, has committed an offense which is an automatic disqualifier from licensure, pursuant to section 86c(1) of the Casino

Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of section 86g of the Act.

2. Whether the petitioner possesses the requisite good character, honesty and integrity for licensure, within the meaning of section 89b(2) and 90b of the Act.
3. Whether the petitioner, notwithstanding his alleged commission of a disqualifying offense, has affirmatively demonstrated his rehabilitation, within the meaning of section 90h of the Act.

At the prehearing conference in this matter, the Division of Gaming Enforcement placed in issue whether the petitioner possesses the requisite experiential requirements for licensure as a dealer in craps, within the meaning of sections 89b(3) and 90b of the Casino Control Act. At the hearing, it was stipulated by the parties that the petitioner does satisfy the experiential requirements for licensure as a dealer in craps and this issue was eliminated.

#### PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated April 23, 1985, the Division of Gaming Enforcement objected to the licensure of the petitioner. On June 18, 1985, the Casino Control Commission received the petitioner's request for a hearing. The matter was thereafter transmitted by the Commission to the Office of Administrative Law on June 27, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on August 27, 1985. At that time, the matter was scheduled to be heard on November 14, 1985. The matter was subsequently adjourned from that date due to the unavailability of a witness. The matter was then rescheduled for and heard on January 23, 1986.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 23 year old resident of Atlantic City, New Jersey. Since June 1985, the petitioner has been unemployed and he has been receiving unemployment insurance benefits. For approximately one year preceding June 1985, the petitioner was employed in the valet parking department at Trump's Plaza Casino.

According to the testimony of the petitioner, he grew up in Ventnor City, New Jersey, and was raised by his maternal grandparents. The petitioner's father left the home when the petitioner was very young and he had contact with his father only once, at the age of 15. In 1977, the petitioner's grandfather suffered a stroke, which had an adverse emotional impact upon the petitioner.

The petitioner's brushes with the law in 1982 are the primary basis for the Division's objection to his licensure. On January 21, 1982, the petitioner was arrested by the Margate City Police Department for assault, contrary to N.J.S.A. 2C:12-1(a)(1). The petitioner testified credibly that this arrest arose from an incident which had involved a fight between a woman and another man. The petitioner tried to break up the fight and was later charged by the woman with assault. The complainant did not appear in court and the matter was dismissed (R-1).

In March 1982, the petitioner was arrested in Margate City and charged with criminal trespass and harrasment, contrary to N.J.S.A. 2C:18-3 and N.J.S.A. 2C:33-4. According to the petitioner, he had been drinking heavily and, being cold and tired, he broke into the Sea Shell Motel so that he could sleep. The petitioner pled guilty to the charges (Exhibit R-2).

Also in March 1982, the petitioner was arrested by the Margate City Police for interfering, contrary to N.J.S.A. 2C:29-1 and resisting arrest, contrary to N.J.S.A. 2C:29-2. At the hearing, the petitioner explained that he was again intoxicated and that he observed a police officer roughly handling a female whom he was placing under arrest. The petitioner's attempt to intervene resulted in his arrest. He was found guilty on the charges and fined \$225 and \$25 court costs.

The most serious incident involving the petitioner occurred on October 4, 1982, when he was arrested by the Margate City Police Department and charged with theft of moveable property (auto), contrary to N.J.S.A. 2C:20-3 and conspiracy, contrary to N.J.S.A. 2C:5-2. According to the police investigation report (Exhibit R-3), the petitioner was observed to be driving a vehicle in an erratic manner. The petitioner was stopped by the arresting officer and the resulting investigation revealed that the vehicle had been taken from near its owner's property without permission. The petitioner and his passenger were then arrested and charged as described (Exhibit R-5).

Testifying on his own behalf, the petitioner stated that he was again intoxicated on October 4, 1982. The weather was very cold and he and his companion were walking toward the petitioner's home. They observed ignition keys in an automobile and they took the auto with the intention of driving it close to the petitioner's home and just leaving it. It would have been a short trip, but the petitioner was stopped by the police on the way.

It is undisputed that the charge of theft of moveable property was downgraded to the disorderly persons offense of unlawful taking of a means of conveyance, contrary to N.J.S.A. 2C:20-10. On February 16, 1983, the petitioner pled guilty to this offense and was fined \$250 with \$15 cost imposed (Exhibit R-4).

The petitioner explained that his grandfather was dying in 1982 and the emotional stress this caused the petitioner led him to drink heavily. His consumption of alcohol was a significant factor in each of his arrests in 1982. It was the sincere and credible testimony of the petitioner that he obtained employment in 1983 and overcame his problem with alcohol. He has no further arrests since October 1982.

The petitioner explained that he seeks a casino employee license so that he can advance himself in the casino industry. Letters from persons who have known the petitioner and which attest to his having overcome his prior problems with character and responsibility were admitted into evidence as exhibits P-1, P-2, and P-3.

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

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honest and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act.

Under section 86c, an applicant may be denied licensure for his commission of an automatically disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the Act. Similarly, an applicant may be denied licensure for his commission of an offense which would render his licensure inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(4).

It is undisputed that the petitioner was arrested in October 1982 and charged with theft of moveable property (auto), contrary to N.J.S.A. 2C:20-3. Such an offense would be an automatically disqualifying event, pursuant to N.J.S.A. 5:12-86c(1), if it constituted a crime of the second or third degree. Under N.J.S.A. 2C:20-2b(2), theft of an automobile is a crime of the third degree. However, it is undisputed that the petitioner intended to exercise control over the automobile only temporarily, as a means of obtaining transportation home.

N.J.S.A. 2C:20-10a provides in part that: "a person commits a disorderly persons offense if, with purpose to withhold temporarily from the owner, he takes, operates, or exercises control over any means of conveyance without consent of the owner or other person authorized to give consent." This offense of unlawful taking of a means of conveyance is the charge to which the petitioner entered a plea of guilty on February 16, 1983. Based upon the foregoing, I **CONCLUDE** that the petitioner committed the disorderly persons offense of unlawful taking of a means of conveyance, contrary to N.J.S.A. 2C:20-10, on October 4, 1982. I further **CONCLUDE** that he did not commit the crime of the third degree of theft of moveable property (auto), contrary to N.J.S.A. 2C:20-3. Therefore, I also **CONCLUDE** that the petitioner has not committed an offense which is an automatic disqualifier from licensure, within the meaning of sections 86c(1) and 86g of the Act.

The respondent's involvement with criminal and disorderly persons activity occurred in 1982, when he was experiencing great emotional stress and suffering from alcohol abuse. He has put those problems behind him and has had no further arrest since 1982. It is apparent from the foregoing discussion that the petitioner's licensure would not be adverse to the public's confidence in the strict regulation of the casino industry. Therefore, I further **CONCLUDE** that the petitioner has not committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of sections 86c(4) and 86g of the Act.

Since I have concluded that the petitioner has not committed an automatically disqualifying offense, it is unnecessary for the petitioner to affirmatively demonstrate his rehabilitation, within the meaning of section 90h of the Act. Nevertheless, based upon the credible evidence in the record, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90b of the Act.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Francis M. Urban for a casino employee license, permitting him to work in a casino as a craps dealer, be **GRANTED**.

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

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

March 12, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3/13/86  
DATE

Trith Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 14 1986  
DATE

Epiphany [Signature]  
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

**For the petitioner:**

- P-1 Letter, dated January 22, 1986
- P-2 Undated letter
- P-3 Letter, dated January 18, 1986
- P-4 Letter from the Division of Gaming Enforcement to the Casino Control Commission, dated April 23, 1985

**For the respondent:**

- R-1 Complaint, dated January 21, 1982
- R-2 Complaint, dated March 4, 1982
- R-3 Investigation report, dated October 4, 1982
- R-4 Complaint, dated October 4, 1982, and disposition, dated February 16, 1983
- R-5 Complaint, dated October 4, 1982

WITNESSES

**For the petitioner:**

Francis M. Urban

**For the respondent:**

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-57  
OAL DOCKET NO. CCC 3635-85  
LICENSE NO. 19869-21

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

Complainant, :

FINAL ORDER

V. :

MARGARITA VEGA, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 15, 1986,

IT IS on this 14<sup>th</sup> day of MARCH 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is permitted to apply for registration as a casino hotel employee under N.J.S.A. 5:12-91; and

IT IS FURTHER ORDERED that the respondent is otherwise prohibited from applying for any license, qualification or

approval required under the Casino Control Act, except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that the respondent shall deliver her casino employee license 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 Margarita Vega, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: *Dennis Daly*  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 3635-85

AGENCY DKT. NO. 85-57

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

Petitioner,

v.

**MARGARITA VEGA,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Norma Plenty, Law Clerk, appearing pursuant to R. 1:21-3(c) at the prehearing conference only)

**Lorraine Gormley, Esq.,** for the respondent (Cape-Atlantic Legal Services, Inc., attorneys)

Record Closed: November 26, 1985

Decided: December 9, 1985

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Margarita Vega, respondent, and the holder of casino hotel employee license number 19869-21, with a violation of the Casino Control Act (Act) by reason of criminal misconduct; for which the Division sought the imposition of a penalty against the respondent's license, pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on February 22, 1985. By order dated March 8, 1985, the Commission suspended the respondent's license pending the final disposition of the complaint. Also and in pertinent part, the order precluded the respondent from applying for registration as a casino hotel employee, pursuant to N.J.S.A. 5:12-91. By letter, the Commission notified the respondent of the pending action and advised her of her right to request a hearing. By letter filed with the Commission on June 5, 1985, Ms. Vega requested a hearing. On June 13, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 6, 1985, and the matter was scheduled for hearing.

FINDINGS OF FACT FINDINGS OF FACT AND CONCLUSION

At the hearing the parties agreed to a settlement. The undisputed facts, which form the basis for the settlement, are as follows:

Ms. Vega has resided in Atlantic City since she emigrated from Puerto Rico in 1966. She is 45 years of age. The respondent is the mother of five children, two of which are still at home. Her husband, who had been the sole provider for the family, died in 1978. The respondent became the sole source of income for the family. She completed the seventh grade. The respondent has difficulty with the English language, and required the assistance of an interpreter at the hearing.

During early-1984, the respondent was employed by the Playboy Hotel Casino as a change person for a period of one month. She left that position voluntarily, because the employment did not provide enough income.

For approximately the nine-month period preceeding January 1985, the respondent was employed as a change person on the casino floor by the Sands Hotel and Casino (Sands). She did well in this position.

On January 23, 1985, the respondent was observed shortchanging casino patrons by removing quarters from rolls of quarters (P-1). The respondent was arrested by the Casino Investigation Bureau of the New Jersey State Police, and was charged with a violation of N.J.S.A. 2C:20-3, theft by unlawful taking (P-1 and P-2). On February 20, 1985, the respondent appeared in the Atlantic City Municipal Court and pled guilty to the charge, a disorderly persons' offense. The respondent was fined \$50 and costs in the amount of \$25 (P-2). The respondent has satisfied the sentence.

The respondent described the circumstances underlying the incident. On the date of the incident, she had a shortfall from her customer transactions. She removed \$6.25 in quarters from several rolls of quarters sold to casino patrons and placed the monies in her change apron in order to make up the shortage. The respondent admitted her misdeeds. Although she did not believe initially that she had committed misconduct, the respondent now understands and acknowledges that her actions were unlawful.

The Sands dismissed the respondent as a result of the incident.

The respondent regrets her misconduct. She testified that the incident is constantly on her mind. She attends church daily as a means of self-imposed penance. Also, she has spoken with her priest concerning the incident to seek guidance. The respondent is too embarrassed to discuss the incident with her family. The respondent has not committed any other violations of the criminal laws. Since her dismissal from the Sands, the respondent has undergone employment application training and counselling. Aside from some minimal employment as part of her training, the respondent has been unemployed. She collected unemployment benefits and is currently receiving welfare. The respondent applied for employment as a maid at a casino; however, an offer of employment was withdrawn by reason of the pending action.

The respondent wants to work because welfare benefits are not sufficient. In addition, she wants to prove that her misconduct was isolated and aberrational.

The Division's investigation has not revealed any other derogatory information.

The terms and conditions of the settlement were set forth on the record and are as follows:

1. The casino hotel employee license, number 19869-21, held by the respondent will be revoked.
2. The order of revocation will not preclude the respondent from obtaining a casino hotel employee registration under N.J.S.A. 5:12-91.

I have reviewed the record and terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement on the record.
2. The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**.

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

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

December 9, 1985  
DATE

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

Receipt Acknowledged:

12-11-85  
DATE

It [Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 12 1985  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 New Jersey State Police - Investigation Report, January 23, 1985; Victim Property Loss Report, January 23, 1985; Supplementary Investigation Report, February 21, 1985; Arrest Report, January 23, 1985; Property Report, January 23, 1985 (10 pages)
- P-2 The State of New Jersey v. Margarita Vega, Atlantic City Municipal Court, Docket number C-00849, Complaint, January 23, 1985, and Disposition, February 20, 1985

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Margarita Vega

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 84-EA-119 & 84-CSI-10  
APPLICATION NOS. 43952-21 & 01204-70  
OAL DOCKET NO. CCC 7607-84

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APPLICATION OF JULIUS WEINTRAUB FOR  
LICENSURE AS A JUNKET REPRESENTATIVE  
AND JUNKET ENTERPRISE

---

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 11, 1986,

IT IS on this 27<sup>th</sup> day of March 1986, ORDERED that the recommendation of the administrative law judge to grant the license applications is rejected in the particulars and for the reasons stated on the record and for the further reasons stated in the final Commission decision to be issued forthwith; and

IT IS FURTHER ORDERED that the junket representative and junket enterprise license applications of Julius Weintraub are denied based upon the reasons stated on the record and the further reasons set forth in the final Commission decision, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this final order be served upon Julius Weintraub, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7607-84

AGENCY DKT. NOS. 84-CSI-10 AND  
84-EA-119

**JULIUS WEINTRAUB,**

Petitioner,

v.

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

Respondent.

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James A. Galdieri, Esq., for the petitioner (Miller & Galdieri, attorneys)

Lee D. Gottesman and Mitchell A. Schwefel, Deputy Attorneys General, for the  
respondent (Irwin L. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 31, 1985

Decided: October 18, 1985

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Julius Weintraub, petitioner, has applied to the Casino Control Commission (Commission) for licensure as a junket representative and/or as a junket enterprise, pursuant to N.J.S.A. 5:12-102b and 102c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that Mr. Weintraub had committed a disqualifying criminal offense, pursuant to section 86c(4) of the Casino Control Act (Act), and did not possess financial stability, integrity and responsibility, under section 89b(1), nor good character, honesty and integrity, under section 89b(2), nor sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a casino employee, under section 89b(3), by reason of his purported role in numerous incidents.

PROCEDURAL HISTORY

On December 9, 1982, Mr. Weintraub submitted his Sole Owner/Operator Junket Enterprise Disclosure Form to the Commission. On December 28, 1982, the applicant submitted his Personal History Disclosure Form - 2A (PHDF-2A) to the Commission (J-3). By letter dated September 19, 1984, the Commission advised the applicants that, based upon information received in a report from the Division, dated May 31, 1984, there was a "substantial possibility" that the Commission would deny his applications and that he had a right to a hearing. On September 28, 1984, the applicant requested a hearing. On October 11, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 22, 1985, and the matter was scheduled for hearing. The matter was heard on 16 separate dates. The record closed on July 31, 1985, upon written submission by counsel for the parties. By an order of extension, the time period for the submission of the initial decision was extended to October 18, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Weintraub is 65 years of age. He was born, raised and has been a life-long resident of New York City, New York. He resides currently with his second wife, Barbara, and their two minor children. His first wife is deceased, and his two children by that marriage are emancipated.

By reason of his father's illness, the applicant quit school at age fifteen and one-half and worked at a variety of jobs in order to help support the family. The applicant entered the U.S. Navy in 1943 and served in the southwest Pacific. In 1945 he earned an honorable discharge.

From 1945 to 1948 the applicant was employed by a diamond company in New York City.

In 1948 Mr. Weintraub formed a retail jewelry business which operated in the jewelry exchange at 47 West 47th Street, New York City. In addition to supporting his family, the applicant provided financial assistance in order that his brother, Charles Weintraub, could attend watchmaking school.

For approximately a one-year period in 1953-54, the applicant was hospitalized as a result of a war injury, the effects of which persist to this day. For approximately one year following his release, the applicant was required to recuperate at home. His wife worked to support the family; nevertheless, a supplier put the applicant into involuntary bankruptcy. An order was entered which discharged fully the applicant's indebtedness

In 1955 the applicant began to work for his brother. In 1956, the applicant and his brother became partners in a jewelry business known as Charles Weintraub and Company. This business relationship continues to this day. The jewelry business was and remains located in the jewelry exchange in New York City. However, the applicant sold jewelry out of his pocket, which was a custom in the industry at that time. The business was relocated to 15 West 47th Street and was, on January 12, 1984, relocated to 25 West 47th Street, where it remains to date.

The applicant sold jewelry at various nightclubs, bars, etc. His customers included known bookmakers. He knew that bookmaking was a crime in New York (R-21). The applicant frequented these premises with the knowledge that bookmaking activities were ongoing. In fact, Monday nights were busy because it was "settle-up" night for bookmakers and their customers (R-21 at 124).

It is appropriate at this point to inject the applicant's testimony concerning the basic philosophy of the casino industry in regard to patrons, money and credit to players. More specifically, in order for the industry to be successful it must bring people to the casinos so as to secure a sufficient volume of play, and the players must have money or be given credit by the casinos in order to play. The elements of players having money or being given credit are inextricably intertwined. The applicant testified that this philosophy has remained constant and is prevalent today, including in both New Jersey and Nevada. Although the elements of volume and player money have remained unchanged, the element of credit has changed, but only insofar as the methods used to grant credit, i.e., more thorough background checks and restrictions have been imposed.

In 1956 Mr. Weintraub made his first visit to Las Vegas, Nevada. The trip was social in nature. At that time, the gaming industry was in its infancy; however, the applicant identified it as a new marketplace for his jewelry business.

Thereafter, the applicant returned to Las Vegas six times per year, for 30 days each, for the purpose of selling jewelry. He sold jewelry to entertainers, employees of the casino industry, business persons and others. His brother remained in New York City and managed the business.

Gradually the applicant became a player at the casinos. Although he lost substantial sums of money, his jewelry business continued to prosper. Because of the extent of his play, he received substantial "comps" (food, beverages, hotel accommodations, etc.) and, as a result, other persons from the New York City area began to follow him to Las Vegas.

In 1961 Charlie Rich, Sid Wyman and George Duckworth, previously owners of the Riviera Hotel, purchased the Dunes Hotel and Country Club (Dunes) in Las Vegas.

In 1962 the first junket was run to the Flamingo Hotel from New York City.

In December 1962 the applicant proposed to operate a junket to the Dunes from New York City. Howie Engel, known to the applicant as a former bookmaker in Florida and as a part owner of the Dunes, worked with the applicant to organize the junket. The junket consisted of approximately 150 people, who were friends and acquaintances of the applicant or Mr. Engel. The applicant opined that approximately 10 percent of the patrons were bookmakers. The Dunes provided full transportation, hotel accommodations, food and beverages to the patrons of the junket. The Dunes extended credit to the patrons upon, in part, the recommendations of the applicant. All credit references were completed in Las Vegas. Credit procedures at that time were very loose and no markers existed. The Dunes won approximately \$750,000 in credit play alone, which was later collected in New York City through the applicant.

Thereafter, Mr. Weintraub became a salaried employee of the Dunes, and organized and ran junkets from New York City. He was placed in charge of the Dunes New York field office, a position he held until 1984. In 1962 he first obtained a work car from the Las Vegas Sheriff's Office.

Other casino-hotels followed the lead of the Dunes and initiated junket activities. Many junket operators were former patrons of the applicant. Neither the industry nor the Dunes had specific standards for patrons.

For the following 20 years the applicant was the office manager of the Dunes New York City office, which was located in the same premises as the applicant's jewelry business. The field office facilities consisted of a double office, one for support systems (secretarial, telex and typewriter) and the second for the applicant and several other employees.

During the period from 1962 to 1984, the applicant took approximately 10,000 players to Las Vegas. Six thousand of these patrons were qualified for credit. From these players the Dunes won approximately \$400 million on credit play alone. The applicant participated in the authorization of approximately \$1 billion in credit. It was stipulated that \$8,291,926.08 has been written off by the Dunes as uncollectable (J-1); this amount concerns approximately 1,000 customers. Not all of the uncollectable credit debt was attributable to the applicant.

In 1963 Howie Engel hired Al Tuller to assist the applicant in the New York office. Tuller was a former bookmaker and was also a runner for Mr. Engel when he was a bookmaker in Florida. Tuller served as the applicant's right-hand man and became a trusted associate over the next 20 years. The relationship between the applicant and Tuller, concerning the duties and responsibilities of each, was in dispute and will be discussed, infra.

Mr. Weintraub developed a substantial customer list during his tenure with the Dunes (R-121). This was achieved primarily based on patron recommendations. More specifically, the applicant relied substantially on recommendations made by preferred or highly rated customers (R-21). This created a pyramid effect. During most of the applicant's tenure at the Dunes he had authority to extend credit to players. He also relied heavily upon preferred customer recommendations concerning credit to be granted to new players. In fact, the applicant held the referring patron "morally responsible" for any debt incurred by a person recommended. A reason for this was that prior to June 1984 gambling debts were not enforceable legally. Further, the applicant was of the opinion that the source of new credit was more reliable than bank or other credit checks (R-103 at 8). The fact that the applicant relied substantially upon the recommendations

of others and developed successfully his patron list was well established (R-131 at 5; R-136; and R-144 at 58). Further, it was established that this method of developing a customer base was a standard practice in the casino industry (R-146 at 17). Following a patron's initial visit, his play was rated and his repayment practices were evaluated, which formed the basis for decisions on future credit (R-104 at 27).

The applicant maintained a Rolodex file for the majority of his patrons over the years (see R-19, R-23, R-31, etc.). The rolodex cards included the name and possibly an address and/or telephone number for a patron, as well as the name of the person who recommended the patron. This file was maintained by clerical personnel upon information provided by the applicant and Tuller.

Although there was dispute regarding the procedures, it was established that casino credit cards, which consisted of names, address, etc., for a credit patron, were most often initiated in the New York office prior to a junket. These cards were taken to Las Vegas and were maintained in the cage at the Dunes. The credit cards should reflect accurately the credit history of each patron as well as collection efforts and results. The applicant had access to the cage and credit cards and made entries thereon. On occasion, patrons were permitted by the applicant and with the knowledge of the Dunes, to use aliases, although their true identity should have been known (R-14; R-104 at 36 and 61).

During the return of a junket to New York, collection efforts were initiated. It was clear that the New York office was responsible for and made attempts to collect, although there was a dispute concerning the role of the applicant and others in collection efforts. In fact, prior to 1983, when Nevada enacted a statutory revision which altered substantially the policies and procedures of the industry with regard to the extension of credit and collection, the New York office, as well as other junket offices of the Dunes, handled collection efforts independent of the central office (R-143 and R-144). Thereafter, the credit and collection responsibilities were gradually centralized in Las Vegas.

In 1964 and following a dispute with a patron concerning the amount of indebtedness, the applicant recommended successfully to Messrs. Rich and Wyman that they initiate the use of a marker system, whereby customers sign receipts (markers) for credit received. This system established written evidence of indebtedness and simplified collection efforts. Other casinos quickly followed the lead of the Dunes. The marker system is now an industry-wide standard.

In 1964 and 1967 Mr. Weintraub attempted unsuccessfully to obtain permission from the Nevada Gaming Control Board (Board) to purchase one percent of M & R Investment Corporation d/b/a Dunes Hotel. On both occasions the applicant appeared before the Board and was questioned regarding Charles Stein and Nicholas Forlano, bookmakers known to him and which will be discussed, infra (R-17, R-123 and R-135). Also on both occasions, his applications were denied, although without prejudice to his continued licensure and employment in the Nevada gaming industry. The applicant was never notified of the reasons underlying the Board's denial (R-135 and R-136).

In 1965 Mr. Weintraub's first wife died; he remarried a couple of years later.

On September 17, 1968, Vincent Perfetti from Endicot, New York, was first a junket patron (R-24). Perfetti continued to be a junket patron for the next 11 years. In dispute was whether Perfetti was recommended by Remo Allio, a 15-year customer and also from upstate New York, or vice versa. In fact, the Rolodex file entries for each indicate the other as the reference (P-14, R-23). In any event, the applicant developed a substantial relationship with Perfetti. The applicant knew Perfetti to be a recipient of a government pension, as a result of a war injury, and was unaware of any other employment. Although Perfetti was only a medium or fair player, he was a regular patron and was accompanied by his wife and family. In addition, the applicant grew to trust and to rely heavily upon the new patron recommendations made by Perfetti who recommended many good customers. Ultimately, the applicant accepted at face value Perfetti's recommendations. This reliance was uncommon only because the applicant usually relied upon a preferred player, which Perfetti was not (R-23). These recommendations proved to be reliable until 1977-78.

In 1972, the applicant initiated celebrity golf tournament junkets. On two occasions per year he would enlist the services of professional athletes and would conduct junkets to the Dunes, the proceeds of which went to various charitable enterprises.

Approximately 10 to 15 years ago and during the Board's investigation of junket irregularities at a different hotel, the Board solicited the applicant's recommendations. He recommended that junket employees be licensed the same as hotel employees. Such procedures were initiated by the Board.

Also, approximately 15 years ago the applicant initiated the practice of bringing wives of patrons, the majority of whom were male, to the casinos on junkets. This became the practice for the industry. The result was increased play, which provided an ultimate benefit to the industry.

During the 1960s and 1970s in Las Vegas, chips were transferrable from one hotel to another. The Dunes observed that it was losing monies because its junket patrons were playing at other hotels. The applicant recommended that the transferability of chips be stopped and that a junket patron not be permitted to cash in chips until the junket was concluded. These recommendations were adopted with substantial success.

During the applicant's life he has known and has had contact with persons involved in illegal bookmaking activities. Although the nature and extent of these contacts were in dispute and will be discussed, infra, the identities of these bookmakers should be discussed at this point.

Mr. Weintraub knew Charles Stein and Nicholas Forlano. Both were bookmakers, whom the applicant had known since he was 20 years old. Stein and Forlano were partners and were very substantial bookmakers and loan sharks. Their illegal activities were conducted primarily in New York City and in Florida. Stein and Forlano have criminal record histories for bookmaking, gambling and income tax violations, for which each was incarcerated on several occasions (R-153, R-154 and R-155). The applicant was aware of their incarceration. Forlano died in March 1977, and Stein was the victim of a homicide in May 1977. The applicant knew Stein, his family and friends, and had more contact with Stein than Forlano. In 1955 and upon his release from his period of hospitalization, the applicant borrowed \$2,000 from Stein (R-135 at 22). Nevertheless, he did not place bets with either Stein or Forlano. On occasions, they purchased jewelry from the applicant. The nature of the relationship, if any, between the applicant and Stein and Forlano, as well as any other bookmakers, was in dispute and will be discussed, infra.

The applicant also acknowledged that he has known Milton Wekar, who was a bookmaker, for the past 40 years. Wekar is approximately 70 years old and married a woman known to Mr. Weintraub since childhood. The applicant has been in Wekar's company socially on one occasion several years ago in Las Vegas, Nevada. The applicant,

Wekar and Charles Meyerson, together with their spouses, had dinner and gambled at the casinos. Also, Wekar went to the Dunes on one junket operated by the applicant in 1983. The applicant approved credit for Wekar and waived the bank checks (R-18). The applicant testified that he knew Wekar had the money to cover any use of credit.

Mr. Meyerson was also known to the applicant as a bookmaker; however, Mr. Meyerson apparently ceased such activities many years ago.

The applicant knew Willie Winters, a bookmaker, whom he met approximately 30 years ago. The applicant has seen Winters "on the street" in New York City. Winters has not been a junket patron of the applicant.

The applicant also acknowledged that he knew Jimmie Leigh, a bookmaker. Leigh lived in the neighborhood near the applicant. The applicant was not aware of the extent of Leigh's bookmaking activities. Leigh was a junket patron on five/six occasions prior to 1983.

Although there was no dispute that Charlie Heller was a bookmaker, there was a dispute whether the applicant knew Heller or had any contact with him.

The applicant also testified that during a vacation many years ago he had met Max Courtney, Frank Ritter and Charlie Brudner at a resort hotel they owned in the Bahamas. The three were well-known bookmakers in Florida. However, the applicant never placed bets with them, they were never on a junket operated by the applicant and he never sold jewelry to them (R-21, at 124 and 125). Currently, Messrs. Courtney and Ritter are members of The Town Club in New York City, a social and philanthropic organization of which the applicant is also a member. Both are approximately 80 years of age and are retired. Louis Lefkowitz, former Attorney General of New York State, is also a member of the club.

Milton Bialostok, also a junket patron of the applicant prior to 1983, was known to the applicant as a bookmaker. Bialostok has an arrest record and a 1976 conviction in New York State for possession of gambling records (R-151).

At this point it is also necessary to inject facts concerning the structure and make-up of various organized crime enterprises which exist purportedly in New York City,

upstate New York and eastern Pennsylvania. Although the basic information was not disputed, there was substantial dispute concerning the applicant's relationship, if any, and/or knowledge of any members of these organized crime enterprises. More specifically, although the information is set forth herein in an effort to enlighten any reader of this decision concerning incidents which will be described hereafter, it is necessary to register a caution that the basic dispute will be resolved at a later point.

Division witnesses established that a traditional organized crime family is a group which is formed for illegal or legal purposes. The family or enterprise is managed by a "boss," who is assisted by an "underboss." The boss is also advised concerning problems of the enterprise by a "consiglieri." The remainder of the family consists of "caporegimes," which are high echelon leaders of various units, which, in turn, consist of "soldiers" or "made men." In order for a person to become a "made man," i.e., a formal member of a traditional family, he must be of Sicilian parentage, be sponsored by another member and be formally inducted. In addition to members of crime families, there are associates, who are people involved through illegal activities with members of the family; however, associates are not eligible for full membership. Associates help provide revenues to the enterprise. The sources of income for organized crime organizations include narcotics, gambling, prostitution, high-jacking, auto theft, labor racketeering, etc. The witnesses established that in the New York City/northern New Jersey area there are five traditional organized crime families; the Genovese, Gambino, Colombo, Bonanno and Luchese families. The Genovese family is the most powerful organized crime family in the United States.

The boss of the Genovese family is Philip Lombardo. Gerrardo Catena is the consigliere. Anthony Salerno is the underboss. Caporegimes include Vincent Napoli, Matthew Ianniello, and others who number approximately 20. Soldiers include Vincent Cafaro, James Ida, Louis Corso, Abe Margolies, Charles Stein, Milton Wekar and Sam Bland.

Matthew Ianniello was identified as a very powerful and prominent money earner for the family, with numerous business interests, including many undisclosed ownerships of bars, trading companies, etc. He owns and operates a legitimate restaurant and bar. Ianniello has a substantial arrest record, although he has no convictions (R-109). He was most recently indicted in 1985 for various organized crime activities (R-155). The applicant at first met Ianniello on a junket through either Abe Margolies or Corso;

Ianniello was a junket patron on two occasions (R-22, at 153). Ianniello was placed on the junket upon a request made by Corso to Mr. Shenker. Ianniello was considered a preferred patron. The applicant testified that he had seen a newspaper article, which appeared in the New York Times on August 1, 1977, and in which Ianniello was identified as a leader of an organized crime group situated in New York City (R-75).

Since the mid-1970s, Louis Corso has been identified as an associate.

In 1984 James Ida was identified as a soldier who works for Matthew Ianniello. In 1984 Ida pled guilty to a charge of criminal contempt in the first degree in the New York State courts and was sentenced to 90 days and was fined \$2,500 (R-156).

Charles Stein was previously discussed.

Although Abe Margolies was not identified as an associate or member of an organized crime family, he is suspected of laundering illegally received monies through legitimate businesses. His association, purportedly with Matthew Ianniello, was discovered in 1972.

Oscar Ianniello, the brother of Matthew Ianniello, is suspected of being an associate of his brother in legitimate businesses. The basis for this belief is that Oscar Ianniello was recently indicted together with his brother in 1985 (R-155).

Sam Bland was identified as an old-time gambler and bookmaker.

Milton Wekar was identified as an associate of both the Genovese and Colombo families. He is considered to be a substantial and well-known bookmaker. He has been identified as an associate since 1966 and has a substantial arrest and conviction record.

Vincent Cafaro has been identified as a soldier since 1966. He operates Salerno's gambling activities in Harlem and is a high-revenue generator. Cafaro has an arrest and conviction record concerning incidents which occurred between December 1952 and June 11, 1965 (R-152).

It was also established that Nicholas Forlano was a caporegime in the Colombo family for many years.

The witnesses were also of the opinion that Guiseppe Gambino is active in the south Jersey, eastern Pennsylvania and New York City area with regard to narcotics and arson in the pizza industry. It is believed he has been an associate of organized crime since 1979-80. He is currently the subject of a federal indictment. Additional testimony attempted to link Guiseppe Gambino with Salvatore Avena, a New Jersey attorney with offices in Camden County, who frequently represents alleged members of organized crime.

Division witnesses also identified the Bufalino crime family, which is located in northeastern Pennsylvania and western New York. This family is identified as one of the most powerful crime families in the United States. Since 1959 Russell Bufalino has been the boss of the family. Edward Sciandra, a brother-in-law of Russell Bufalino, is the underboss. Since 1980, Remp Allio, an attorney, has been identified as a made man and the consiglieri. Caporegimes include Anthony Frank Guarnieri and Frank Salvatore Cannone.

Guarnieri has been identified for the past 15 to 20 years as the caporegime for the Endicott, New York area. He uses various aliases, including Anthony Tony Polean, N. Polean, Anthony Todd and Joseph M. Guarnieri, and uses various addresses in Endicott. He is involved in gambling, loan-sharking and labor racketeering, and is suspected of performing murders under contract. He is active in the garment industry.

Cannone has been identified as the caporegime for the Binghamton, New York area. He is employed in New York City. He has been identified as a made man since 1977. He is involved in gambling, loan-sharking and is suspected of involvement in narcotics. He is approximately 60 years of age and is a convicted gambler. Cannone is an associate of Perfetti, Angelo Joseph Son, Guarnieri and Joseph Maruca.

Son was identified as a made member in 1963 and was considered to be a caporegime. He died in June 1983. He was the partner of Louis Cohen in a scrap metal yard and other legitimate enterprises. Further, he was active in the garment industry. Son was arrested and was convicted of racetrack fixing concerning a scam operated at the Pocono Downs.

Joseph Edward Todaro, Sr., has been identified as a caporegime and was underboss to the former boss Stephano Magadino. Todaro has also been associated with the hierarchy of the Genovese, Gambino and Bruno organized crime families.

Joseph Edward Todaro, Jr., has been identified as a made man.

Louis Marconi, who died in 1981, was identified as a made man and as an associate of Guarnieri. Marconi operated gambling junkets to Las Vegas and Atlantic City.

Perfetti, who is approximately 60 years of age, has been identified as a made man and as a soldier since prior to 1975. He is active in gambling, loan-sharking and narcotics.

During the 1970s the Dunes was purchased by Morris Shenker, previously attorney to the Dunes, together with Irving Kahn.

From February 15 through 19, 1978, Guiseppe Gambino together with Salvatore Avena and Irv Nowick, were at the Dunes. Although it is in dispute whether they were on a junket with the applicant, their names were not included on the junket list (P-8). Credit was issued to each of the three. The Dunes ultimately "wrote off" a total of approximately \$10,000 of unpaid credit for the three (P-9, P-10, P-11, R-69 and R-70). Although \$8,000 was written off for Nowick, an additional \$2,000 had been collected by Cappy Doyle, a Dunes junket operator from the Baltimore area, Nowick had previously been his patron (R-144 at 70).

During 1977 and 1978, persons who obtained credit from the Dunes upon Perfetti's recommendation to the New York office stole approximately \$400,000 from the hotel, by means of a failure to repay credit that was taken but was not lost at the casino. (See, R-25, Nino Alimonti; R-26, Joseph Maruca; R-27, Thomas Keith; R-28, Vincent Locket; R-29, Patrick Lebous; R-30, Charles M. Taylor; R-31, Augie Spano; R-34, Louis Dreeze; R-35, Frank Ley; R-36, Mike S. Kushner; R-37, Dave Evans; R-38, Tony Monteforte; R-39, Tony Ruggerio; R-40, Howard E. Kelly; R-41, Roger Gaydos; R-42, Bob Gianetti; R-43, George Joros; R-44, Dave Rossi; R-45, Joseph R. Romano; R-46, Dave Testa; R-47, Joe Todaro; R-48, John Visconti; R-50, Anthony Burra; R-51, Mike Colena; R-52, Joe Curra; R-53, Dave Edwards; R-54, Robert Rosa; R-55, Mario Pino; R-56, Tony Porta; R-57, Mike English; R-58, Anthony Riola; R-59, Phil DiOrio; R-66, Anthony Malasi; and R-67, Louis Marconi). The role, if any, of the applicant in this scam was in dispute and will be discussed, infra. In any event, it was evident that the scam was effected by the use of fictitious names and false addresses, telephone numbers, etc. (R-21, at 72).

Ultimately, the Dunes wrote off these debts. Although the majority of the patrons involved in this scam used fictitious names, some were repeat customers with an established credit track record (R-28).

An investigation of this scam was conducted by Thomas Drost, chief of corporate security for the Dunes. The results of this investigation were submitted to Morris A. Shenker, Chairman of the Board, in a report dated October 3, 1979 (R-60). The results were later rewritten in an additional report, dated July 19, 1983 (P-3). Mr. Shenker submitted the original report to the Board. The report concluded that the scam was perpetrated through the use of credit references from Perfetti and by the use of fictitious names and addresses. Once the credit was obtained, the chips were cashed in and the debts were not paid.

The applicant first met Herman Todd Derlachter approximately 25 years ago at the Riviera Hotel through Sid Wyman (R-131). Derlachter was then employed by the Sergeant Fletcher Company (Sergeant Fletcher), a manufacturer of munitions. During the early 1970s, Sergeant Fletcher held 15 percent of Dunes stock for a short period of time. Ultimately, the Board ordered Sergeant Fletcher to divest itself of the stock. However, prior to the divestiture order it was anticipated that Sergeant Fletcher would purchase the Dunes and that Derlachter would be named general manager (R-124 and R-132). In that capacity Derlachter would have been the applicant's supervisor.

During 1973 Derlachter made several trips to New York City, during which he had contact with staff members of the Dunes field office. Between January and September 1973 Derlachter, with some assistance from the applicant and Tuller, the nature of which is in dispute, cashed 28 original cashier's checks drawn on the First City Bank, Rosemeade, California, payable to Zvi Ashkenazi, for a total amount in excess of \$200,000 (R-128, R-131, R-132, R-133, R-134, R-158 and R-160). The checks were cashed by either Murray Geller or Sam Bland, check cashers, who charged a fee of one percent of the face value of the checks. No attempt was made to cash the checks at a bank, including any bank where the Dunes had an account. The matter was investigated by the Internal Revenue Service. The applicant was advised that he along with others was a target of the investigation. During 1977 and 1980, the applicant appeared and testified before the Internal Revenue Service and a Federal Grand Jury, and provided handwriting exemplars (R-105, R-106, R-107 and R-108). However, the applicant was never charged with any criminal misconduct (R-20). The nature of the applicant's role in this incident was in dispute and will be discussed, infra.

Between five and ten years ago the applicant, in his capacity as office manager, came into the possession of monies collected from gaming patrons. On three to four occasions he retained possession of the monies for a short period of time and for his personal use. The monies were repaid in full. The applicant testified that his use of the monies constituted a loan and was done with Mr. Shenker's express permission. The circumstances underlying these loans were that Mr. Shenker had promised the applicant an opportunity to purchase 50,000 shares of Dunes stock at a discounted price, which was the same price at which another employee had made a stock purchase. The applicant obtained 11,000 shares, but was never given the opportunity to purchase the balance. Accordingly, the loans were made in lieu of the stock option. This practice ceased upon the advice of the Dunes Audit Committee.

In August 1979, the applicant sold his Dunes stock for approximately \$650,000. He disposed of \$500,000 in two separate incidents which occurred during the same month.

First, the applicant entered into a business proposition with Louis Corso. The applicant had been previously introduced to Corso by Morris Shenker, and knew Corso as a customer of the Dunes (R-22 and R-76). The applicant had also been to Corso's office on a few occasions on Dunes business. During August 1979, the applicant was solicited by Mr. Shenker to invest in a security company owned by Corso, known as Identimat. The applicant was aware that the Dunes had purchased equipment from Identimat and, upon information provided by Mr. Shenker, believed that the Dunes might purchase Identimat. In any event, Mr. Shenker recommended the transaction and advised the applicant that there was no risk involved, i.e., either he would get his money back or he would make a big profit. The nature of the investment and the circumstances underlying it were in dispute. However, on August 22, 1979, the applicant gave two checks in a total amount of \$250,000 to Corso. One check in the amount of \$200,000 was payable to Corso, and the second check in the amount of \$50,000 was payable to Vincent Cafaro (R-79 and R-152). The applicant received no stock, notes, or other written security for the monies given to Corso. Also, he had no knowledge of any other investors in Identimat. Ultimately Identimat was not successful. Corso repaid approximately \$127,000 prior to mid-1982, but did not make any further payments. The applicant secured the assistance of an attorney, who, on October 28, 1982, successfully secured a promissory note payable on demand from Corso to the applicant in the amount of \$123,000 (R-77 and R-78). Corso promised to commence making payments on the note in January 1983. It was stipulated that there is a current balance on the note in the amount of \$53,463.20.

On or about December 21, 1982, the applicant proceeded to Mr. Corso's office for the stated purpose of securing some payment on the note, although payments were not to recommence until January 1983. The applicant was unable to enter Corso's office; however, he did enter the office of Matthew Ianniello, which was immediately adjacent to Corso's office. The applicant stated that he believed Corso and Ianniello were related and that he intended to request Ianniello's assistance in collection on the note. Ianniello was not in his office; however, while the applicant was in the office he had a conversation with Jimmy Ida. A portion of this conversation was recorded by the Justice Department (R-113a and b). During this conversation the applicant discussed in detail his contractual relationship with the Dunes and as it related to the Golden Nugget of Atlantic City (Golden Nugget), which is discussed, infra.

Second, during an approximate one-week to ten-day period during late August 1979, the applicant gave the total sum of \$250,000 in cash to his assistant Tuller for the ostensible purpose of placing "exotic" wagers on horse races with the hopes of a big win. The applicant secured these funds by cashing a \$150,000 check payable to himself on August 22, 1979, and by cashing a \$100,000 check payable to himself on August 27, 1979 (R-20). All of the money was lost. In 1982 and during an interview by the Board, both the applicant and Tuller testified that the monies were lost at the Meadowlands Racetrack (R-20 and R-142). However, it was established that the Meadowlands was closed at that time. Thereafter, the applicant and Tuller have testified that the monies were lost at other tracks. This dispute will be discussed further, infra.

In February 1982, Greg Graison, employed in the Dunes Audit Department, was transferred by Mr. Shenker to the New York office (R-2). Mr. Graison was placed in charge of collections, ostensibly because of various problems, which will be discussed, infra. Tuller assisted Graison.

In 1982, the applicant's compensation from the Dunes was \$250,000 per year, consisting of a \$150,000 contract and a \$100,000 consultant contract, Mr. Shenker sold the applicant's consultant contract and his preferred customer list (R-121) to the Golden Nugget in New Jersey. The Golden Nugget purchased the VIP customer list for \$900,000 and assumed the applicant's consultant contract for the remaining two years at \$100,000 per year, for a total of \$1.1 million. However, the Golden Nugget made no payments to the applicant. The applicant threatened to initiate legal proceedings against the Golden Nugget. A settlement was reached in the amount of \$600,000. The applicant had incurred

outstanding markers at the Golden Nugget in the amount of \$100,000, which was credited against the settlement amount. With regard to his \$100,000 indebtedness at the Golden Nugget, the applicant admitted that he had "rolled over" his credit. More specifically, the applicant took new markers to pay off old markers. The applicant testified that this was done with the express knowledge and approval of the Golden Nugget, by reason of the pending lawsuit.

Mike Lando, a preferred patron, frequently made recommendations to the applicant, who relied thereon and approved credit. Ultimately, there came a time when Lando failed to pay his debts. In addition, upon inquiry to other patrons by the cage, it was learned that they had "made payment" to Lando, which monies had not been remitted to the cage (R-3 and R-13). During 1983 the applicant, following communications with Lando, made assurances that Lando would pay the total amounts due; however, no payments have been made. At this time, Lando still owes the Dunes approximately \$120,000 (R-140).

In early 1983 Clifford and Stewart Perlman entered into an agreement with Mr. Shenker to purchase the Dunes. Included was a provision that the Perlmans would operate the Dunes for three months. Upon the Perlmans' arrival, they drastically changed the type of patron to be sought. More specifically, they wanted only high-credit players. The applicant disagreed openly with this shift in policy.

On April 27, 1983, the applicant brought a celebrity golf junket to the Dunes, which consisted of 300 people, not all of whom were on the charter plane. Included on the junket was Murray Wilson, the owner of a restaurant and an importer of merchandise from Korea. Mr. Wilson was considered a highly valued customer. He had a \$100,000 line of credit and had been a preferred customer for approximately 15 years. His credit history was excellent. In the past, Mr. Wilson had lost several hundreds of thousands of dollars at the Dunes on credit, which he had always paid in a timely manner (R-80). In addition, the applicant often and uniformly relied upon Mr. Wilson's recommendations concerning new patrons and credit. These recommendations had proven reliable. Also on the junket were approximately 20 persons of Russian/Jewish extraction who had been recommended by Mr. Wilson (P-2). Credit for these patrons was approved and issued consistent with Mr. Wilson's recommendations as had been done previously. When the junket arrived at the Dunes, Mr. Wilson had an outstanding credit balance of \$90,000 (R-80). He made payment by means of two checks. He then proceeded to incur new indebtedness in the

amount of \$100,000. However, when Mr. Wilson's New York bank refused to honor the checks as presented, an incident developed, the circumstances of which are in dispute. As a result, neither Wilson nor any of the persons he recommended be included on the junket have made payment on the credit used, in the amount of approximately \$1 million (R-140 and R-143). Letters were written by a representative of the Dunes to Mr. Wilson in an unsuccessful attempt at appeasement (R-145 at 17; P-12). These letters were written at the applicant's request. Although the balances have not yet been paid, it appears that Mr. Wilson, on behalf of himself and the other persons involved, is continuing to negotiate a potential settlement.

In the aftermath of this incident there was a dispute concerning the applicant's authority to grant credit. On May 2, 1983, Clifford Perlman revised his earlier decision and increased the applicant's credit authorization to \$50,000, effective April 14, 1983 (P-6).

Ultimately, the applicant was suspended from his position by Michael J. Hessling, vice president and director of casino operations, with the approval of Clifford Perlman (R-145 at 4). Nevertheless, the applicant continued to receive his salary at the direction of Mr. Shenker.

In 1983, Tuller's employment was terminated through the authority of Clifford Perlman.

As a result of the Perlmans' operation of the Dunes for a three-month period, the hotel incurred a \$30 million loss. At that point, the contractual relationship was terminated and management of the Dunes was reassumed by Mr. Shenker. Mr. Shenker reinstated the applicant.

During mid-1983 a Dunes patron incurred a debt of \$5,000 (R-9). Following collection efforts by Dunes personnel, they were advised that the debt had been paid to Al Zwicker, an employee of the New York office and the brother-in-law of the applicant. Ultimately, \$2,500 was paid to the Dunes. Upon learning of the incident, the applicant terminated Zwicker's employment. Further, the applicant represented to the Dunes that he would make good on the outstanding balance. The balance to date remains at \$2,500 (R-140).

Louis Magnano, of Olean, New York, and self-employed in the autobus business, was a preferred junket customer of the applicant approximately ten times during a fifteen-year period. Mr. Magnano was a credit player; in 1983 he had a credit line of between \$75,000 and \$100,000, and he was frequently a big winner and loser (R-11). The applicant relied upon patron recommendations made by Mr. Magnano. In November 1983 Mr. Magnano incurred a \$68,000 indebtedness at the Dunes from his gambling activities. He commenced making payments in May 1984. Payments were made to Tuller. In exchange, Mr. Magnano did not receive his markers. Full payment was made prior to December 1984. However, in December 1984 Mr. Magnano learned that his markers had been deposited in his bank by the Dunes. Mr. Magnano inquired of the applicant, who advised that the matter would be taken care of shortly thereafter. Also in December 1984, Mr. Magnano incurred some difficulty obtaining credit at Caesar's in Atlantic City by reason of purportedly unpaid markers at the Dunes. The markers were paid shortly thereafter. Mr. Magnano testified that he continues to trust the applicant.

By means of a telex, dated February 8, 1984, the applicant had been advised not to bring any more junkets to the Dunes. In mid-March 1984 the applicant was suspended by the Dunes, effective January 27, 1984, via a telex from Mr. Shenker.

Subsequently, the Dunes sent the applicant a list of several hundred names of persons who were indebted to the hotel. The Dunes requested that Mr. Weintraub make attempts to collect and offered him a commission on any collections. However, the applicant refused the offer, one reason was that the commission offer was substantially less than the amount the Dunes paid collection agencies.

The applicant's current income is approximately \$97,000, which is from his jewelry business and other financial interests.

On March 9, 1984, the applicant applied for credit at the Sands Hotel and Casino (Sands) in Atlantic City (R-117). A \$25,000 line of credit was granted, which required the approval of two credit executives and which was issued despite apparent problems in bank record checks. From March 10, 1984 to June 8, 1984, the applicant played at the Sands and used and paid off his credit balance. However, on June 1 and 8, 1984, the applicant took a total of \$25,000 in markers, which he lost and which have not been paid. Four invoices have been sent by the Sands to the applicant. Further, on six separate occasions between October 29, 1984 and March 18, 1985, the applicant has made

verbal promises to pay (R-118). The Sands also sent an "attorney's letter," dated April 9, 1985, requesting payment. The applicant did not respond to this letter. On April 18, 1985, the applicant called the Sands and requested an additional 60 days in which to make payment (R-119). No payment has been made to date. The Sands, which opened in August 1980, currently has \$11 million in outstanding receivable from patrons.

The applicant is able currently to secure jewelry of an unlimited value (in excess of \$1 million) on credit in the jewelry exchange upon a handshake.

The applicant currently operates occasional junkets to Puerto Rico and to the Sands in Las Vegas.

In addition to his substantial loss of income from the casino industry the applicant has incurred an additional loss, because much of his living expenses were paid by his employer as a perquisite of his employment.

The celebrity golf tournaments and other efforts by the applicant resulted in substantial contributions to many charities in Las Vegas and New York, principally those involved in cancer research.

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

**(B) DISPUTED FACTS**

Although there were innumerable factual disputes, they can be broken down into separate categories, as follows:

1. the applicant's duties and responsibilities, i.e., scope of responsibilities, as office manager in New York, especially, vis-a-vis Tuller's duties and responsibilities;
2. the nature of the relationships, if any, between the applicant and various bookmakers;

3. the role, if any, of the applicant in the credit scam conducted against the Dunes during 1977/78;
4. the circumstances underlying the transaction between the applicant and Louis Corso in 1979 and, the circumstances underlying the applicant's attempt to contact Matthew Ianniello;
5. the circumstances underlying the applicant's purported loss of \$250,000 wagered on horse races in August 1979;
6. the nature of the applicant's role in the check cashing activities of Todd Derlachter in 1973;
7. whether the applicant had any knowledge of and/or association with organized crime;
8. the nature of the applicant's role in the issuance of credit and the inability to collect indebtedness from certain patrons who accompanied Murray Wilson on a junket in April 1983;
9. The applicant's business practices;
10. whether the applicant testified truthfully during sworn interviews conducted by the Division; and
11. the applicant's reputation.

For simplicity, each of these areas will be dealt with separately.

#### 1. The Responsibilities of the Applicant as Office Manager

It was generally acknowledged that as office manager the applicant was ultimately responsible for the entire operations of the New York office. However, there was a dispute concerning the breakdown of various functions among employees in the office, specifically concerning the applicant and Tuller. Nevertheless, it was clear that Tuller reported to the applicant.

The applicant testified that his basic responsibility was to secure patrons for the junkets. He did this primarily by customer contact and ensuring that the office records, i.e., the Rolodex file and preferred customer list, were maintained and updated. Also, the applicant was in contact with various preferred customers concerning their recommendations of new patrons and credit lines. It was apparent that the applicant had authority to grant credit to patrons. Prior to the arrival of the Perlman's, the applicant had virtually no limit on the amount of credit which he could grant (R-144 at 6). On any occasion when the request for credit was extraordinarily high the applicant would confer with Mr. Shenker. In essence, the applicant enjoyed a free reign regarding the operations of the field office and attendant duties (R-144 at 29).

The applicant also testified that he relied heavily upon Tuller. His testimony was corroborated by Mr. Drost (R-146 at 40 and 41). In fact, Tuller was hired to be the person primarily responsible for collections in the New York office. Tuller arranged for collections during the return flight on every junket (R-21 at 71; R-103 at 56; R-125 at 3; R-131 at 5, and R-146 at 40). Although the applicant was ultimately responsible for collections, Tuller performed that function (R-146 at 82); however, on occasion the applicant became involved in collection activity.

Although the Division disputed the breakdown in functions as described, no evidence was offered to refute the description, which emanates from the testimony of the applicant both during the hearing and during sworn interviews conducted by the Division, the various credit card records of the Dunes, the testimony of Louis Magnano, the various sworn statements taken from Tuller, the sworn statement of Mr. Drost and the sworn statement of Inez Anderson, who was in charge of the cage at the Dunes.

It was also established that Tuller on occasion granted credit to patrons. However, Tuller's authority to grant credit was clouded at best. It appears that he acted on occasion with the express knowledge and assent of the applicant and, would place the applicant's initials on various credit cards (R-144 at 50). On other occasions, it appears that Tuller, acted with inferred authority and granted credit (R-144 at 7; R-142 at 3). The Division offered the sworn statement of Mr. Hessling, who stated that Tuller was not authorized to grant credit (R-145 at 5). However, the overwhelming proofs, including the statements of Ms. Anderson and Mr. Drost, indicate that Tuller did, in fact, grant credit, which was honored routinely by the Dunes' casino cage personnel. Further, it was evident that Tuller authorized credit for many of the patrons who were involved in the credit

scam against the Dunes during 1977/78 (R-30, R-41, R-43, R-45, R-46, R-47, R-51, R-52, R-53, R-54, R-55, R-56, R-57, R-58 and R-59).

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

1. The applicant was ultimately responsible for the entire operations of the Dunes New York office.
2. With the exception of the time period during which the Perlmans operated the Dunes, the applicant had authority to grant virtually unlimited credit to patrons. In the event the amount of credit requested was extraordinarily high, the applicant would confer with Mr. Shenker.
3. Although the applicant was occasionally involved in collection activities, Tuller was the primary employee in the New York office responsible for collection and banking activities.
4. Tuller performed his collection activities on a day-to-day basis.
5. It was also evident that Tuller had inferred authority from the applicant to and did grant credit to various patrons of the Dunes.

**2. The Purported Relationship between the Applicant and Bookmakers**

The Division contended that the applicant had personal and business associations during a period in excess of 30 years with known bookmakers, including Charles Stein, Nicholas Forlano, Milton Wekar, Milton Bialostock, Al Tuller, Howie Engel, Charles Heller, Frank Reed, Max Courtney, Charlie Brudner, Willie Winters and Jimmy Leigh.

With regard to Messrs. Ritter, Courtney and Brudner, the applicant acknowledged that they had reputations as bookmakers, that the applicant and his first wife patronized once a resort owned by the three and that Messrs. Courtney and Ritter are currently retired and are members of the same social and philanthropic club as the applicant. There was no evidence offered to refute the testimony of the applicant.

Therefore, no relationship of any kind between Messrs. Ritter, Courtney and Brudner and the applicant was established. Further, the membership of the applicant and Messrs. Courtney and Ritter in The Town Club does not reflect negatively upon the applicant.

At the inception of the applicant's employment at the Dunes in 1962 he came into contact with Howie Engel. Engel was known to the applicant at that time as a former bookmaker. In the absence of any evidence that Engel participated in illegal bookmaking activities during the time of his business association with the applicant, no negative inferences can be drawn therefrom.

In 1963 Engel hired Tuller and assigned him to the New York field office. At that time, the applicant knew Tuller was a former bookmaker and runner who had been employed in that capacity by Mr. Engel. During the following 20 years Tuller became a close friend and trusted associate of the applicant. In the absence of any evidence that Tuller ever repeated his illegal activities following his employment by the Dunes, no negative inferences can be drawn from his relationship with the applicant.

The applicant testified that he had no knowledge of Charlie Heller. Absent any proof to the contrary, the applicant's testimony is accepted.

The applicant has known Milton Wekar for the past 40 years. Wekar is approximately 70 years of age. He was a junket patron of the applicant on a single occasion in May 1982 (R-18). On this occasion, the applicant waived the credit checks, because he knew that Wekar had the financial capability to cover his line of credit. As will be discussed hereafter, such waivers were permitted by the Dunes and were not uncommon. Also, the applicant participated in one social activity with Wekar in 1983. At that time, the applicant, Wekar and Charles Meyerson, another former bookmaker who is currently licensed by the Commission, together with their spouses, had dinner at a restaurant and gambled at a casino in Las Vegas. The applicant testified that he had no knowledge of any criminal record history of Wekar; further, none was produced by the Division. Again, absent any proof that the extent and nature of the relationship between the applicant and Wekar was anything more than as testified to by the applicant and absent any proofs that the relationship was nefarious in any regard, no negative inferences can be drawn therefrom.

The applicant met Willie Winters approximately 30 years ago. Winters had a jewelry counter in the jewelry exchange on the same block as the applicant's business. The applicant never placed bets with Winters, nor was Winters ever a junket customer. Absent any proofs of any relationship between the applicant and Winters, no negative inferences can be drawn.

Jimmie Leigh lived in the vicinity of the applicant. No negative inferences can be drawn from this fact.

Milton Bialostock resided on Long Island. His criminal record history reveals a 1964 bookmaking conviction and a \$50 fine, a dismissal of a charged offense in 1975, and in 1976 an apparent conviction for illegal gambling activities and a \$500 fine. Also, Bialostock was a junket patron on numerous occasions prior to 1983. There was no evidence that the applicant was aware of Bialostock's criminal record history. Further, there was no evidence that the facts that Bialostock was a bookmaker and was concurrently a junket patron bore any relationship as one fact to the other. Also, there was no evidence to suggest that the applicant and Bialostock had any relationship whatsoever. Accordingly, no negative inferences can be drawn therefrom.

There is no question that the applicant knew well the reputation of Messrs. Stein and Forlano as very substantial bookmakers and, had known them for approximately 40 years. The applicant testified that he was basically aware of their criminal record histories, including their incarceration. In addition, the applicant had a friendly relationship with Stein and his family and had borrowed money from Stein in the early 1950's. Also, Forlano was a former junket patron on a few occasions. In addition, Messrs. Stein and Forlano had, on a rare occasion, purchased jewelry from the applicant. Also, Forlano had on a few occasions recommended patrons to the applicant. Nevertheless, the applicant testified that he and Messrs. Stein and Forlano had grown apart over the years, which the applicant attributed to their criminal activities. Nevertheless, the applicant had no reason to believe that they were in any way associated with organized crime until their incarceration shortly before their deaths.

Although the applicant had a relationship with and knew Messrs. Stein and Forlano over a substantial period of years, there was no evidence that this relationship was substantial nor was there evidence that it was to any degree predicated upon Stein and Forlano's illegal activities. In fact, it was apparent that the "relationship" was

nothing more than casual and that it had deteriorated over the years. Accordingly, no negative inferences can be drawn therefrom.

The Division also raised issue with the fact that the applicant had sold jewelry at various nightclubs and other entertainment establishments in New York City on occasions when he was aware that bookmakers and their customers were "settling up" bets. However, there was no evidence to indicate that the applicant was involved to any degree in these illegal activities and, it was not unlawful for the applicant to sell jewelry under such circumstances. Accordingly, no negative inferences can be drawn therefrom.

The Division also raised issue with the fact that bookmakers comprised an identifiable percentage of the applicant's junket patrons, particularly during the early years of his tenure with the Dunes. Although the applicant readily acknowledged this fact, there was no evidence which would indicate that there was anything nefarious and, the authorities in Nevada as well as Dunes officials never registered a single complaint with the applicant.

In conclusion, it was abundantly evident that the applicant never placed bets with bookmakers, nor did he ever enter into any business or other relationships with bookmakers that were predicated upon illegal activities. In addition, the extent of the applicant's contacts with bookmakers, primarily as junket patrons, was not substantial enough to establish any relationship, let alone a nefarious relationship.

I further **FIND** that:

6. The applicant had no business or personal relationship with Frank Ritter, Max Courtney or Charles Brudner.
7. Although the applicant knew Howie Engel as a former bookmaker, it was evident that Engel did not participate in such activities during the time that they were associated. Accordingly, no negative inferences can be drawn therefrom.
8. Although the applicant knew Tuller as a former bookmaker and runner, there was no evidence that Tuller participated in such illegal activities during the time of their association. Accordingly, no negative inferences can be drawn therefrom.

9. The applicant does not know Charlie Heller.
10. The circumstances under which the applicant has known and been in the company of Milton Wekar are harmless and insignificant, and no negative inferences can be drawn therefrom.
11. The applicant has no personal or business relationship with Willie Winters, and no negative inferences can be drawn therefrom.
12. The applicant has no personal or business relationship with Jimmie Leigh, and no negative inferences can be drawn therefrom.
13. Although Milton Bialostock was a frequent customer on junkets, there was no evidence to establish that there was any relationship with the applicant nor that the applicant knew of Bialostock's criminal record history. Accordingly, no negative inferences can be drawn therefrom.
14. The applicant had a personal relationship with Charles Stein and knew Nicholas Forlano for approximately 40 years.
15. The nature of the applicant's contacts with Stein and Forlano bore no relationship whatsoever to Stein's and Forlano's participation in illegal activities.
16. The applicant's contacts with Stein and Forlano decreased over the years.
17. The applicant had no knowledge that Stein and Forlano may have been connected with organized crime.
18. The nature of the relationships and contacts between the applicant and Messrs. Stein and Forlano were minimal and harmless.
19. No negative inferences can be drawn from the applicant's relationship and contacts with Messrs. Stein and Forlano.

20. The applicant had no significant personal nor any business relationship with any known bookmaker.
21. The inclusion of known bookmakers as junket patrons violated no federal, state or local law, nor did it violate any Nevada gaming regulation or policy of the Dunes.
22. The applicant was never notified not to include bookmakers as junket patrons.
23. Accordingly, no negative inferences can be drawn therefrom.
24. These contacts were minimal and insignificant.

### 3. 1977/78 Credit Scam

There was no dispute that the \$400,000 credit scam during 1977/78 was effected through Perfetti's established relationship with the applicant and through Tuller's ability to issue credit under inferred authority from the applicant. Essentially, the applicant was ultimately responsible for the credit scam. Also in dispute was whether the applicant had any knowledge of the perpetration or perpetrators of the scheme and whether the applicant participated therein. The significance of the scam with regard to the applicant's business practices was in dispute and will be discussed, infra.

The applicant has maintained at all times that he had no prior knowledge of the credit scam, including the use of fictitious names, addresses, etc., did not know the identity of the perpetrators of the credit scam, did not know that the perpetrators of the credit scam are purportedly linked to organized crime, believed that Perfetti's track record with regard to patron recommendations warranted continued trust prior to the credit scam, and stated that the perpetrators of the credit scam traveled to the Dunes by means other than on a junket.

The Division contended that the contrary of the applicant's testimony was the more accurate version of what occurred. This contention was based upon the purported membership of the perpetrators in organized crime, Perfetti's relationship with the

applicant, the credit in issue was approved by the applicant (see credit card exhibits previously identified) and because some of the perpetrators were previously patrons of the New York office.

Although the Division's theories may be remotely viable on paper, they are not borne out by the credible evidence. More specifically, the applicant's version of the incident was reasonable and plausible. Further, his version is consistent with his explanations during his interviews by the Dunes security chief Drost and during sworn interviews with the Division. In addition, the applicant's version is consistent with the information contained on the credit cards and Rolodex files, especially insofar as Perfetti's track record of recommendations (R-146 at 22). Also, it is believable that the applicant did not know the identity of the perpetrators, because it was established that they were not on a junket and that the credit and collection efforts for this group were handled by Tuller (R-14, R-21 and R-104). In addition, the investigation conducted by Mr. Drost corroborates fully the version of the incident described by the applicant (P-3 and R-60). Mr. Drost's testimony during a sworn interview conducted by the Division also supports thoroughly the applicant's testimony (R-146). Further, Drost conducted an off-the-record interview with Perfetti, during which Perfetti admitted, against his own interests, that he was used as a tool by the perpetrators of the credit scam and that he did not want Mr. Drost to inform the applicant of this fact (R-146 at 15, 34 and 77). In the final analysis, the applicant's version of the incident is supported by all of the relevant evidence in the record. Further, the Division's theory is not supported by any credible evidence.

I further **FIND** that:

25. The applicant had no prior knowledge of the credit scam.
26. The applicant did not know the vast majority of the perpetrators of the credit scam.
27. The applicant's reliance on Perfetti's recommendations was reasonable and was supported by an 11-year track record of successful recommendations.

28. The credit scam was accomplished, in part, by the perpetrators traveling to the Dunes by means other than on a junket.
29. The applicant had no knowledge of the credit scam until difficulties arose with regard to collection efforts.
30. The applicant played no role in the credit scam.

#### 4. Investment in Identimat/Ianniello Office Visit

This section concerns the circumstances underlying Mr. Weintraub's purported investment in Identimat and, the significance of his visit to Ianniello's office for the ostensible reason of seeking assistance in securing repayment.

The applicant stated that he knew Corso only as a patron of the Dunes and as the head of Identimat. The applicant relied upon Mr. Shenker's recommendations, which were accepted at full value based upon a long-time business and personal relationship. Mr. Shenker's recommendations were supported by representations made to the applicant and his personal knowledge of the business relationship between the Dunes and Identimat. The applicant had no reason to believe that his investment/loan was anything other than a "sure thing."

The applicant's testimony is consistent with his testimony before the Board on July 15, 1982 (R-20). Also, this testimony was corroborated by Mr. Shenker during his interview by New Jersey State Police Detective I Goree Fleck, who is assigned to the Division. In addition, the applicant asserted that he had no knowledge of any purported involvement by Corso in organized crime activities, as proffered by the Division. As will be discussed, infra, there was no evidence which would link the the applicant to Corso other than through a few junkets and the subject investment. Also, there was no evidence to refute the applicant's disclaimer of knowledge of any involvement of Corso in organized crime. In fact, there was no evidence of any criminal record history for Corso and, he was identified by law enforcement authorities only since the 1970's and only in the capacity of an associate.

Under the circumstances presented and in the absence of any evidence to the contrary, the applicant's willingness to make an investment/loan with Corso was reasonable and no negative inferences can be drawn therefrom.

The Division also questioned the nature of the transaction, i.e., whether it was a loan or an investment. During the hearing the applicant characterized the transaction as an investment. However, during an interview by the Division the applicant characterized the transaction as a loan (R-22 at 121). The absence of a written record of the transaction contributes to the confusion. Further, in Corso's letter to the applicant's attorney, which was accompanied by the note, the transaction was also characterized as a loan (R-77). Det. Fleck interviewed Corso, who characterized the transaction as a personal loan as opposed to an investment in Identimat. However, Mr. Shenker identified the transaction as an investment.

I am more persuaded to believe the applicant's testimony during the hearing, which was corroborated by Mr. Shenker. Corso's characterization is inherently lacking in credibility given the Division's evidence regarding his association with organized crime. Also, whether the transaction constituted a loan or an investment is of no real significance given the reasonable circumstances underlying the transaction and because the underlying nature of the incident has remained constant throughout.

Last, the Division raised issue with the check written to Cafaro in the amount of \$50,000 (R-79). More specifically, were whether the applicant knew of Cafaro, the apparent noninvolvement of Cafaro in Identimat and his purported involvement in organized crime.

The applicant testified that he had absolutely no knowledge of Cafaro. This testimony was consistent with testimony he gave to the Division during sworn interviews (R-2 at 38; R-22 at 121) and before the Board (R-20). There was no evidence to suggest that the applicant had any knowledge of the identification of Cafaro by law enforcement officials as a participant in organized crime. Further, Corso's letter to the applicant's attorney corroborates the applicant's testimony concerning the absence of any knowledge of Cafaro (R-77). In addition, Cafaro's criminal record history reveals only a few minor offenses, the most recent of which concerned an arrest on June 11, 1965, which charges were dismissed (R-152). In the final analysis, the applicant's testimony was corroborated by all other relevant evidence in the record. Accordingly, it is believable. Therefore, no

negative inferences can be drawn from the applicant's conduct. Nevertheless, it is recognized that the applicant's conduct in this regard was careless.

I further FIND that:

31. The only knowledge the applicant had of Corso prior to 1979 was as a junket patron, as an acquaintance of Mr. Shenker's and as a vendor of the Dunes.
32. The applicant's reliance upon Mr. Shenker's recommendation regarding an investment in Identimat was reasonable.
33. There was no evidence concerning the applicant's investment in Identimat from which negative inferences could be drawn.
34. The nature of the transaction, i.e., whether it was a loan or an investment, was of no significance.
35. The applicant's testimony that he had no knowledge of Cafaro was corroborated by all the relevant evidence in the record, was reasonable and was persuasive.
36. No negative inferences can be drawn from the fact that the applicant wrote a check to Cafaro as part and parcel of the applicant's transaction with Corso. However, the applicant was careless in this regard.

Also involved in this area of dispute was the significance, if any, of the applicant's visit to Matthew Ianniello's office on December 21, 1982. This issue must be examined in light of the Division's contentions that the applicant knew Ianniello was and is involved in organized crime and sought out Ianniello's assistance in consideration thereof. The applicant denied these allegations.

The applicant's visit to Ianniello's office was preceded, on November 15, 1982, by the appearance of Barry Slotnick, the applicant's New York attorney. Slotnick met Ianniello, and a portion of their conversation was also recorded by the Justice Department (R-112). Slotnick informed Ianniello that he wished to discuss the subject of Mr.

Weintraub's application for licensure in Las Vegas and an impending hearing. The remainder of the conversation was not recordable. The applicant testified that he had no knowledge of nor did he request Slotnick to meet with Ianniello (R-22 at 158). Absent more information concerning the nature of this communication, it is impossible to attribute any significance thereto, other than through gross speculation. This is so even when the incident is considered together with the other evidence.

The applicant testified that he entered Ianniello's office after he could not to enter Corso's office, which was immediately adjacent. Further, the applicant, upon a belief that Corso and Ianniello were related, intended to seek Ianniello's assistance in securing repayment on the note. Although Corso had not made payment for some time, he had executed the demand note to the applicant and had agreed to recommence payments in January 1983. Nevertheless, the applicant testified that he was in need of the monies in December 1982. The applicant also acknowledged that he was aware of Ianniello's reputation in some circles as involved in organized crime by means of a newspaper article he read in 1977 (R-21 at 132 and 133; R-75). However, the applicant placed no value on the newspaper article, primarily because of the applicant's prior personal experience with inaccuracies in newspaper articles concerning organized crime (R-22 at 161). In addition, he stated that there was no prearranged meeting. Once in the office, the applicant had a conversation with Jimmie Ida (R-113). Although the applicant disclaimed that he had met Ida previously, he indulged in an extensive personal discussion concerning the status of his licensure in both New Jersey and Nevada as well as the status of his contractual relationship and payments thereunder with the Golden Nugget (R-113). The applicant contended that the tape recording was not of the complete discussion with Ida. Further, he claimed that he was depressed by reason of the circumstances surrounding his contract and told his problems to everyone.

The applicant's disclaimer of not having met Ida previously, although he later speculated that he may have met Ida as Ianniello's driver on an occasion preceding a junket, was not borne out by the nature of the discussion. Rather, it was apparent that the applicant had had prior contacts and/or communications with Ida. There was no evidence which would shed light on the nature of any such contacts or the extent thereof. Further, it was evident that the applicant knew Ianniello well enough to feel confident that attempts to communicate would be received favorably. Of course, this could occur because Ianniello had been a junket patron. . In addition, it must be noted that during his conversation with Ida the applicant referred to the subject of organized crime with a negative connotation. This reflects favorably upon the applicant.

The nature and significance of the applicant's visit to Ianniello's office is extraordinarily perplexing. However, in light of Ianniello's status as a junket patron and as an occasional client of Mr. Shenker together with the applicant's plausible explanation, no negative nor positive inferences can be drawn therefrom.

I further **FIND** that:

37. The applicant entered Ianniello's office only after an unsuccessful attempt to enter Corso's office, which was adjacent thereto.
38. Slotnick visited Ianniello's office on November 15, 1982, and advised Ianniello that he wished to discuss the subject of the applicant's licensure in Nevada.
39. The significance of the stated reason for Slotnick's appearance at Ianniello's office was not revealed by any evidence.
40. The applicant disclaimed any knowledge of Slotnick's visit to Ianniello's office.
41. At the time the applicant visited Ianniello's office, he knew Ianniello as a junket patron and as an occasional client of Mr. Shenker, and was aware by means of a newspaper article read in 1977 of Ianniello's potential involvement in organized crime.
42. The applicant's unwillingness to attribute any value to the newspaper article was based upon personal experience and was reasonable.
43. The applicant entered Ianniello's office for the purpose of securing assistance in the collection of monies owed by Corso.
44. The applicant believed that Ianniello and Corso were related.
45. The personal nature and the subject matter of the conversation between the applicant and Ida indicated that the applicant had met Ida previously.

46. There was no evidence to explain the significance, if any, of the applicant's contacts with Ida.
47. Although the applicant's visit to Ianniello's office and the ensuing conversation with Ida may have significance, the nature thereof cannot be determined. No negative nor positive inferences can be drawn therefrom.

#### 5. Racetrack Losses in August 1979

In addition to the one-quarter million dollars given by Mr. Weintraub to Corso in August 1979, he asserted that he had unsuccessfully placed another one-quarter million dollars in wagers on horse races via Tuller in August 1979. The applicant testified that by reason of the trust he placed in Tuller and by reason of Tuller's expertise in horse racing, the applicant gave Tuller one-quarter of a million dollars in cash during a one-week to ten-day period in August 1979, to be wagered on exotic horse bets in the hopes of a big win. All of the money was lost at that time. Tuller provided no receipts or evidence of the wagers to the applicant, who did not request any written evidence thereof. When the applicant was questioned by the Board in 1982 regarding this incident, he stated that Tuller placed the wagers at the Meadowlands Race Track (R-20 at 64). Tuller's testimony before the Board on October 27, 1982, was identical to that of the applicant (R-142 at 13). However, the Division discovered that the Meadowlands was closed during the period the monies were purportedly lost. During a sworn interview by the Division on June 21, 1983, the applicant testified that the monies were lost at either the Meadowlands, Yonkers or Roosevelt (R-22 at 53). He did not know which track, because he did not attend the races as he did not like horse racing. In response to further queries, the applicant stated that his testimony before the Board concerning the Meadowlands was an inadvertent error and that he simply did not know which track or tracks had been patronized by Tuller during the specific period in question (R-22 at 107, 109 and 111).

The Division contended that the internal conflicts in the applicant's testimony, i.e., the length of the period of time during which the money was lost and the identity of the track together with the testimony of Tuller before the Board which identified the Meadowlands as the subject track, rendered the entire explanation not credible and false.

The Division's argument is not supported by any evidence nor by an evaluation of the existing evidence. More specifically, the basic events which transpired were described consistently throughout all of the testimonies of the applicant and Tuller. The discrepancy concerning the length of the period of time in which the money was lost was so minor that it is of no significance whatsoever. Further, the discrepancy concerning the identity of the racetrack does not appear to be significant. Clearly the applicant had no interest or concern with the track patronized by Tuller. Rather, his only concern was with the outcome of the wagers. Although it might be expected that Tuller would identify correctly the track, it was clear that he patronized the Meadowlands on a regular basis in addition to other tracks, and that his error was of no significance. Also, the applicant's testimony was entirely plausible under the circumstances. He has lived a lifestyle of a substantial gambler and views everything from that perspective. Upon finding himself with a substantial sum of money, knowing Tuller's experience and placing substantial trust in Tuller, the applicant took what for him was a reasonable risk. It is clear that the applicant has never attempted to accumulate financial assets through perseverance and savings. Rather, he seeks the penultimate win. Accordingly, his described conduct during August 1979 was believable. It must also be noted that the Division offered no evidence other than minor inconsistencies in the version of the incident proffered by the applicant to dispute the accuracy thereof. Given the essential consistency between the various testimonies, the absence of any evidence to the contrary tends to corroborate the applicant's version of an unusual incident.

I further **FIND** that:

48. The applicant's testimony concerning the loss of one quarter of a million dollars by means of wagers placed by Tuller on horse races at racetracks in New York was plausible and is believable in every respect.

#### 6. 1973 Check Cashing Incident

Although there was an allusion that the Derlachter check cashing incidents in 1973 were a part of a larger criminal scheme, there was no real contention and no proof that Mr. Weintraub was aware of the scheme, knew Zvi Ashkenazi, nor that he received any benefit whatsoever as a result of the check cashings. All monies received from the cashed checks were given to Todd Derlachter. Nevertheless, the Division contended that the applicant endorsed nine of the checks with the name Zvi Ashkenazi.

It was well established that the check cashing was done as a favor for Derlachter, who was then a high-ranking employee of the Dunes. The applicant testified that Derlachter first approached Tuller for assistance in cashing checks. Tuller took the checks to Murray Geller, a known check casher and a junket patron. The monies received by Tuller were given to Derlachter. Ultimately, Geller's business closed. Derlachter then approached the applicant for assistance. The applicant either forwarded or took the checks personally to Sam Bland, a/k/a Mr. Murphy, another check casher, whose offices were near the applicant's business. Again, all monies received were given to Derlachter.

The applicant's testimony was consistent with his testimony during an interview conducted by IRS investigators on October 25, 1977 (R-106), during his testimony before a Federal Grand Jury for the Central District of California on March 18, 1980 (R-131), before the Board on July 15, 1982 (R-20), and during a sworn interview conducted by the Division on June 21, 1983 (R-22). Also, the applicant's testimony was corroborated in full by the testimonies of Tuller during an interview with the IRS on October 25, 1977 (R-125), and during his testimony before the Federal Grand Jury on March 18, 1980 (R-132); of Murray Geller in his affidavit of September 8, 1977 (R-129), and before the Federal Grand Jury on March 18, 1980 (R-133); and the statement of Sam Bland in an affidavit, dated November 17, 1977 (R-128). In addition, on November 22, 1977, the applicant wrote to Special Agent Fred Borakove, in which he denied making the subject endorsements (R-105). In fact, the first occasion when the applicant was asked, under oath, whether he made the endorsements was on March 18, 1980, before the Federal Grand Jury, at which time he denied the acts (R-131 at 11). On all occasions subsequent the applicant has denied making the subject endorsements. It is also interesting to note that in all the documentation provided by the Division, specifically concerning statements and testimonies of other individuals involved in the transactions, at no time were any of these persons asked whether the applicant endorsed the checks.

The Division produced John A. Keckler, examiner of questioned documents for the Las Vegas Metropolitan Police Department, Criminal Ballistics Bureau, as an expert witness. The witness was well qualified as a handwriting expert, including his education, experience, professional associations and teaching experience. The witness was first contacted during April 1980 and requested to make an analysis of the subject checks. Mr. Keckler reviewed the original 28 checks (R-134), and signature samples made by the applicant and others (R-107, R-108, R-160). The study was conducted over a two year period. On April 7, 1982, the witness submitted his report (R-158). During his testimony

the witness identified various handwriting characteristics of both the known handwriting of the applicant and the unknown handwriting of the Ashkenazi endorsement on the back of the checks. Further, the witness identified the similarities and dissimilarities of the various signatures. The witness was of the opinion that the endorsements on three of the checks were made by the applicant and, further, that there was a high degree of probability that the endorsements on six additional checks were made by the applicant. The witness made no opinion regarding the subject endorsements on the remaining 19 checks. Also, the witness was of the opinion that, from his review of the sample handwriting of the applicant, the applicant had cooperated fully in providing the requested handwriting samples.

Mr. Weintraub testified that he had also consulted with a handwriting expert. Although this expert was unable to render an opinion because she did not have available the original writings, she advised the applicant that some, but not all, of the questioned signatures looked like the applicant's handwriting.

The outcome of this matter depends in large part upon the credibility of the applicant's testimony. Accordingly, his position in this matter must be fully recognized. Nevertheless, the applicant's testimony was fully consistent with his testimony given at all times prior to this hearing, specifically his denial of having made the subject endorsements, and was corroborated by the testimonies of all other individuals involved in the incident. Further, it was obvious both during the hearing and during my review of the record, and from my observations of the application's demeanor and my examination of the documentary evidence, that the applicant believed that to which he testified was true.

I have also reviewed Mr. Keckler's testimony. His study was based upon a thorough analysis of all relevant information to which was applied the appropriate technical analysis. Accordingly, the witness's opinion appears to be valid. However, the witness's testimony identified as many dissimilarities between the relevant signatures as it did similarities. Accordingly, the opinion, although reasonable, should not be accorded full weight.

I further **FIND** that:

49. The applicant's testimony at the hearing was fully consistent with his testimony made at all previous times.
50. The applicant's testimony was corroborated fully by the testimonies of Tuller, Geller and Bland given in various forums.
51. The applicant believed that that to which he testified was true.
52. Mr. Keckler's study encompassed all of the relevant original documents.
53. Mr. Keckler appeared to apply the appropriate technical standards to his analysis of the samples.
54. Mr. Keckler's opinion was valid.
55. Mr. Keckler's opinion appeared to be supported by the unofficial opinion of Mr. Weintraub's handwriting expert.
56. Mr. Keckler's opinion revealed as many dissimilarities between the subject signatures as there were similarities.
57. Mr. Keckler's opinion is not entitled to full weight.

#### **7. Purported Organized Crime Associations**

It was also contended that Mr. Weintraub had business and personal relationships with members and associates of organized crime and was himself an associate of organized crime.

In part, it was contended that the applicant had personal and business associations with Anthony Corso, Vincent Vinci, Todd Derlachter, Tony Milasi, Harold Halpern and Irvin Snofsky. However, there was no evidence offered to indicate that any of these persons were members or associates of organized crime. Further, the applicant

testified that he did not know Anthony Corso. Vinci was a retired importer/exporter of merchandise from Italy, had been on a few junkets and was considered a good customer. Derlachter has been discussed previously. Milasi was a credit patron (R-66). The applicant testified that there were two persons by the name of Harold Halpern who had been junket patrons (R-64 and R-68). One, the owner of a jewelry business in Brooklyn, had been on one junket. Because of a problem he was not invited to return (R-2 at 34). The applicant did not recall the identity of the other person, who was from Baldwin, New York. The applicant testified that Snofsky was a junket representative whom he had met once, but was not a junket patron (R-2 at 33). No negative inferences can be drawn from these facts.

Abe Margolies was identified as a potential associate of organized crime. Margolies has been employed in a jewelry business in New York City for a period of in excess of 40 years. The applicant first met him 40 years ago. Margolies is known to the applicant as a restaurant owner, as a charitable person and as a preferred junket patron. The applicant disclaimed any knowledge of any involvement by Margolies in organized crime.

The Division's proofs did not establish that Margolies is, in fact, an associate of organized crime. Further, there was insufficient proof to establish that the applicant would be aware of any such connection, if it existed.

It was also contended that the applicant had a relationship with Guisepe Gambino. However, aside from the fact that Gambino, with two companions, was at the Dunes during February 1978, and has been identified since 1979-80 as an associate of organized crime, there is no nexus established between Gambino and the applicant. The applicant testified that he did not know Gambino and maintained that Gambino was not on the junket plane in February 1978 (R-2 at 31). Clearly, no relationship of any kind has been established and there is no reason not to accept the applicant's testimony.

The Division also contended that the applicant had relationships with Angelo Son, Louis Marconi, Frank Cannone and Joseph Todaro, who were identified as members of the Bufalino crime family. In addition, Todaro was identified as a participant in the 1977-78 scam (R-47). Marconi and Cannone were identified as former junket customers (R-67 and R-68). The applicant testified that he did not know these people.

Given the findings concerning the scam and the mere identification of these persons as potential members of an organized crime family and as isolated junket patrons, there is no proof of any relationship with the applicant. The mere fact that a person is a junket patron and has been identified by law enforcement authorities as being involved in organized crime is insufficient to establish a relationship with the applicant. Accordingly, no negative inferences can be drawn therefrom.

Louis Corso and Vincent Cafaro were identified as soldiers in the Genovese family by Division witnesses. The applicant acknowledged that he knew Corso and the scope of their business relationship has been discussed previously. It is clear that Mr. Shenker was the source of the introduction to Corso. Also, the applicant had no reason to believe that Corso was linked to organized crime. In the absence of any evidence to the contrary and in the absence of Corso's criminal record history, if any, the applicant's testimony was reasonable.

Similarly, the applicant's testimony that he did not know Cafaro was corroborated and was believable. In the absence of any such evidence and given that the last entry on Cafaro's criminal record history was a dismissal of minor charges on June 11, 1965, there is no reason to believe that the applicant would know of Cafaro's brushes with the law (R-152).

Division witnesses also identified Perfetti, Remo Allio and Anthony Guarnieri as members of the Bufalino family.

Perfetti was identified as a member prior to 1975. His relationship with the applicant has been discussed in detail; however, the applicant has testified consistently at all times that he did not know of Perfetti's purported relationship with organized crime (R-21 at 54). Although Mr. Drost of the Dunes, during his sworn interview by the Division, identified Perfetti as being affiliated with organized crime, he concluded that the applicant's association with Perfetti was purely business in nature and was completely in accord with the established procedures of the Dunes (R-146 at 66). Further, Mr. Drost concluded that the applicant had no organized crime associations (P-3 at 47). Also of significance was the testimony of Gino Lazzari of the Pennsylvania Crime Commission, who described the difficulty law enforcement agencies have in identifying members of organized crime and the shroud which organized crime organizations place over their operations in order to keep them secret.

Although the applicant had a substantial and a long-term relationship with Perfetti, there was absolutely no evidence, other than speculation, to suggest that the applicant was aware of Perfetti's organized crime ties. It is also necessary to place the extent of the applicant's contacts with Perfetti in proper context. These contacts were only a few per year for approximately 11 years and were among the thousands of contacts the applicant had per year with his many patrons. Also to be considered is the positive nature of Perfetti's track record with the applicant prior to 1977. Accordingly, the applicant's testimony is persuasive.

The applicant also disclaimed any knowledge that Allio was affiliated with organized crime. Most significant is that Allio has been identified as organized crime only since 1980. This post dates the period when Allio was a patron of the applicant. Further, given the difficulties law enforcement agencies had in identifying Allio as organized crime, and in the absence of any affirmative evidence to the contrary, the applicant's testimony is reasonable.

Division witnesses identified Anthony Guarnieri as a high ranking official in the Bufalino crime family. The applicant acknowledged that Guarnieri was a junket patron on a single trip in 1963. During that trip, a representative of the Las Vegas Sheriff's office advised the applicant that Guarnieri had attended the organized crime meeting in Appalachia and was not to be brought back to Las Vegas (R-21 at 61). On the return flight, the applicant advised Guarnieri of the circumstances. Guarnieri paid off his gambling debt. Guarnieri never returned to Las Vegas. The applicant also testified that Guarnieri was not on his Rolodex file and that he did not know Guarnieri by any other name. Guarnieri's Dunes credit card contained the designation "a/k/a Anthony Todd" (R-61a). Further, the card revealed entries through 1970, which indicates that Guarnieri played at the Dunes; however, he apparently took no credit. A Dunes credit card for Anthony Todd indicated that he was a credit player at the Dunes through 1970 and that the markers were to be sent the applicant for collection (R-61b). Of course, sending the markers to the applicant in the New York was standard operating procedure. The applicant also testified that he did not know Joseph Guarnieri, Anthony Todd, Al Polean, Anthony Polean or an A. Polean. The applicant's Rolodex file contained the names of Joseph Guarnieri (R-64) and A. Polean (R-30). The Dunes has credit cards for Joseph Guarnieri (R-62), Anthony Todd (R-61b), Al Polean (R-63) and Anthony Polean (R-65). The applicant also testified that he had no knowledge that Guarnieri or any of the other named persons were in any way associated with organized crime. Also, if Guarnieri was on a junket or at the Dunes after 1963, it was unbeknownst to the applicant.

The Division's witness identified Anthony Todd, Joseph Guarnieri, Al Polean and Anthony Polean as aliases of Anthony Guarnieri. Mr. Drost identified Polean, Polan and Joseph Guarnieri as aliases of Anthony Guarnieri (R-60). Mr. Drost also testified that Guarnieri was a long-time customer of the Dunes under his various aliases. However, since Guarnieri had no convictions and paid his markers, he was a welcomed customer; and Guarnieri came to the Dunes individually and not on a junket (R-146 at 17). Mr. Drost identified Anthony Todd as a Dunes junket patron separate and apart from Guarnieri (R-146 at 18). Mr. Drost also concluded that there was no nexus between the applicant and Guarnieri (R-146 at 18). With the exception of Guarnieri's credit card, which originated in the New York office and was later sent to Las Vegas (R-61), the remaining credit cards all originated in Las Vegas (R-61b, R-62, R-63, R-64 and R-65).

Although it is apparent that Guarnieri was a patron of the Dunes subsequent to 1963, there was no evidence that he was ever a junket patron. Accordingly, the applicant's testimony that he never had contact with Guarnieri subsequent to 1963 was plausible and believable. Further, there is no reason to believe that the applicant knew that Guarnieri appeared at the Dunes under various aliases. The fact that these aliases appeared on the applicant's Rolodex file does not establish knowledge on his part. Accordingly, no negative inferences can be drawn therefrom.

The Division also argued that the applicant had a relationship with Jimmie Ida. Ida was identified in 1984 as a soldier. This identification apparently stems from Ida's guilty plea to criminal contempt in the same year (R-156).

The applicant testified that he had met Ida on only one occasion in December 1982 and that he had no knowledge of any involvement by Ida in organized crime.

Although it was evident that the applicant may have had other contacts with Ida prior to December 1982, there is no evidence to indicate the nature of these contacts. Given the fact that Matthew Ianniello, Ida's boss, was a junket patron, contacts between Ida and the applicant would not be surprising. Further, the applicant has consistently been unable to recall Ida's name (R-2 at 38), although he has identified his picture. Given the limited and recent identification by law enforcement authorities of Ida as a potential organized crime member, and in the absence of any evidence to the contrary, I am persuaded to believe that the applicant's testimony was reasonable.

The circumstances surrounding the applicant's contacts with Matthew Ianniello are more complex. On the one hand, it is evident that the applicant first came to know Ianniello (through Mr. Shenker) as a customer of the Dunes and as a former client of Mr. Shenker. This was corroborated by the testimony of Det. Fleck, based upon his interview of Mr. Shenker. The applicant had also come to know Ianniello through Abe Margolies, who was previously discussed. Ianniello was a preferred junket patron on a few occasions prior to 1983. Also, the applicant had reason to believe there was a familial relationship between Corso and Ianniello. Most significant, is that the applicant's contacts with Ianniello probably occurred or at the very least continued subsequent to the occasion when the applicant read an article in the New York Times in 1977, which identified Ianniello as a high-echelon member of organized crime (R-75). However, the applicant testified that he placed no value in and did not believe the article (R-21 at 161 and 163, R-22 at 163). Also significant was testimony by Division witnesses that Ianniello and his office were unapproachable by anyone.

The applicant's testimony is reasonable and believable. Further, aside from Ianniello's status as a junket patron, there is no evidence of any business or social relationship between the applicant and Ianniello. However, in accepting the applicant's explanation for his refusal to place any stock in the newspaper article, there is still reason to question why the applicant would enter Ianniello's office for a non-Dunes related matter. Unfortunately, there is no clear answer to this question. The applicant's actions indicate a degree of insensitivity or careless behavior in handling his personal affairs following an indication that contact with Ianniello might be cause for concern.

I further **FIND** that:

58. There is no evidence to establish that Anthony Corso, Vincent Vinci, Todd Derlachter, Tony Milasi, Harold Halpern or Irvin Snofsky were members or associates of organized crime.
59. Aside from Derlachter, which relationship was discussed previously, the applicant had no personal or business relationship with Anthony Corso, Vinci, Milasi or Snofsky.
60. Margolies was and continues to be a long-time casual acquaintance of the applicant.

61. The applicant had no reason to believe that Margolies was affiliated with organized crime.
62. No negative inferences can be drawn from the applicant's contacts with Margolies.
63. The applicant's testimony that he did not know Gambino was corroborated by the documentary evidence and was otherwise believable.
64. There was no evidence that the applicant had any relationship with Son, Marconi, Cannone or Todaro.
65. The mere fact that they may have been Dunes junket patrons on an isolated occasion and were identified as members of organized crime is insufficient to establish any relationship with the applicant.
66. The fact that they were junket patrons does not reflect negatively upon the applicant.
67. Although the applicant had a business relationship with Louis Corso, there was no reason for him to believe that Corso was affiliated with organized crime.
68. The applicant did not know Cafaro.
69. The applicant had no knowledge of Cafaro's criminal record history, the last entry on which is June 11, 1965.
70. The applicant had no reason to believe that Cafaro was affiliated with organized crime.
71. Although the applicant had a long-term and frequent relationship with Perfetti, there was no evidence of any other contact between them.
72. The applicant's contacts with Perfetti had always been of a business nature and had proven successful.

73. The applicant had no reason to believe that Perfetti was affiliated with organized crime.
74. Since 1980 Allio has been identified by law enforcement authorities as being affiliated with organized crime .
75. The applicant's contacts with Allio predated 1980.
76. The applicant had no reason to believe that Allio was affiliated with organized crime.
77. Anthony Guarnieri was a junket patron on one occasion in 1963.
78. Upon information received from the Las Vegas Sheriff's office, the applicant advised Guarnieri that he was not welcome on a future junket.
79. Guarnieri was never again a junket patron.
80. The applicant had reason to believe that Guarnieri might be affiliated with organized crime.
81. Guarnieri's name does not appear on the applicant's Rolodex file.
82. The applicant's testimony that he did not know Joseph Guarnieri, Anthony Todd, Al Polean, A. Polean or Anthony Polean, although it appears they were junket patrons, was believable.
83. There was no evidence to establish that the applicant had knowledge of the aliases used by Guarnieri on his return trips to the Dunes, which were not on junkets.
84. The applicant's testimony that his sole contact with Guarnieri was on a single junket in 1963 was believable.
85. It is probable that the applicant had contact with Jimmie Ida prior to their discussion in December 1982. The nature and extent of any such contacts is unknown.

86. Ida was only identified as being affiliated with organized crime in 1984 by reason of his conviction in the same year.
87. The applicant had no reason to believe that Ida was affiliated with organized crime, and no negative inferences can be drawn from the contact with Ida.
88. The applicant's introduction to Ianniello was through Mr. Shenker and Margolies and was as a Dunes junket patron and a client of Mr. Shenker.
89. Ianniello was an occasional junket patron.
90. The refusal of the applicant to place any value on the contents of a newspaper article he read in 1977 was reasonable.
91. Nevertheless, the contents of the newspaper article should have raised the level of the applicant's consciousness and sensitivity to any future contacts with Ianniello.
92. The applicant had no objective reason to believe that Ianniello was affiliated with organized crime.
93. Ianniello's status as a junket patron does not reflect negatively upon the applicant.
94. The applicant's attempt to contact Ianniello during December 1982 reveals a lack of sensitivity and carelessness in his personal affairs.

The Division also contended that the applicant had a criminal association with organized crime. More specifically, although the applicant was not a member of organized crime, he was associated therewith by reason of his financial contributions through his employment with the Dunes.

The Division presented Ralph Sorrentino, retired from the New York City Police Department after 28 years, as an expert on organized crime. Mr. Sorrentino had conducted investigations of traditional organized crime activities and, through his

assignment to the organized Crime Control Bureau, had access to the results of investigations conducted by other officers, information from confidential informants and information from many other law enforcement organizations. The witness described the structure and membership of various organized crime families in the New York City area. The witness acknowledged that errors had occurred in the identification of members and associates of organized crime. Police department classification of members and associates are classified information and are not readily available to the public. Also, the witness had occasion to know persons from childhood who had entered organized crime. He would occasionally meet such people on the street and exchange greetings. Mr. Sorrentino testified that the applicant was not involved in organized crime.

The Division also offered Joseph J. Coffey as an expert on organized crime. Mr. Coffey retired in March 1985 after 21 years with the New York City Police Department. His career involved the investigation of traditional organized crime in the New York City area and he was in charge of the organized crime homicide task force. Since May 1985, Mr. Coffey has been employed by the New York State Organize Crime Task Force. His qualifications were well established. This witness was of the opinion that applicant was a criminal associate of organized crime through his association with Messrs. Forlano and Stein. Specifically, during the late 1960's and early 1970's the witness participated in electronic surveillance of various organized crime suspects, including Forlano and Stein. On several occasions he had the opportunity to monitor telephonic communications between the applicant and Forlano and Stein, which conversations concerned junkets to the Dunes, but not collection efforts. On one occasion Stein indicated a desire to go on a junket. Also, on one occasion the witness followed Stein to the applicant's jewelry store, where he remained for a brief period of time. The witness concluded that the applicant was a criminal associate of Forlano and Stein. Based upon this information, the fact that the applicant conducted junkets to the Dunes, which consisted of high rollers who lost substantial sums of money, and based upon the witness's statement that everyone knows that the casinos in Nevada are owned and operated by organized crime, the witness concluded that the applicant was a criminal associate of organized crime. In essence, because the applicant provided revenues to the Dunes his association was established.

This opinion was facially and blatantly specious. In the first instance, no nexus between Forlano and Stein and the Dunes was established. Further, no nexus between the Dunes and any organized crime association was identified by the witness. Also, the

witness's observations of the applicant revealed no illegal conduct. Interestingly, the applicant testified, at a time during the hearing well before Mr. Coffey testified or the Division identified the nature of his testimony, that Forlano and Stein were occasional junket patrons and customers of his jewelry store. In essence, the applicant provided exculpatory testimony before he even knew it was necessary. Mr. Coffey's opinion was totally without factual foundation and was not believable.

The Division last called Gino L. Lazzari, who is an expert on organized crime in the northeastern Pennsylvania, western New York and Philadelphia area. Mr. Lazzari was an agent of the FBI for 32 years and, for the past six years has been inspector of field operations for the Pennsylvania Crime Commission. The witness was qualified to render an opinion. During the 1960's and during his tenure with the FBI, the witness first heard of the applicant as a junket operator. The witness was initially of the opinion that the applicant had a business association with organized crime, because he purportedly operated junkets in conjunction with junket operators from Miami, Florida, which were connected with organized crime. However, it was established that this relationship did not exist. The witness was also of the opinion that the applicant was an associate of Perfetti. This opinion was based upon the applicant's long-time contacts with Perfetti and reliance upon recommendations made by Perfetti concerning junket patrons. The witness also testified that Allio was only identified as a member of organized crime within the past five years. Further, organized crime societies are extraordinarily secretive about their membership and concerning their business associations. In fact, these organizations and their members make every effort to appear to be legitimate. Such was true with the Bufalino family and the apparent employment by its various members in the garment and other industries. The basis of the witness's opinion concerning the applicant was that the applicant was a life-long resident of New York City and, based upon the witness's experience for a three-year period in the Army some 40 years ago, he believed people from New York City were "slick" and "knew who's who." Also, people from New York City are the best hustlers.

Mr. Lazzari's opinion has no merit whatsoever. The mere fact that he would attribute knowledge of the structure and membership of organized crime families in western New York, northeastern Pennsylvania and the Philadelphia area to all persons who have been life-long residents of New York City is sufficiently ludicrous to negate any significance to his opinion.

I further FIND that:

95. Mr. Coffey's opinion concerning the applicant's purported association with organized crime was based upon assumptions for which there was no factual basis and which assumptions are not entitled to official notice.
96. Mr. Coffey's opinions were without factual foundation and were not believable.
97. Mr. Lazzari's opinion was based upon a premise that defies the imagination. This opinion is without merit.
98. Mr. Sorrentino was of the opinion that the applicant is not involved with organized crime. This opinion appeared to be based upon objective information and was believable.

It is interesting to note that during Mr. Drost's interview by the Division he testified that the applicant had no association with the wrong element or organized crime (R-146 at 45 and 47). In Mr. Drost's capacity with the Dunes he had every reason to know of any such relationships. However, after conducting an in-depth investigation of several incidents which involved the applicant and having known the applicant otherwise for a substantial period of time, he came to the conclusion that there was no such association. Also, Mr. Drost acknowledged that persons with reputations of ill repute did frequent the Dunes as well as other casinos. This appears to be a common occurrence within the casino industry as a whole. However, aside from the applicant's contacts with persons of ill repute solely as junket patrons there was no evidence that the applicant had any other relationship with these people. This corroborates fully Mr. Sorrentino's opinion.

99. Mr. Drost's opinion that the applicant had no association with organized crime was an objective assessment and was based upon an in-depth investigation and knowledge of the applicant's business and personal practice over an extended period of time.
100. Mr. Drost's opinion was persuasive in all respects.

101. The applicant had no personal or business relationships with members or associates of organized crime and was not a criminal associate of organized crime.

8. Junket Incident on April 27, 1983

Issue was raised with the applicant's role in and the circumstances underlying the incident which occurred during the celebrity golf junket, which commenced on April 27, 1983, and which resulted in approximately \$1 million in lost credit that has not been collected to date. The Division has attributed responsibility for the unpaid debts to the applicant by reason of his authorization of credit to a Murray Wilson and approximately a dozen other patrons of the 300 patrons on the junket.

Mr. Weintraub described the circumstances underlying the incident. Mr. Wilson was invited by the New York office to participate in the junket. Mr. Wilson's track record as a preferred customer, including recommendations of new patrons and credit therefore, was well established. The applicant included approximately a dozen patrons and approved credit based upon Mr. Wilson's recommendations. Some of these patrons were repeat customers (R-83, R-95, R-100 and R-102). In addition to names, addresses and telephone numbers, some additional credit information was included on the credit cards for these patrons; however, the information was not complete. Nevertheless, the approval of credit under these circumstances was consistent with Dunes' policy and procedure at that time. Also, it was consistent with the policies and procedures of the casino industry in Las Vegas. The majority of these patrons were not known to the applicant.

Upon arrival at the Dunes, Mr. Wilson had an outstanding credit balance of \$90,000. He submitted two checks in the total amount of \$90,000 to the cage and was authorized to incur new credit up to his limit of \$100,000. This method of payment of outstanding credit and receiving new credit was consistent with Mr. Wilson's prior experience.

The applicant played golf on Thursday through Saturday, which took up most of his time. During the late afternoon on Saturday, he first heard from Clifford Perlman of problems concerning these junket patrons. The applicant was advised that certain patrons

were "walking with chips." The applicant was annoyed by this information, because it appeared that the Dunes had violated its own procedures, which had been instituted upon the recommendation of the applicant. Thereafter, the applicant learned of a problem which involved Mr. Wilson.

Michael Hessling and Artie Selman had forwarded via Federal Express Mr. Wilson's checks to a Dunes contact person to be cashed in New York City. However, Mr. Wilson's bank would not cash the checks because the person who presented them was not the payee (i.e., they were third-party checks). By the time Hessling and Selman learned of this, Mr. Wilson had incurred an additional \$100,000 in indebtedness from gambling losses. They advised Mr. Wilson of the situation. He responded with extreme anger. Hessling and Selman discussed the matter with the applicant, who informed them of Mr. Wilson's background and the manner in which he had been treated previously. Thereafter, Hessling apologized to Mr. Wilson and offered additional credit. Mr. Wilson rejected this offer. Further, Mr. Wilson was so angered by the incident that he threatened not to pay his obligation and to encourage his companions not to repay any debts they had incurred. Mr. Wilson then left the casino and has not returned to this date. On May 3, 1983, Hessling, upon the applicant's recommendation, wrote to Mr. Wilson and acknowledged that the Dunes' treatment of Mr. Wilson was deplorable and apologized therefore (P-12). Further, Hessling explained that the incident was the result of recently initiated credit procedures and expressed hope for future business. Ultimately, Mr. Wilson stopped payment on his checks. Although Mr. Wilson has paid \$5,000 against his debt, the remainder of his balance and the balance of the majority of the other persons involved has not been paid to date. Nevertheless, Mr. Wilson continues to negotiate with the Dunes on behalf of himself and the others toward a settlement. The applicant does not believe the incident constituted a scam. This opinion was based upon his observations at the time and his observations of the same patrons gambling on credit at the casinos in Atlantic City.

The applicant's description of the incident was corroborated by the testimonies during sworn interviews by the Division of Ms. Anderson and Mr. Drost (R-144 and R-146). Ms. Anderson stated that the information placed on the credit cards for the subject patrons prior to the junket complied in all respects with then existing Dunes' regulations (R-144 at 35). Also, the applicant was authorized to issue the subject credit and the issuance was appropriate and consistent with past practices based upon Mr. Wilson's track record (R-144 at 36). Last, Hessling's actions concerning Mr. Wilson's checks were unique and were not based upon prior practice (R-144, p. 39). Mr. Drost stated that Hessling's

actions concerning Mr. Wilson's checks constituted a deviation from hotel procedure (R-146 at 51). Further, Mr. Drost testified that Hessling's version of the incident (Hessling was interviewed by the Division on August 27, 1984, see R-145) was not truthful. Mr. Drost conducted an investigation of the incident, including an interview of Mr. Wilson, a summary of which was included in his report of July 19, 1983 (P-3). The investigation revealed that the credit cards for the subject patrons contained proper names, addresses and telephone numbers (R-146 at 90). Mr. Drost also corroborated the applicant's testimony concerning the notification that a problem existed (R-146 at 107). Mr. Drost also learned that Mr. Wilson had made deposits prior to the junket, which deposits were sufficient to cover the two checks submitted and he had proof thereof (R-146 at 116).

The Division offered the sworn interview of Hessling (R-145). Hessling was employed by the Dunes from February to November 1983. He was of the opinion that the applicant should not have granted credit because there was no demonstrated ability of the patrons to repay (R-145 at 6). However, Hessling could not state whether the procedures he followed constituted a change, because he was not familiar with prior procedures (R-145 at 7).

It was abundantly evident that the applicant's testimony regarding the events which transpired was believable. It was consistent with his testimonies at all times prior to the hearing and was corroborated in full by the testimonies of Ms. Anderson and Mr. Drost, who were long-time employees of the Dunes, and who were thoroughly familiar with Dunes' procedures as well as the incident. Hessling's testimony was the only contradictory evidence. However, it was clear that Hessling did not have a complete understanding of the applicant's responsibilities nor of Mr. Wilson's track record. Also, it was apparent that Hessling's actions, alone, precipitated the incident. The applicant's approval of the subject credit was consistent in every regard with established Dunes' procedures. As such, it was appropriate. Accordingly, no negative inferences can be drawn against the applicant by reason of the circumstances underlying this incident.

**I further FIND that:**

102. Mr. Wilson was invited to participate in the junket.
103. Mr. Wilson recommended to the applicant that certain persons be included as patrons on the junket and recommended the amount of credit to be issued.

104. The applicant accepted Mr. Wilson's recommendations.
105. Based upon Mr. Wilson's track record, the applicant's reliance upon these recommendations was reasonable.
106. The applicant's reliance upon Mr. Wilson's recommendations was consistent with existing Dunes' policies and procedures.
107. Credit cards for the subject patrons were initiated in the New York office.
108. Names, addresses and telephone numbers, together with some credit information, were set forth on the cards. However, the credit cards were not complete.
109. The absence of complete information on the credit cards was not uncommon and was consistent with then existing Dunes' policies and procedures.
110. Upon arrival at the Dunes, Mr. Wilson paid his existing indebtedness with two checks.
111. Hessling and Selman forwarded Mr. Wilson's checks to New York to be cashed.
112. This procedure was a departure from previously existing practices.
113. Mr. Wilson's bank refused to honor third-party checks.
114. Mr. Wilson had made sufficient deposits prior to the junket to cover the checks.
115. Mr. Wilson incurred an additional \$100,000 indebtedness.
116. Hessling and Selman confronted Mr. Wilson concerning the two checks.

117. Mr. Wilson reacted with extreme anger.
118. After Hesssing consulted with the applicant, he apologized and offered Mr. Wilson more credit. This offer was rejected.
119. The applicant first learned of a problem on late Saturday.
120. Approximately \$1 million of indebtedness, which consists of obligations owed by Mr. Wilson and his companions on the junket, has not been paid to date.
121. The refusal to make payment does not constitute a scam.
122. The applicant's testimony was corroborated in full by employees of the Dunes who possess knowledge of policies and procedures and of the incident.
123. The applicant's testimony is fully believable.

#### 9. Business Practices

The Division raised issue with Mr. Weintraub's business practices, including procedures he followed in granting credit, which the Division contends resulted in uncollectable obligations, that the applicant converted monies collected on behalf of the Dunes to his personal use, and his financial practices concerning personal gaming loss obligations.

The applicant's patron reference system was not in dispute and was well established. Credit players constituted the great majority of the business because there were few cash players. The applicant relied upon preferred customer recommendations based upon their individual and previous reference track records. Incomplete information on customer credit cards that had originated in the New York office was not uncommon. Essentially, this information was waived by the applicant. Also, it was not uncommon that the credit cards lacked sufficient information to enable the Dunes' office to complete bank credit checks prior to a junket. Of course, such checks were only

performed for new patrons. On a rare occasion, the use of aliases was permitted, provided the applicant knew the true identity of the patron. This was a very flexible system. If problems developed, credit would be stopped. The applicant testified that these policies and procedures were consistent fully with the policies and procedures of the Dunes and were employed with the Dunes' knowledge and approval, and were substantially similar to the policies and procedures used by other Dunes junket representatives. The policies and procedures changed dramatically upon the arrival of the Perlman's. The applicant further testified that the rate of uncollectable accounts was not inordinate, and that the stipulated amount contained some inaccuracies and was not fully attributable to him. Also, some uncollectables were attributable to long-time patrons with positive track records, which patrons simply "burned out," and their debt resulted from their final trip.

The Division argued that the pre-junket credit procedures employed in the New York office were so loose that they resulted inevitably in substantial uncollectables. Concurrently, the applicant's willingness to rely upon customer references in granting credit to new patrons was unreasonable.

The Division offered a sworn interview of Ms. Anderson (R-144). She stated that as of 1981 Dunes policy permitted junket representatives to bring credit customers without complete credit card information and the Dunes did not stress complete bank information (R-144 at 31). In addition, the junket representatives were given wide latitude with regard to credit, i.e., Mr. Weintraub's situation was not unique (R-144 at 32). In addition, the Dunes modified its policies and procedures following a legislative enactment in 1983, which requires that all credit information be verified prior to a junket (R-144 at 33).

The Division also offered the sworn interview of Mr. Drost (R-146). Mr. Drost corroborated that junket representatives had authority to waive credit checks (R-146 at 71). Also, the witness corroborated the legislatively mandated changes in credit and collection procedures (R-146 at 73).

The credit reference system employed by the applicant was enormously successful as the Dunes won in excess of \$400 million on credit play alone from New York junket patrons. The reliability of this system is self-evident. However, there was also in excess of \$8 million in uncollectables. Business losses are an integral part of the risk of doing business and are not to be unanticipated. It is possible that if the applicant had used

tighter credit procedures he might have reduced the amount of uncollectables. However, this is speculative. Most importantly, and as corroborated by the Division's proofs, it was a fact that the policies and procedures used by the applicant were approved, accepted, relied upon and satisfactory to the Dunes. In addition, such procedures were substantially similar to those employed by the vast majority of the other Dunes junket representatives. Further, these procedures were consistent throughout the industry. The fact that the State of Nevada implemented a legislative modification does not reflect adversely upon the Dunes or the applicant.

I further **FIND** that:

124. The credit cards which originated in the New York office did not always contain complete information concerning patron identification or credit references.
125. Bank credit checks were not always completed by the New York office prior to a junket.
126. The applicant was authorized to and did waive credit card and bank check information.
127. The policies and procedures regarding credit cards and bank checks and the extension of credit by the applicant were consistent fully with the policies and procedures of the Dunes.
128. The applicant's credit reference system was successful.
129. The amount of uncollectable patron debt is not all attributable to the applicant, nor does this debt reflect negatively upon the applicant's business practices.

The Division also identified certain incidents where efforts by Dunes' Las Vegas employees to collect monies revealed that monies had been paid to the applicant (Lando and Feldman). While it is apparent that Lando did take money from several customers, which was supposed to be remitted to the Dunes, but was not, and that Lando has not repaid his own debt, this should not be attributed to the applicant. Lando

was not authorized by the applicant to make collections for the Dunes. It appears that Lando was previously a good customer who had burned out.

Similarly, the Feldmans had a positive track record and it appears that there was misinformation on the credit cards regarding the applicant. The applicant was friendly with the Feldmans and considered them to be reliable persons. This obligation was paid in full by the Feldmans in 1985 (R-140).

The Zwicker incident is also not attributable to the applicant. Although Zwicker was a relative of the applicant and an employee of the New York office, it was apparent that his misconduct was committed without any knowledge or concurrence by the applicant. Also, there was no evidence to indicate that the applicant should have anticipated such misconduct.

I further FIND that:

130. No negative inferences can be drawn against the applicant from the Lando, Feldman and Zwicker incidents.

The Division also raised issue with the fact that the applicant converted some monies collected on behalf of the Dunes to his own personal use.

It was not disputed that on three to four occasions the applicant retained monies for his personal use collected on behalf of the Dunes and that such monies were ultimately repaid to the Dunes. The applicant's explanation of the circumstances underlying these incidents was plausible and believable and was not refuted. Accordingly, no negative inferences can be drawn therefrom.

I further FIND that:

131. The applicant's personal use on a few occasions of monies collected on behalf of the Dunes was done with the prior knowledge and approval of Mr. Shenker. No negative inferences can be drawn therefrom.

The Division also raised issue with the circumstances surrounding Mr. Weintraub's personal use of monies paid to the New York Office by Louis Magnano on

his account at the Dunes, and with the applicant's explanation of the circumstances underlying this transaction.

The applicant testified that he solicited and received a personal \$50,000 loan from Mr. Magnano, which loan was made in cash and in Mr. Magnano's room at the Golden Nugget during the fall of 1984. Ultimately, the applicant repaid the loan by means of making payment against Mr. Magnano's outstanding credit debt at the Dunes.

Mr. Magnano testified that he had known the applicant for approximately 15 years and was a frequent junket customer with a credit line of \$75,000-100,000. During November 1983, the witness incurred \$68,000 in markers at the Dunes, although he was not on a junket at that time. In May 1984, Mr. Magnano paid \$34,000 to Tuller in Oleans, New York. Shortly thereafter, the witness was contacted via telephone by the applicant, who asked to borrow the monies. Mr. Magnano assented on the basis that his obligation to the Dunes would not be affected. In December 1984 and at the Golden Nugget, Mr. Magnano loaned \$18,000 in cash to the applicant, which was to be credited against his account at the Dunes. Thereafter, Mr. Magnano received a telephone inquiry from his banker concerning markers deposited from the Dunes. Mr. Magnano contacted the applicant, who advised that the matter would be taken care of immediately, which it was. Mr. Magnano testified that he had not loaned the applicant \$50,000 at the Golden Nugget out of winnings. Nevertheless, the witness testified that he continues to trust the applicant to this day.

The conflicts between the testimonies of the applicant and Mr. Magnano are not as serious as they appear to be. More specifically, it is evident that the applicant received in excess of \$50,000 in cash from Mr. Magnano on his account at the Dunes. Some of the monies were received at the Golden Nugget. Further, it was clear that all parties knew the applicant intended to use these monies personally and that the monies were to be credited against Mr. Magnano's account at the Dunes. In fact, \$38,000 was credited to Mr. Magnano's account on May 9, 1983 (R-143 attachment). The consistencies between the testimonies of the applicant and Mr. Magnano concerned each important fact in the transactions. Further, the inconsistencies appear to result from the different perspectives of both participants, and do not reveal the applicant's testimony to be false. Although the fact that the applicant used Dunes' receivables for his personal use for short periods of time raises concerns, it, individually, does not reflect negatively upon the applicant.

I further FIND that:

132. The testimonies of the applicant and Mr. Magnano were essentially consistent and were mutually compatible.
133. The applicant's testimony was reasonable in view of his perspective of the transactions.
134. During 1984, the applicant personally used in excess of \$50,000 received from Mr. Magnano payable on Mr. Magnano's account at the Dunes.
135. The applicant repaid these monies to the Dunes on Mr. Magnano's account.
136. The applicant's conduct during the transactions raises concern regarding his business practices.
137. Mr. Magnano continues to trust the applicant.

Also in issue are the circumstances under which the applicant incurred a \$100,000 debt at the Golden Nugget and the circumstances underlying the applicant's failure to pay his \$25,000 obligation to the Sands.

In the absence of any evidence to the contrary, the applicant's explanation of his obligation to the Golden Nugget was plausible, believable and persuasive. Further, this obligation has been satisfied in full.

The applicant testified that his obligation to the Sands consisted of gaming losses. In the absence of any evidence to the contrary, this testimony is believable and was corroborated by the documentary evidence (R-117). Further, the applicant has acknowledged his obligation and has, on many occasions, promised to pay. Nevertheless, the applicant has failed to make any payments. The applicant earns a substantial income and it appears that he has the ability to commence repayment. However, it was also clear that the applicant has, in the past, enjoyed a substantially higher income and the resulting loss in earnings indicates a reduced ability to pay. Further, the applicant incurred this obligation while under the false assumption that he would soon be licensed in New Jersey

and employed in the gaming industry. Although this outstanding debt does not reflect positively upon the applicant, its negative connotations are not severe.

I further **FIND** that:

138. The circumstances under which the applicant incurred a \$100,000 debt to the Golden Nugget do not reflect negatively upon him.
139. The applicant's \$25,000 obligation to the Sands resulted from monies lost in gaming activities.
140. The applicant's failure to make payment on the obligation reflects negatively on the applicant.
141. Given the applicant's acknowledgment of his debt and his promises to repay, the negative inferences to be drawn from the incident are minimal.

#### 10. Mr. Weintraub's Credibility

The Division contended that Mr. Weintraub testified falsely during this hearing and in his testimonies in many other forums identified in this decision concerning every issue of fact. Inter alia, the Division accused the applicant of selective amnesia, being argumentative, giving evasive testimony and being inconsistent. However, the Division's contentions were not borne out by my review of the record.

By reason of the nature and extent of the issues raised in this case, an evaluation of the truthfulness of the applicant's testimony, i.e., his credibility, is critical. Initially, Mr. Weintraub's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was obvious both during the hearing and during my review of the record, and from my observations of the applicant's demeanor, the witnesses who corroborated his testimony and from my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent, believable and most persuasive. More specifically, the applicant testified during 11 of the

days of hearing and in regard to each and every one of the multiple issues of fact, which concerned his entire life and career, with special emphasis upon the past 25 years. This included extraordinarily hectic and complex incidents and periods of time in the applicant's life. His testimony during the hearing and in other forums was internally consistent with minor exceptions, which are not unexpected. Further, the applicant's testimony was corroborated by all of the relevant and believable documentary evidence, including his testimonies in other forums. In addition, that portion of the Division's documentary evidence which consisted of sworn interviews conducted subsequent to the date of the objection letter and prior to the date of the applicant's request for a hearing, on an ex parte basis, without any opportunity for the applicant to attempt to affect the nature of such testimonies and from people who had no motive to testify falsely, corroborated fully the applicant's testimony in many critical areas. The record viewed as a whole supports the applicant.

It is also necessary to comment upon the nature of the objections made concerning the applicant's credibility. It was argued that negative inferences should be drawn from minor inconsistencies or from assumptions not based upon facts in evidence, but the result of pure speculation. However, the inconsistencies which did exist in the applicant's testimonies are, for the most part, the result of imprecise, argumentative and inaccurate questions, as well as permitting the applicant to digress. There is no question that the applicant was a difficult witness. It was the nature of his personality to speak freely and at length on subjects tangential to a question. This often created confusion and an appearance of inconsistency. However, this was not supported by the overall record. Clearly, this should not be held against the applicant and does not establish that he testified falsely.

The record is overwhelmingly consistent. Accordingly, I am persuaded to believe that the applicant testified truthfully.

I further FIND that:

142. The applicant's testimony during the hearing was internally consistent and was consistent with his testimonies given in other forums on prior occasions.

143. The applicant's testimony was corroborated by all of the relevant and believable documentary evidence from all sources.
144. Any inconsistencies in the applicant's testimony during the hearing and his testimonies on other occasions were minor and no negative inferences should be drawn therefrom.
145. The applicant's testimony was believable and persuasive.

#### 11. Reputation for Good Character, Honesty and Integrity

The applicant called many witnesses to attest to his good character, honesty and integrity. Those who testified were: Arthur Lashinsky, a partner in a New York brokerage company and a resident of Springfield, New Jersey, who has known the applicant for the past 30 years, a participant on many junkets, and a social acquaintance; Julian Kramer, a retired consultant to the meat packing industry, a personal and social friend of the applicant for the past 30 years, a patron on one junket many years ago and a member of the Town Club; Jules Besserman, self-employed in the plastics industry and a friend, jewelry customer and junket patron of the applicant for the past 25 years; Morris Yamner, an attorney-at-law of the State of New Jersey, an occasional social friend and a junket patron of the applicant for the past 17 years; Leone J. Peters, chairman of the board of Kushman and Wakefield, a real estate corporation, and a close friend, jewelry and junket customer of the applicant for the past 25 years; Richard M. Rosen, an attorney-at-law of the State of New York, and a former junket patron of the applicant during the past 23 years; Dr. Eugene Silberman, a teacher at the New York Medical College, a doctor, and a friend, junket patron and co-participant in charitable organizations with the applicant for the past 20 years; Lewis Groman, retired deputy inspector of the New York City Police Department for 31 years, an infrequent junket patron and an acquaintance of the applicant for the past 20 years; Albert Palocsik, a self-employed private investigator with a history of employment with the FBI and the Central Intelligence Agency, a friend of the applicant and a rare junket patron for the past 20 years; Murray B. Darvick, self-employed in the diamond business, a personal friend and has done business with the applicant for the past 38 years; Irving Friedman, employed in the real estate and insurance business, president of the Town Club, has known the applicant for ten years and has been an occasional junket patron; and Herbert L. Weisman,

an attorney-at-law of the State of New York with many years in public service, a participant in charitable functions, an occasional junket patron and has known the applicant for the past 20 years. These character witnesses were from many sectors of the communities in which the applicant lives, works and otherwise participates, and were persons who achieved a high level of success in their respective fields. Each of the witnesses personally held Mr. Weintraub in the highest possible regard. Some of the adjectives used to express their personal evaluations of his character, honesty, integrity were: "integrity of the highest caliber one can imagine;" "perfectly reliable;" "trustworthy and likeable;" "very good for gambling in New Jersey;" "judged by the people around him, of high character and moral character;" "good parent;" "his word is excellent;" "unimpeachable integrity;" "love as a brother;" "absolutely honest, genuine and truthful, of highest caliber;" "marvelous asset to gambling community by way of conduct of his affairs in comparison to others;" "no reason to question his honesty;" "shake hands with Julius Weintraub rather than accept in writing with someone else;" and "word is his bond, 100 percent believable."

The applicant also offered written statements attesting to his character, honesty, and integrity from approximately 200 persons from the religious, general, civic and casino industry communities (P-5). Each of these persons was of the opinion that the applicant is a person of good character, honesty and integrity and enjoys the same reputation in each of the communities in which he lives and works.

**I further FIND that:**

146. The applicant is held in the highest possible regard concerning his character, honesty, and integrity by many persons who represent the many communities in which the applicant lives and works.
147. The applicant enjoys an extraordinarily high reputation for good character, honesty and integrity within the communities in which he lives and works.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g provides that an applicant be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

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

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

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A.

5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartender's International Union Local 54 \_\_ N.J. Super. \_\_ (App. Div. 1985) (slip opinion at 17 and 18) the Appellate Division held that inimical means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conduct during the 1973 check cashing incident constitutes a violation of N.J.S.A. 2C:21-1a(2), forgery, which it further contends renders licensure to be inimical to the Act.

N.J.S.A. 2C:21-1a(2) defines the crime of forgery as follows:

A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

....

- (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

New Jersey has adopted the broad definition of forgery which holds that the crime may be committed by executing, or procuring to be executed, a written instrument in a fictitious or assumed name with intent to defraud. State v. Berko, 75 N.J. Super. 283, 290-1 (App. Div. 1962). It has been held that forgery is committed where the false writing if genuine would on its face be of some legal effect upon the rights of others. State v. Weigel, 194 N.J. Super. 451, 461 (App. Div. 1984) citing State v. Schultz, 71 N.J. 590, 598 (1976). "Falsely," as used in the statute implies that the paper or writing is not genuine, but fictitious, and not a true writing. State v. Berko at 290.

While the State has the burden of proving scienter, it may be inferred from the actions of the defendant. State v. Weigel at 458. The act of forgery itself implies the intent to defraud regardless of the knowledge of the one who takes the instrument. Id. In addition, a check which is made payable to a fictitious or nonexistent person is treated as a check made payable to bearer when the maker of the check knows that the payee is either a fictitious or nonexistent person. Id. at 461.

There was no dispute that the check cashings did occur and were initiated by Derlachter. The sole issue is whether Mr. Weintraub endorsed any of the checks. The Division relied solely upon the opinion testimony of Mr. Keckler, its expert. The applicant has denied the accusation. Therefore, it is necessary to first evaluate Mr. Keckler's testimony.

Historically, testimony of handwriting experts has faced strong judicial resistance, note, Authentication of Disputed Writings by Comparison: The Expert Witness, 104 U. Pa. L. Rev. 664 (1956), and it has been considered to be of the lowest order of evidence. Nelson v. Nelson 87 NW 2d 767, 770 (Iowa Sup. Ct. 1958). However, the recent trend has been toward recognition of the value of such expert testimony because of the significant improvements that the science has experienced since the beginning of the twentieth century. Id. In Nelson, the Iowa Supreme Court explained this changed attitude when it stated at 771:

One of the reasons for the low opinion of handwriting experts' testimony expressed in the early cases was the fact that in the early days of the handwriting experts, their opinion was not fortified by or with modern methods of examination and comparisons but consisted almost entirely of the bare statement of the expert's opinion that the signatures was [sic] genuine or not genuine:

In Storm v. Hansen, 41 N.J. Super. 249 (App. Div. 1956), the Appellate Division held that opinions as to the genuineness of handwritings are at best weak and unsatisfactory evidence and such proof should be received only from one whose qualifications have been properly established. Id. at 254. However, a categorical position labelling such testimony as inherently suspect was later rejected in Morrone v. Morrone 44 N.J. Super. 305, 312 (App. Div. 1957). In Morrone the court pointed out that such an argument was rejected in the famous Lindbergh kidnapping case where the testimony of the handwriting expert proved to be a crucial element in the State's case. Id., citing State v. Hauptmann, 115 N.J.L. 412, 432-435 (E.&A. 1935); cert. denied, 296 U.S. 649 (1935).

While no New Jersey cases directly address the question, the majority of authorities hold that the weight or value of opinion testimony as to handwriting depends largely upon the character of the witness and the opportunity he had of acquiring knowledge of the handwriting in question together with the cogency of the reasons for his opinion. Kucaba v. Kucaba, 18 NW 2d 645 (Neb. Sup. Ct. 1945); See, Nelson v. Nelson, 7 Wigmore, Evidence, 3 ed, 1940) § 2014; Jones, Commentaries on Evidence (2 ed) § 1307; 32 C.J.S., Evidence § 621; 20 Am. Jur.; Evidence, § 843. Thus, the value depends largely upon the grounds on which the expert bases his opinion. In re Rumbey's Estate, 106 So 2d 678, 679 (Miss. Sup. Ct. 1958). The probative force of such evidence is a question for the jury or other trier of fact. Id. citing 32 C.J.S., Evidence §§ 611-621.

The opinion of a handwriting expert can be dispositive even in the face of contradictory testimony. It has been held that a handwriting expert's opinion that the signature on an instrument offered for probate as a will is not the signature of the alleged testator, if based on sound reasons and circumstances supporting that theory, may be sufficient to overturn the testimony of subscribing witnesses that they saw the will being signed. Dunbier v. Rafert, 103 NW 2d 814, 828 (Neb. Sup. Ct. 1960); In the Matter of Estate of Foster, 699 P 2d 638, 642 (N.M. Ct. App. 1985). Further, such testimony, when supported by circumstances of probative value, has been held sufficient to overcome the impeached testimony of a notarizing officer to a deed. Clark v. Lansford, 191 So 2d 123, 125 (Miss. Sup. Ct. 1966), See also, Culbreath v. Johnson, 427 So 2d 705 (Miss. Sup. Ct. 1983).

In In re Elliott, 362 A 438 (Pa. Comm. Ct. 1976) at 443, the Commonwealth Court of Pennsylvania held that uncontradicted testimony of a handwriting expert was sufficient evidence to require invalidation, on the ground of forgery, of certain signatures on a nomination petition for the office of United States Senator. However, the court emphasized, "These experts were highly qualified both by training and experience. . . . Both witnesses explained in great detail the reasons for their conclusions or nonconclusions. Both expert witnesses were forthright and believable." Id. at 443. Moreover, the testimony in Elliott was uncontradicted. In Williams v. Philadelphia Transportation Company, 203 A 2d 665 (Pa. Sup. Ct. 1964), the Supreme Court of Pennsylvania maintained its traditional stance when it held that testimony of a handwriting expert was of the lowest grade of evidence when uncontradicted by testimony as to the facts. In Williams, the appellant introduced testimony of a handwriting expert to prove the genuineness of a signature which was denied by the appellee.

Despite the fact that the trend has been towards accepting credible handwriting expert testimony, no court has gone so far as to hold such testimony as conclusive and thus binding on the trier of fact. On the contrary, it has been held that the testimony of a handwriting expert is neither conclusive nor binding on the trier of fact. In re Estate of Graves, 144 NW 2d 35, 37 (S. D., Sup. Ct. 1966). Further it is within the province of the fact finder to determine the value and weight to be given the testimony of experts. United States Fidelity & Guaranty Company v. Perk, 491 SW 2d 791, 793 (Ark. Sup. Ct. 1973); See 31 Am. Jur. 2d, Expert and Opinion Evidence, § 187 at 756; 32 C.J.S., Evidence, § 621 at 787-8; Annotation, "Review on Appeal of Evidence as to Genuineness of Disputed Documents," 6 ALR 507 (1920).

In the findings of fact it was determined that Mr. Keckler's opinion was not entitled to full weight. The reasons for this are the lack of nonsubjective standards by which to analyze questioned handwriting, the substantial number of dissimilarities between the applicant's handwriting and the endorsements, the number of similarities and dissimilarities between the handwriting samples from others and the endorsements, and the passage of seven years between the incidents and the commencement of the analysis. It is also important to note that no prosecution was undertaken despite the existence of Mr. Keckler's opinion. In light of the limited and known number of participants in the check cashing incidents, the absence of prosecution takes on additional significance. Although Mr. Keckler's opinion appears to be valid, it is not fully persuasive. Mr. Keckler's opinion must also be considered in view of the applicant's consistent and persistent denials that he made any of the endorsements. Significant is that the remainder of the applicant's testimony concerning this issue was corroborated in full by the testimonies and sworn statements of the other persons involved. Further, none of these other persons was ever asked if the applicant made the endorsements. These factors enhance the believability of the applicant's exculpatory testimony. Further, it appeared that the applicant believed that that to which he testified was true. This evidence indicates strongly that the applicant did not make the endorsements. Therefore, the weight accorded to the applicant's denials renders Mr. Keckler's opinion alone to be insufficient evidence to establish the allegation.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant committed a violation of N.J.S.A. 2C:21-1a(2).

(B) N.J.S.A. 5:12-89b(1), (2) and (3)

Under section 89b(1) of the Act, Mr. Weintraub was required to establish, by clear and convincing evidence, that he possesses financial stability, integrity and responsibility.

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

Also, under section 89b(3) of the Act, the applicant was required to establish, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino key employee. The Division has raised issue with the applicant's ability to meet his affirmative burden with regard to the many previously identified issues of fact.

The areas of dispute can be broken down into three basic areas for discussion: (1) issues where there is no evidence of misconduct, (2) contacts with organized crime and (3) personal and business practices.

The Division offered no evidence of any misconduct by the applicant concerning the assignment of responsibilities and the delegation of authority in the New

York office, the 1977/78 credit scam, the circumstances underlying the applicant's loss of \$250,000 at racetracks in 1979, the circumstances underlying the applicant's involvement in the 1973 check cashing incidents and the applicant's involvement in the April 27, 1983 junket (Mr. Wilson). Also, the applicant's testimony concerning these issues was corroborated and supported by the testimonial and documentary evidence, was believable and was persuasive. Accordingly, no negative inferences can be drawn therefrom and these events do not impair the applicant's affirmative presentation.

Second, there is no question that the applicant has knowingly had contact with bookmakers and has had contact with purported members of organized crime. For the most part, these contacts appeared to be the direct and inevitable result of the applicant's employment as a junket representative in the casino industry. Of the greatest concern was the applicant's contact with Matthew Ianniello, of whom the applicant had some reason to suspect a nexus to organized crime. This contact creates an appearance of insensitivity to the seriousness of such contacts and, therefore, raises serious concerns. In essence, the applicant's contacts with persons of ill repute create an appearance of accessibility. Nevertheless, it was abundantly evident that the applicant has not committed any unlawful acts or patently inappropriate behavior in this regard. Further, most of these questionable contacts occurred in the distant past, particularly contacts with bookmakers.

In the final analysis, the conclusions reached by Mr. Drost are the most revealing and the most compelling, i.e., that the applicant has no identifiable affiliation with organized crime. This assessment was based upon investigations of specific incidents, long-term intimate knowledge of the applicant and a thorough knowledge and understanding of the industry. Although this issue raises concerns, in the absence of any affirmative evidence of personal or business relationships with organized crime, and in consideration that these contacts are being viewed in the most negative light, these concerns do not rise to a level sufficient to defeat the applicant's affirmative presentation.

Third, issue was raised with the manner in which the applicant conducted his personal and business practices. Although serious issues were identified, the applicant successfully and persuasively explained away the circumstances underlying these incidents. His testimony was corroborated by the testimonial and documentary evidence in the record. Further, it was evident that the applicant complied in every degree with

Nevada law, the policies and procedures of the Dunes and his conduct was otherwise consistent with industry standards. Also, his method of doing business was highly successful. Under these circumstances, no negative inferences can be drawn against the applicant.

The evidence reflects that the applicant is a person of stability, integrity and responsibility in his personal and business financial dealings. He has always paid his obligations in a timely manner. The incident of his bankruptcy in the early 1950's was of no significance. Although the circumstances underlying the applicant's failure to date to pay his obligation at the Sands was of concern, it was not sufficient to defeat licensure. Nevertheless, it should be cured prior to employment in New Jersey.

Similarly, the applicant established that he is a highly regarded individual in all communities in which he works and resides. The nature and extent of his positive reputation is based upon the manner in which the applicant has conducted himself and his personal and business affairs throughout his entire life and over a substantial period of time. Such accolades are not easily achieved.

It was clearly established that the applicant is highly qualified and experienced in the casino industry. There is no reason to anticipate that the applicant would not be successful. It is important to note that many of the areas of the applicant's work history in the industry with which the Division raised issue are areas where New Jersey has adopted and enforces strict regulatory controls and are areas in which the applicant would likely not perform any functions. Accordingly, there is no reason to believe that the applicant would have any difficulty complying with the regulatory scheme.

Mr. Weintraub carried an enormous burden of proof to establish his qualifications for licensure in light of the several and significant negative factors. However, several of these factors were the direct product of the nature of the industry and of the then existing regulatory scheme. It is apparent that Nevada has upgraded its regulatory scheme and New Jersey has strict regulatory controls over all aspects of the industry. The applicant has established an ability to progress with the industry and there is no reason to believe that he would not continue in this vein. It must also be noted that the applicant has made substantial contributions to the integrity of the industry during his over 23-year association with the industry. The decision herein is extraordinarily difficult to make. However, it was evident that the applicant can participate and contribute and

comply with the regulatory controls governing the casino industry in New Jersey, the positive nature of which outweighs substantially the negative factors presented. By the slimmest of margins, Mr. Weintraub has met his heavy burden.

I CONCLUDE that the applicant has established, by clear and convincing evidence, his qualifications for licensure under sections 89b(1), (2) and (3).

DISPOSITION

It is ORDERED that the application of Julius Weintraub for licensure as a junket representative and/or as a junket enterprise, pursuant to N.J.S.A. 5:12-102b and 102c, be GRANTED. It is further ORDERED that the applicant reach agreement with the Sands for the repayment of his debt prior to commencement of employment in New Jersey, which agreement will be subject to the review and approval of the Casino Control Commission.

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

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

October 18, 1985  
DATE

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

Receipt Acknowledged:

October 18, 1985  
DATE

Bernadette P. Frizer  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 22 1985

DATE

OFFICE OF ADMINISTRATIVE LAW

*Ronald D. Parker* / x.5.

ij/ee

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Dunes Casino Hotel-Casino Write off Control Junket, effective February 28, 1985, Run Date of March 21, 1985 (23 pages)
- J-2 (a) Photograph of the purported signature of Zvi Ashkenazi on checks  
(b) Photograph of the purported signature of Zvi Ashkenazi on checks  
(c) Photograph of the purported signature of Zvi Ashkenazi on checks
- J-3 Personal History Disclosure Form-2A, Julius Weintraub, filed with the Casino Control Commission on December 28, 1982; Sole Owner-Operator Junket Enterprise Disclosure Form, Julius Weintraub, filed with the Casino Control Commission on December 9, 1982 (36 pages)
- P-2 Dunes Hotel-New York Celebrity Golf Scramble-April 27, 1983, List of Patrons on the Airplane (2 pages)
- P-3 Memorandum to Morris A. Shenker from Thomas F. Drost, July 19, 1983 (21 pages)
- P-5 Book of Character and Reputation References for Julius Weintraub (226 pages)
- P-6 Dunes Hotel and Casino-Credit Policies and Procedures, effective April 14, 1983, revised May 2, 1983 (2 pages)
- P-8 Dunes Hotel-New York Junket-February 15, 1978-Alphabetical List (4 pages)
- P-9 Dunes Hotel-Player Master Record, Giuseppe Gambino, January 12, 1984 (6 pages)
- P-10 Dunes Hotel-Player Master Record, Dominick V. Nole, January 12, 1984 (6 pages)
- P-11 Dunes Hotel-Player Master Record, Salvatore Avena, January 12, 1984 (6 pages)
- P-12 Letter to Mr. Murray Wilson from Michael J. Hessling, Vice President and Director of Casino Operations, May 3, 1983
- P-13 Letter to Mr. Julius Weintraub from Michael J. Hessling, Vice President and Director of Casino Operations, May 3, 1983
- P-14 Letter from Remo A. Allio, January 9, 1984
- P-15 Letter to Barry Slotnick, Esq., from James D. Henderson, Attorney in Charge, Los Angeles Strike Force, U.S. Department of Justice, April 19, 1984

The petitioner has also adopted Exhibit R-146 as his exhibit.

- R-2 Transcript of Sworn Interview of Julius Weintraub conducted by the Division of Gaming Enforcement on January 6, 1984, Redacted (23 pages)
- R-3 Dunes Hotel-Credit Card, Anthony Berardi (2 pages)

- R-4 Dunes Hotel-Credit Card, Murray Bernstein
- R-5 Dunes Hotel-Credit Card, Arnold Feldman (4 pages)
- R-6 Dunes Hotel-Credit Card, Burton Feldman (4 pages)
- R-7 Dunes Hotel-Credit Card, Jerome Feldman
- R-8 Dunes Hotel-Credit Card, Mitchell Feldman
- R-9 Dunes Hotel-Credit Card, Mark Kerstein (9 pages); Letter to Mr. Jim Madercic from Mark Kerstein, June 23, 1983; Letter to Mark Kerstein from Duane R. Krohn, Vice President of Finance and Treasurer; Memorandum prepared by Alvin Zwicker, Agent of the Dunes, March 21, 1980; Letter to Julie Weintraub from Joel Bernstein, Esq., August 4, 1981; Letter to Julie Weintraub from Mark Kerstein, October 15, 1981; Letter to Julie Weintraub from Mark Kerstein, February 3, 1982; Letter to Mark Kerstein from Duane R. Krohn, Vice President of Finance and Treasurer
- R-10 Dunes Hotel-Credit Card, Charles R. Liberti (3 pages)
- R-11 Dunes Hotel-Credit Card, Louis Magnano (2 pages)
- R-12 Dunes Hotel-Credit Card, Ralph Mace; together with Inter-Department Correspondence to Duane Krohn from Inez P. Anderson, June 19, 1984; Letter to Ralph Surrago from Inez P. Anderson, Casino Collections Manager, May 15, 1984 (6 pages)
- R-13 Dunes Hotel-Credit Card, Robert M. McDonnell (2 pages)
- R-14 Dunes Hotel-Credit Card, Phil Perlin (8 pages)
- R-15 Dunes Hotel-Credit Card, John Pettas
- R-16 Dunes Hotel-Credit Card, Joseph J. Salerno (4 pages)
- R-18 Dunes Hotel-Credit Card, Milton Wicker (2 pages)
- R-19 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-20 Copy of the Transcript of an Interview of Julius Weintraub by the Nevada Gaming Control Board, July 15, 1982, Redacted (23 pages)
- R-21 Transcript of Sworn Interview of Julius Weintraub conducted by the Division of Gaming Enforcement, June 22, 1983, Redacted (56 pages)
- R-22 Transcript of Sworn Interview of Julius Weintraub conducted by the Division of Gaming Enforcement, June 21, 1983, Redacted (69 pages)
- R-23 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-24 Dunes Hotel-Credit Card, Vincent Perfetti (2 pages)
- R-25 Dunes Hotel-Credit Card, Nino Alimoni (2 pages)

- R-26 Dunes Hotel-Credit Card, Joseph Maruca (2 pages)
- R-27 Dunes Hotel-Credit Card, Keith Thomas (2 pages)
- R-28 Dunes Hotel-Credit Card, Vincent Lockett (4 pages)
- R-29 Dunes Hotel-Credit Card, Patrick T. LeBous (2 pages)
- R-30 Dunes Hotel-Credit Card, Charles M. Taylor (3 pages)
- R-31 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-32 Dunes Hotel-Credit Card, Augie Spano (2 pages)
- R-33 Copy of eight cards from the Rolodex File of Julius Weintraub
- R-34 Dunes Hotel-Credit Card, Louis Dreeze (2 pages)
- R-35 Dunes Hotel-Credit Card, Frank Foley (2 pages)
- R-36 Dunes Hotel-Credit Card, Mike S. Kushner (2 pages)
- R-37 Dunes Hotel-Credit Card, Dave Evans (2 pages)
- R-38 Dunes Hotel-Credit Card, Tony Monteforte (2 pages)
- R-39 Dunes Hotel-Credit Card, Tony Ruggiero (2 pages)
- R-40 Dunes Hotel-Credit Card, Ed Kelly (2 pages)
- R-41 Dunes Hotel-Credit Card, Roger M. Gaydos (2 pages)
- R-42 Dunes Hotel-Credit Card, Bob Gianetti (2 pages)
- R-43 Dunes Hotel-Credit Card, George Joros
- R-44 Dunes Hotel-Credit Card, Dave Rossi (2 pages)
- R-45 Dunes Hotel-Credit Card, Joseph R. Romano (2 pages)
- R-46 Dunes Hotel-Credit Card, Dave Testa (2 pages)
- R-47 Dunes Hotel-Credit Card, Joe Todaro (2 pages)
- R-48 Dunes Hotel-Credit Card, John Visconti (2 pages)
- R-49 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-50 Dunes Hotel-Credit Card, Anthony Burra (3 pages)
- R-51 Dunes Hotel-Credit Card, Mile Coleman
- R-52 Dunes Hotel-Credit Card, Joe Curra (2 pages)

- R-53 Dunes Hotel-Credit Card, David Edwards (4 pages)
- R-54 Dunes Hotel-Credit Card, Robert Rosa (3 pages)
- R-55 Dunes Hotel-Credit Card, Mario Pino (4 pages)
- R-56 Dunes Hotel-Credit Card, Anthony Porta (3 pages)
- R-57 Dunes Hotel-Credit Card, Mike English (3 pages)
- R-58 Dunes Hotel-Credit Card, Anthony Riola (2 pages)
- R-59 Dunes Hotel-Credit Card, Phil Diorio (2 pages)
- R-60 Preliminary Report submitted to Morris A. Shenker, Chairman of the Board, by Thomas F. Drost, October 3, 1979 (137 pages)
- R-61 (a) Dunes Hotel-Credit Card, Anthony Guarnieri (2 pages)  
(b) Dunes Hotel-Credit Card, Anthony Todd (2 pages)
- R-62 Dunes Hotel-Credit Card, Joseph Guarnieri (3 pages)
- R-63 Dunes Hotel-Credit Card, Al Polean (4 pages)
- R-64 Copies of three cards from the Rolodex File of Julius Weintraub
- R-65 Dunes Hotel-Credit Card, Anthony Polean
- R-66 Dunes Hotel-Credit Card, Anthony Milasi (2 pages)
- R-67 Dunes Hotel-Credit Card, Louis Marconi (2 pages)
- R-68 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-69 Dunes Hotel-Credit Card, Giuseppe Gambino (2 pages)
- R-70 Dunes Hotel-Credit Card, Irv Nowick (9 pages)
- R-72 Copies of eight cards from the Rolodex File of Julius Weintraub
- R-73 Dunes Hotel-Credit Card, Murray Geller
- R-75 The New York Times, August 1, 1977, Article entitled "Crime Group Leaders Said to Rule Many Bar Businesses in Midtown," pages 1 and 15 (3 pages)
- R-76 Dunes Hotel-Credit Card, Louis C. Corso (3 pages)
- R-77 Letter to A. J. Hicks, Esq., from Louis C. Corso, October 28, 1982 (2 pages)
- R-78 Promissory Note payable to Julius Weintraub from Louis C. Corso, October 28, 1982
- R-79 Copies of checks drawn on the account of Barbara and Julius Weintraub at the National Bank of North America, signed by Julius Weintraub, and payable to:

(1) Vincent Cafaro in the amount of \$50,000 and (2) Louis C. Corso in the amount of \$200,000, August 22, 1979

- R-80 Dunes Hotel-Credit Card, Murray Wilson (3 pages)
- R-81 Dunes Hotel-Credit Card, Evsei Agron (2 pages)
- R-82 Dunes Hotel-Credit Card, Juan Choi (3 pages)
- R-83 Dunes Hotel-Credit Card, Jacob Dobrer (3 pages)
- R-84 Dunes Hotel-Credit Card, Zelig Flaschstatz (2 pages)
- R-85 Dunes Hotel-Credit Card, Seveyon Gorobets (3 pages)
- R-86 Dunes Hotel-Credit Card, Irving Green (2 pages)
- R-87 Dunes Hotel-Credit Card, Chan Han (3 pages)
- R-88 Dunes Hotel-Credit Card, Joshua Joffe (4 pages)
- R-89 Dunes Hotel-Credit Card, Chong Soo Kim (5 pages)
- R-90 Dunes Hotel-Credit Card, Charles Korn (3 pages)
- R-91 Dunes Hotel-Credit Card, Pyotr Kovtun (3 pages)
- R-92 Dunes Hotel-Credit Card, Boris Mogorichov (2 pages)
- R-93 Dunes Hotel-Credit Card, Michael Nemoy (4 pages)
- R-94 Dunes Hotel-Credit Card, David Podlog (3 pages)
- R-95 Dunes Hotel-Credit Card, Emil Puzyretsky (4 pages)
- R-96 Dunes Hotel-Credit Card, Simon Rudle (2 pages)
- R-97 Dunes Hotel-Credit Card, Arkady Seifer (2 pages)
- R-98 Dunes Hotel-Credit Card, Ilya Shvahbeyn (3 pages)
- R-99 Dunes Hotel-Credit Card, Michael Skalt (3 pages)
- R-100 Dunes Hotel-Credit Card, Sam M. Watenstein (3 pages)
- R-101 Dunes Hotel-Credit Card, Leo Wexler (2 pages)
- R-102 Dunes Hotel-Credit Card, Harvey Arnell (4 pages)
- R-103 Transcript of Sworn Interview of Julius Weintraub by the Division of Gaming Enforcement, January 5, 1984, Redacted (17 pages)
- R-104 Transcript of Sworn Interview of Julius Weintraub conducted by the Division of Gaming Enforcement, December 15, 1983, Redacted (30 pages)

- R-105 Letter to Special Agent Fred Borakove, Internal Revenue Service, from Julius Weintraub, November 22, 1977
- R-106 Copy of the Transcript of the Testimony of Julius Weintraub before the Internal Revenue Service, October 25, 1977 (11 pages)
- R-107 Copy of a "Dear Zeb" letter written by Julius Weintraub for the Internal Revenue Service (2 pages)
- R-108 Signature Samples made by Julius Weintraub at the request of the Internal Revenue Service (7 pages)
- R-109 Memorandum to Chief of Organized Crime Control from Michael J. Philbin, Captain in Command, Police Department of the City of New York, August 6, 1975
- R-112 Tape Recording made on November 15, 1982
- R-113 (a) Tape Recording made on December 21, 1982  
(b) Transcription of Tape Recording made by the Federal Bureau of Investigations on December 21, 1982
- R-114 Dunes Hotel-Credit Card, Ken Wolf (4 pages)
- R-116 Fourtieth Annual Report of the New Jersey Racing Commission, 1979 (15 pages)
- R-117 Sands Hotel and Casino, Atlantic City-Credit Application submitted by Julius Weintraub, March 9, 1984; Record of Play; copies of three checks submitted by Julius Weintraub to the Sands Hotel and Casino drawn on Mr. Weintraub's account at the National Bank of Westminister, New York, New York (5 pages)
- R-118 Sands Hotel and Casino, Atlantic City-Collection File for Julius Weintraub (2 pages)
- R-120 Copies of 28 cards from the Rolodex File of Julius Weintraub (4 pages)
- R-121 Typewritten compilation of the preferred customer list of Julius Weintraub, prepared by the Division of Gaming Enforcement (140 pages)
- R-122 Copy of Transcript of Interview of Julius Weintraub by the Nevada Gaming Commission, June 23, 1982, Redacted (6 pages)
- R-123 Copy of Transcript of Interview of Julius Weintraub by Nevada Gaming Control Board, May 27, 1982, Redacted (4 pages)
- R-124 Statement of Julius Weintraub (2 pages)
- R-125 Copy of Transcript of the testimony of Albert Tuller taken by the Internal Revenue Service, October 27, 1977 (13 pages)
- R-126 (a) Affidavit of Albert Tuller, November 17, 1977  
(b) Affidavit of Albert Tuller, December 21, 1978
- R-128 Affidavit of Sam Bland, November 17, 1977

- R-129 Affidavit of Murray Geller, September 8, 1977 (2 pages)
- R-131 Copy of Transcript of the testimony of Julius Weintraub before a Federal Grand Jury in the United States District Court for the Central District of California, March 18, 1980 (14 pages)
- R-132 Copy of Transcript of the testimony of Albert Tuller before a Federal Grand Jury in the United States District Court for the Central District of California, March 18, 1980 (21 pages)
- R-133 Copy of Transcript of the testimony of Murray Geller before a Federal Grand Jury in the United States District Court for the Central District of California, March 18, 1980 (16 pages)
- R-134 Copies of 26 Cashiers Checks payable to the order of Zvi Ashkenazi drawn on the account of the First City Bank, Rosemead, California (19 pages)
- R-135 Copy of Transcript of the meetings of the Nevada Gaming Commission on September 15, 1964, September 26, 1967 and August 17, 1967 (25 pages)
- R-136 Copy of Transcript of the meetings of the Nevada Gaming Control Board on September 19, 1967 and September 25, 1967 (12 pages)
- R-140 Letter to Detective Fleck, Division of Gaming Enforcement, from Inez P. Anderson, Casino Collections Manager, April 9, 1985, with attachments (3 pages)
- R-141 Affidavit of Inez P. Anderson, April 23, 1985, with attachments (3 pages)
- R-142 Copy of Transcript of the interview of Albert Tuller conducted by the Nevada Gaming Control Board in New York City, October 27, 1982, Redacted (15 pages)
- R-143 Transcript of Sworn Interview of James Madercic by the Division of Gaming Enforcement, August 29, 1984, in Las Vegas, Nevada, Redacted (63 pages)
- R-144 Transcript of Sworn Interview of Inez P. Anderson by the Division of Gaming Enforcement in Trenton, New Jersey, August 29, 1984 (80 pages)
- R-145 Transcript of Sworn Interview of Michael Hessling by the Division of Gaming Enforcement in Reno, Nevada, August 27, 1984, Redacted (32 pages)
- R-146 Transcript of Sworn Interview of Thomas Drost by the Division of Gaming Enforcement in Las Vegas, Nevada, August 30, 1984 (155 pages)
- R-149 Affidavit of James Madercic, April 26, 1985 (3 pages)
- R-151 United States Department of Justice, Federal Bureau of Investigation, Identification Division-Rap Sheet and additional documentation for Milton Bialostok (4 pages)
- R-152 Police Department of the City of New York, Bureau of Criminal Identification-background information for Vincent Dominic Cafaro (3 pages)
- R-153 The Police Department of the City of New York-Rap Sheet for Nicholas Forlano (3 pages)

- R-154 United States of America v. Nicholas Forlano, United States District Court for the Southern District of New York, No. 67Cr.185, Judgment and Commitment Order, January 16, 1968; United States of America v. Nicholas Forlano, United States District Court for the Southern District of New York, No. 70Cr.559, Judgment and Commitment Order, March 26, 1973; Criminal Court of the City of New York-Record of Criminal Proceedings against Nicholas Forlano, April 29, 1985 (5 pages)
- R-155 United States of America v. Charles Ruby Stein, United States District Court for the Southern District of New York, No. 79Cr.559, Judgment and Commitment Order, March 26, 1973; United States of America v. Ruby Lazarus, United States District Court for the Southern District of New York, No. 70Cr.559, Judgment and Commitment Order, March 28, 1973; United States of America v. Charles R. Stein, United States District Court for the Southern District of New York, No. 65Cr.832, Judgment and Commitment Order, February 23, 1966; United States of America v. Charles R. Stein, United States District Court for the Southern District of New York, No. C140/183, Judgment and Commitment Order, May 21, 1954 (8 pages)
- R-156 The People of the State of New York v. James Ida, Supreme Court of the State of New York, County of New York, No. 1843-84, Indictment, filed March 23, 1984
- R-157 United States of America v. Matthew Ianniello, et als, United States District Court for the Southern District of New York, 85Cr.116, Indictment, filed February 15, 1985 (85 pages)
- R-158 Report of Jon A. Keckler, Examiner of Questioned Documents, April 7, 1982 (6 pages)
- R-159 Police Department of the County of Suffolk-Arrest Report, Albert Michael Somma; and Disposition of Charges (2 pages)
- R-160 Photograph of Signatures prepared by Jon A. Keckler, Examiner of Questioned Documents

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

- P-11d. Letter to Honorable Walter N. Read, Chairman, Casino Control Commission, from Lee D. Gottesman, Deputy Attorney General, May 31, 1984 (23 pages)
- P-41d. Letter to Honorable Walter N. Read, Chairman, Casino Control Commission, from Lee D. Gottesman, Deputy Attorney General, March 7, 1985 (8 pages)
- P-71d. Dunes Hotel and County Club-Write off Sheet, 1983
- P-161d. "Big Julie of Vegas" by Edward Linn, copyright 1974, published by Walker and Company (218 pages)
- R-11d. Booklet containing all credit cards of the Dunes Hotel and Country Club (not offered)

- R-171d. Minutes of the Nevada Gaming Commission Meeting of September 26, 1967 (not offered).
- R-711d. Dunes Hotel and Country Club-Printout of casino play of Anthony Salerno (not offered)
- R-741d. Picture (not offered)
- R-1101d. Unidentified (withdrawn)
- R-1111d. Copy of Transcript of the Testimony by a Representative of the New York Police Department before the United States Senate, July 1983 (not offered)
- R-1151d. 1980 Pennsylvania Crime Commission Report: A Decade of Organized Crime (not offered)
- R-1191d. Telephone message written by Peg (not offered)
- R-1271d. Copy of Transcript of the Interviews of Sam Bland made by the Internal Revenue Service, July 28, 1977, August 2, 1977, August 9, 1977 and September 6, 1977 (5 pages)
- R-1301d. Letter to A. J. Industries, Inc., Board of Directors, from Gilbert Cuneo, Esq., March 2, 1977 (22 pages)
- R-1371d. "Report of the Commission of Inquiry into the Operation of the Business of Casinos in Freeport and in Nassau" (8 pages)
- R-1381d. Handwritten notes prepared by Jim Madercic (2 pages)
- R-1391d. Memorandum prepared by Inez P. Anderson, May 20, 1983 (4 pages)
- R-1471d. Transcript of Sworn Interview of Duane R. Krohn by the Division of Gaming Enforcement (not offered)
- R-1481d. Unidentified
- R-1501d. Copy of Transcript of the Proceedings before the Casino Control Commission concerning the Application of Joan Bialostok and the Play Along Corporation, February 27, 1985

WITNESS LIST

**For the Petitioner:**

**Jules Besserman**  
**Murray B. Darvick**  
**Goree Fleck**  
**Irving Friedman**  
**Louis Groman**  
**Julian Kramer**  
**Arthur Lashinsky**  
**Sally McCurdy**  
**Albert Palocsik**  
**Leone J. Peters**  
**Richard M. Rosen**  
**Eugene Silberman**  
**Julius Weintraub**  
**Herbert L. Weisman**  
**Morris Yamner**

**For the Respondent:**

**Joseph J. Coffey**  
**Goree Fleck**  
**Howard Hughes**  
**John A. Keckler**  
**Gino L. Lazzari**  
**Louis Magnano**  
**Ralph Sorrentino**  
**Brian Taylor**  
**Henry J. VanSon (testimony stricken from the record)**  
**Julius Weintraub**  
**Frank Zanzuccki**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-67  
OAL DOCKET NO. CCC 6223-85  
REGISTRATION NO. 21609-40

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

Complainant, :

v. :

WILLIAM BURT WHITE, :

Respondent. :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this *30th* day of May 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of William Burt White is dismissed substantially based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon William Burt White, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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



**FILED**

APR 2 - 1986

State of New Jersey

CASINO CONTROL COMMISSION  
LEGAL DIVISION

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6223-85

AGENCY DKT. NO. 85-67

**STATE OF NEW JERSEY,  
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**WILLIAM B. WHITE,**

Respondent.

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Norma Plenty, Law Assistant, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

William B. White, respondent, pro se

Record Closed: February 24, 1986

Decided: March 25, 1986

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

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

Petitioner is seeking to establish that certain prior convictions and unprosecuted conduct require revocation. Respondent, while contesting some elements of the complaint, is primarily seeking to establish rehabilitation, pursuant to N.J.S.A. 5:12-91(d).

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Many of the facts are undisputed. Respondent was arrested in July 1981 on charges of possession of marijuana over 25 grams, in violation of N.J.S.A. 24:21-20a(4), and possession with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). He was indicted on these charges and eventually pled guilty to possession. The distribution charge was dismissed. He was placed on two years' probation, fined \$1,000 and ordered to pay \$25 to the Violent Crimes Compensation Board.

Respondent was arrested in March 1984 and charged with possession of a controlled dangerous substance (CDS), in violation of N.J.S.A. 24:21-20a(1), possession of marijuana over 25 grams, in violation of N.J.S.A. 24:21-20a(4), and theft of services, in violation of N.J.S.A. 2C:20-8. He pled guilty to possession of marijuana, and after a trial was found guilty of theft of services.

Petitioner presented the testimony of Detective Barry Grasso of the Sea Isle City Police Department, who was one of the arresting officers in the July 1981 incident. Detective Grasso testified that he and fellow officers executed a search warrant at premises leased by respondent and found drug paraphernalia including scales, large numbers of plastic baggies, pipes and the like, in various rooms throughout the house, as well as a total of 310 grams of marijuana. Detective Grasso estimated the street value of the marijuana to have been between \$400 and \$500. Most of this contraband was found in respondent's bedroom and Detective Grasso testified that respondent admitted the following day that the marijuana and drug paraphernalia belonged to him.

Respondent acknowledged his admission to Detective Grasso but explained that he was 22 years old at the time, that it was a summer house and that "lots of people" were in and out all of the time. He admitted responsibility because he had leased the premises and did not want some of the others who may have been entirely innocent to be blamed. Nevertheless, not all of the contraband in the house belonged to him.

Respondent testified that the 1984 incident arose as police were conducting a follow-up investigation of a complaint which he filed about a robbery at his apartment. When the police arrived they smelled an odor of marijuana at the door, and after obtaining his consent to enter and search, they found what turned out to be less than 25 grams of marijuana. He pled guilty to a disorderly persons offense. While there, the police also discovered that he had run a wire from his neighbor's cable television cord. He testified that at the time it did not seem wrong and that he had his neighbors' consent to do so.

Respondent testified that he now realizes that his drug-related offenses, as well as his misuse of the cable, were wrong and that he is now more mature. He has not been arrested since the 1984 incident and is living with his fiancée and her child. He has been employed as a waiter at Caesars for the last year, and he is expecting a promotion from the graveyard shift. Prior to this employment he was a busboy at the Golden Nugget for two years. Respondent testified that his employment record with these casinos is good. Respondent also submitted character letters from his mother, fiancée and co-employees that attest to his rehabilitation.

This is the substance of the record. I believe that petitioner has established the 1981 unprosecuted distribution charge by a preponderance of the credible evidence. Detective Grasso was a credible witness. He testified that most of the marijuana was found in respondent's bedroom and that the premises were leased to respondent. Considering the drug paraphernalia found, as well as the amount of marijuana seized, it is more likely than not that some type of distribution activity was going on. Moreover, respondent did not quite deny the distribution charge; he indicated only that he may not have been responsible for all that was taking place in the house.

The guilty plea and conviction in 1984 stand on their own and were not explained. There is some question about whether the marijuana involved was more or less than 25 grams, although it appears from respondent's testimony that it was less than 25 grams. The disposition sheet is not in evidence.


The key question in light of the record is whether respondent can establish rehabilitation. I note first that he testified credibly, creating the impression that he was remorseful about his past deeds, as well as directed about the future. Respondent was approximately 22 years old when the first incident occurred and was 25 years of age at the time of the second incident. He now has some stabilizing influences in his life — a fiancée and her child — and the indications are that he has functioned acceptably for the last three years while employed in the casinos. Considering his age, the nature of his offenses, the type of work which he is seeking to retain, and his overall demeanor during the hearing, it appears to me that he has established his rehabilitation.

Based on the foregoing, it is **ORDERED** that petitioner's complaint be **DISMISSED** and that respondent be permitted to retain his registration.

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

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

3/25/86  
DATE

  
SOLOMON A. METZGER, ALJ


Receipt Acknowledged:

3/26/86  
DATE

  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 31 1986  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

Detective Barry Grasso  
William B. White, respondent

EXHIBITS

For the petitioner:

- P-1 Uniform Investigation Report with attached Uniform Arrest Report
- P-2 Laboratory Report
- P-3 Inventory of search
- P-4 The State of New Jersey v. William White, Indictment No. 150-81
- P-5 Judgment of Conviction with attached Conditions for Adults on Probation
- P-6 Arrest Report with attached Supplementary Investigation Report
- P-7 Complaint
- P-8 Complaint

For the respondent:

- R-1 Letter from Patricia A. Mircado, dated February 12, 1986
- R-2 Letter of Bonnie Ingersoll, dated February 12, 1986
- R-3 Letter of Alex Nargi, dated February 12, 1985
- R-4 Letter of J.M. Hannon, GNAC, dated February 12, 1986
- R-5 Letter of Miguel Fernandez

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-65  
APPLICATION NO. 49556-21  
OAL DOCKET NO. CCC 2012-85

APPLICATION OF LEE S. WIDDER FOR A :  
CASINO EMPLOYEE LICENSE : FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 18, 1985,

IT IS on this 10<sup>th</sup> day of January 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Lee S. Widder for a casino employee license be granted based upon the reasons stated 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 Lee S. Widder, the Division of Gaming Enforcement and the Office of Administrative Law within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2012-85

AGENCY DKT. NO. 85-EA-65

**LEE S. WIDDER,**  
Petitioner,

v.

**DIVISION OF GAMING  
ENFORCEMENT,**  
Respondent.

---

**Lee S. Widder, petitioner, pro se**

**Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin L. Kimmelman,  
Attorney General of New Jersey, attorney)**

Record Closed: October 3, 1985

Decided: November 18, 1985

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

**STATEMENT OF THE CASE**

This matter concerns the application of Lee S. Widder to the Casino Control Commission for licensure as a casino employee, permitting him to work in a casino as a non-gaming maintenance employee. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner, with specific reference to his record of arrests between 1975 and 1982, has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Section 89b(2) of the Casino Control Act, as incorporated in section 90b of the Act.

1027

2. Whether the petitioner, with specific reference to his 1978 conviction upon a plea of guilty to the offenses of robbery and armed robbery, has been convicted of an offense which is an automatic disqualifier from licensure, pursuant to section 86c of the Casino Control Act.
  
3. Whether the petitioner, notwithstanding any conviction of an automatically disqualifying offense, has affirmatively demonstrated his rehabilitation, within the meaning of section 90h of the Casino Control Act.

#### PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated February 22, 1985, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Commission to the Office of Administrative Law on April 11, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

#### FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 33-year-old resident of Ventnor, New Jersey. He is married and he has two children. The petitioner is the holder of a casino hotel employee registration issued by the Casino Control Commission. From January 5, 1981, until February 10, 1981, the petitioner was employed as a valet at the Golden Nugget Casino Hotel in Atlantic City, New Jersey.

Agent Duane K. Brooks of the Division of Gaming Enforcement testified at the hearing that he conducted a background investigation of the petitioner. This investigation included verification of the arrest and conviction record which the petitioner had disclosed in his Personal History Disclosure Form filed with the Casino Control Commission.

On October 10, 1975, the petitioner was arrested in Margate City, New Jersey, and charged with conspiracy and making a false police report, in violation of N.J.S.A.

2A:98-1 and N.J.S.A. 2A:148-22.1 (exhibit R-1). According to the police investigation report (exhibit R-1), the contents of which the petitioner did not dispute, the petitioner conspired with two other individuals to attempt to defraud his insurance company by falsely reporting that his motorcycle had been stolen and by filing a false police report. According to Agent Brooks, the petitioner had worked for the Atlantic County Sheriff's Department from September 22, 1974, until August 18, 1975. The petitioner explained during an interview with Agent Brooks that he had been unable to keep up his payments on the motorcycle following his resignation from the Sheriff's Department, so he entered into the scheme to have the motorcycle reported as being stolen.

It is undisputed that the petitioner was subsequently indicted following his arrest on October 10, 1975. However, the charges were downgraded in April 1976 to conspiracy to violate the provisions of N.J.S.A. 2A:170-20.6, and the indictment was dismissed. The petitioner was convicted of the downgraded charge (exhibit R-2).

It was the testimony of the petitioner that he left the Atlantic County Sheriff's Department following a shooting incident. According to the petitioner, he attempted to stop a criminal act during his off-duty hours and he shot and killed a man in Atlantic City. The shooting incident upset the petitioner greatly and he began taking quaaludes under a doctor's prescription. It was the candid testimony of the petitioner that he became addicted to this drug.

On September 25, 1977, the petitioner's drug involvement resulted in his arrest in Margate City for robbery (N.J.S.A. 2A:141-1), assault with a dangerous weapon (N.J.S.A. 2A:151-5), unlawful use of a weapon (N.J.S.A. 2A:90-3), and assault with intent to commit robbery (N.J.S.A. 2A:151-56). This arrest resulted from the petitioner's armed robbery of a pharmacy in Margate City. The same incident led to his arrest by the Ventnor City Police on charges of possession of a weapon in a motor vehicle (N.J.S.A. 2A:151-41), possession of a controlled dangerous substance, to wit: tuinal (N.J.S.A. 24:21-20a(1)), and possession of stolen property (tuinal). The petitioner did not dispute the contents of the police arrest and investigation reports concerning this incident, which were admitted into evidence as exhibits R-3 and R-4.

On October 18, 1977, the Atlantic County Grand Jury handed down a seven-count indictment against the petitioner concerning the incident which led to his arrest on September 25, 1977 (exhibit R-5). On March 2, 1978, the petitioner retracted

his plea of not guilty to the indictment and entered a plea of guilty to one count of robbery, contrary to N.J.S.A. 2A:141-1, and armed robbery, contrary to N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5 (exhibit R-5). On March 23, 1978, the respondent was sentenced to the Yardville Youth Reception and Correction Center for an indeterminate term on the fifth count with a maximum of seven years and an indeterminate term on the sixth count with a maximum of seven years, with the sentences to run concurrently. It was the testimony of the petitioner that he intended to kill himself at the time he committed armed robbery at the pharmacy and he consumed approximately 18 of the tuinal capsules which he stole.

On December 11, 1980, the petitioner was charged with having driven while under the influence of drugs on July 28, 1980, contrary to N.J.S.A. 24:21-20b. It is undisputed that the petitioner received a conditional discharge concerning this offense (exhibit R-6). On April 12, 1982, the petitioner was arrested in Egg Harbor Township and charged with various weapons offenses, including possession of a weapon by a convicted person, contrary to N.J.S.A. 2C:39-7 (exhibit R-9). On May 27, 1982, the Atlantic County Grand Jury indicted the petitioner on charges of possession of a rifle and possession of a shotgun without an identification card, contrary to N.J.S.A. 2C:39-5c(1), possession of a loaded shotgun, contrary to N.J.S.A. 2C:39-5c(2), and possession of a rifle and a shotgun by a convicted person, contrary to N.J.S.A. 2C:39-7 (exhibit R-7).

On July 30, 1982, the petitioner retracted a plea of not guilty to the indictment and entered a plea of guilty to the charge of possession of a rifle by a convicted person, contrary to N.J.S.A. 2C:39-7. On October 15, 1982, the petitioner was sentenced to probation for a period of two years, on the condition that he perform 100 hours of community service each year. In addition, the petitioner was required to continue counselling. The remaining counts of the indictment were dismissed (exhibit R-7).

It was the testimony of the petitioner that he performed approximately 200 hours of community service for the City of Ventnor. Much of this work was performed as a handyman and with work in the motor pool. It is the undisputed testimony of the petitioner that he satisfactorily completed the terms of his probation. In particular, the

petitioner testified that the counselling which he received between February 1983 and February 1984 was of great benefit to him. In a letter from the petitioner's clinical social worker (exhibit P-2), the following was stated concerning the petitioner's progress during treatment at the Atlantic Mental Health Center:

Mr. Widder appears to have learned from his past errors, and is concerned with improving his family life. He indicates a sense of responsibility, is eager to obtain and maintain gainful employment, and actively seeks this. He has recently re-entered therapy, and, along with his wife, is currently engaged in marital counselling.

The petitioner attributed much of his difficulty to his former drug dependence. According to the petitioner, he has not been involved with illegal drugs since 1981. He no longer has a desire or a need for drugs. In fact, he left his brief employment with the Golden Nugget Casino Hotel because he felt that free drugs were too readily available.

The petitioner was discharged from parole in February 1985. According to letters from the parole officers who supervised the petitioner (exhibits P-1 and P-3), the petitioner's progress while on parole was above average and the petitioner has demonstrated his desire to be a productive member of society.

Several witnesses testified on behalf of the petitioner. Edward Weinstein, Arthur Steinberg, and Dorothea Kazin have known the petitioner for periods ranging from three years to fourteen years. Mr. Weinstein and Ms. Kazin testified that the petitioner has changed greatly and has become responsible and honest. Mr. Steinberg testified that he hired the petitioner approximately three years ago to work part time in his shoe store. They have since become very close friends and he and his wife socialize with the petitioner and his wife. Mr. Steinberg has known about the petitioner's background from the time the petitioner was hired. According to Mr. Steinberg, he respects the petitioner and believes him to be honest.

Except for brief periods of part-time employment, the petitioner has collected welfare assistance since 1981. However, he is developing a photography business and it is his hope that soon he will no longer require welfare.

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

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86c, the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of certain enumerated statutes.

It is undisputed that the petitioner was convicted upon his plea of guilty in 1978 to the offense of robbery, contrary to N.J.S.A. 2A:141-1. The equivalent offense at the time of his application was robbery, contrary to N.J.S.A. 2C:15-1. Both of these offenses are specifically enumerated disqualifying offenses under section 86c(1) and (2). Pursuant to section 90h of the Casino Control 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, by clear and convincing evidence, with due consideration given to the rehabilitation factors set forth in that section.

The petitioner is now 33 years old. His first criminal involvement began approximately 10 years ago, following his separation from employment with the Atlantic County Sheriff's Department. It is clear that the shooting incident which preceded his separation caused the petitioner great psychological turmoil and led to his drug dependence. This poor psychological state and drug dependence played a major part in the petitioner's subsequent conduct which resulted in his conviction for robbery in 1978.

The petitioner's conviction in 1982 on a charge of possession of a weapon by a convicted person did not involve an act of violence. He has no arrests since that time and he has not been involved with drug use since 1981. The petitioner has satisfactorily completed the terms of his probation, including over 200 hours of community service. The petitioner's parole officers and others who know him have attested to the significant changes in his life which the petitioner has brought about. The petitioner contends that he has been rehabilitated.

I agree with the petitioner. Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of robbery, contrary to N.J.S.A. 2A:141-1, the equivalent of N.J.S.A. 2C:15-1, which at the time of application was 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 his disqualification from licensure on the basis of his conviction of an offense enumerated under section 86c of the Act, by demonstrating his 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 his affirmative burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Lee S. Widder for a casino employee license, permitting him to act as a non-gaming maintenance employee, be **GRANTED**.

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

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

November 12, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 20, 1985  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 21 1985  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

**FOR THE PETITIONER:**

- P-1 Letter from Richard Jenni
- P-2 Letter, dated September 25, 1984
- P-3 Letter, dated September 10, 1985

**FOR THE RESPONDENT:**

- R-1 Arrest Report
- R-2 Indictment and Disposition
- R-3 Arrest Report
- R-4 Investigation and Arrest Reports
- R-5 Indictment and Disposition
- R-6 Arrest and Investigation Report
- R-7 Indictment and Judgment of Conviction
- R-8 Military Discharge
- R-9 Arrest and Investigation Report

WITNESSES

**FOR THE PETITIONER:**

Edward Weinstein  
Arthur Steinberg  
Dorothea Kazin  
Lee S. Widder

**FOR THE RESPONDENT:**

Duane K. Brooks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-188  
OAL DOCKET NO. CCC 4424-85  
LICENSE NO. 29366-21  
REGISTRATION NO. 21716-40

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

Complainant, :

v.

FRANK A. ZIMMERMAN, :

Respondent. :

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this <sup>6<sup>th</sup></sup> day of June, 1986, ORDERED that the initial decision is modified as follows:

The conclusion that the respondent's casino hotel employee registration be revoked is rejected. The Commission finds that the respondent's evidence concerning his efforts to deal with his alcoholism supports a finding that the interest of justice would be served by waiving his disqualification pursuant to N.J.S.A. 5:12-91(e) to permit him to

retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the casino employee license held by Frank A. Zimmerman is revoked substantially for the reason stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e) for good cause shown, to permit him to retain his casino hotel employee registration and

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

IT IS FURTHER ORDERED the copies of this final order be served upon Frank A. Zimmerman, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten days of the day hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4424-85

AGENCY DKT. NO. 85-188

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

Petitioner,

v.

**FRANK A. ZIMMERMAN,**  
Respondent.

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

**Frank A. Zimmerman, respondent, pro se**

Record Closed: February 21, 1986

Decided: March 26, 1986

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

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on May 7, 1985, seeking the revocation of the respondent's license as a casino employee and his registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The license and registration of Mr. Zimmerman were suspended by the Commission on June 11, 1985. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for a hearing pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

The prehearing conference was held by way of a telephone conference call on September 10, 1985, and the Division was represented by Norma Plenty, Law Assistant. At that time, the parties agreed that the issues in this matter are:

- A. Whether the respondent is disqualified from licensure and/or registration based on certain criminal activities pursuant to N.J.S.A. 5:12-86c(1) or 5:12-86g.
- B. Whether the respondent's alleged criminal activities would render his continued licensure and/or registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- C. Whether the respondent can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee pursuant to N.J.S.A. 5:12-90b.
- D. Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h and/or 5:12-91d.

At the hearing, the Division was represented by Deputy Attorney General William E. Mountford.

After the first day of the hearing and at the joint request of the parties, I agreed to place the matter on the inactive list for a period of three months in order to give Mr. Zimmerman additional time to prepare his presentation. The second day of the hearing was held on February 21, 1986, and the record closed on that date.

FACTUAL FINDINGS

On April 9, 1985, at approximately 3 p.m., Albert Paris, a surveillance operator employed by Trump Plaza Hotel Casino (Trump), observed Mr. Zimmerman, a slot change cashier, opening the cash drawer (even though a customer was not present) and removing what appeared to be a folded paper. Mr. Zimmerman then placed this paper into his pocket. Mr. Paris felt this action was suspicious and he decided to watch

Mr. Zimmerman and to have his movements recorded by the television monitor. In addition, John E. McLaughlin, a Casino Control Commission employee, who was present at the casino, was notified about the incident.

A few minutes later, Mr. Paris saw Mr. Zimmerman, while looking around and without looking at his hands, remove one coin from a roll of dollar tokens and repeat the procedure with another roll. These rolls are to have each 20 tokens and are sold for \$20. After removing the coins, Mr. Zimmerman placed the altered rolls in a rack for sale. Mr. Paris saw Mr. Zimmerman sell one of these altered rolls for \$20.

At approximately 3:15 p.m., Mr. Paris saw Mr. Zimmerman repeat the procedure and remove a token from another \$20 roll and he observed the respondent sell this roll to a customer for \$20. At approximately 3:21 p.m., Mr. Paris saw Mr. Zimmerman repeat the procedure with three other \$20 rolls and he saw him sell another altered roll.

According to Mr. Paris, the respondent was adept in removing the tokens; specifically, he stated that the respondent worked quickly, did not look at his hands while he was removing the tokens, and was able to reseal the roll so that it did not appear to be altered.

After he was notified, Mr. McLaughlin observed Mr. Zimmerman on the television monitor in Trump's surveillance room. At approximately 3:15 p.m., Mr. McLaughlin saw Mr. Zimmerman remove a coin from a roll, and he saw Mr. Zimmerman remove another coin when the monitoring tape was rerun for him. Mr. McLaughlin left the surveillance room and headed for Mr. Zimmerman's slot change booth. While on his way, Mr. McLaughlin was informed by radio that Mr. Zimmerman had sold the roll of coins he saw altered and that the respondent had altered two more rolls of coins. At that point, Mr. McLaughlin entered the cashier booth, closed it, and had a supervisor, in Mr. McLaughlin's presence, count the coins in the rolls in the sale rack. This count revealed that two of the rolls were each one coin short. Mr. McLaughlin then ordered a complete countdown of the monies in the booth and it was determined that there was an overage of \$13.

After reading the respondent his rights, Mr. McLaughlin questioned Mr. Zimmerman and the respondent admitted that he had removed coins from some rolls

but was not sure of the number. According to Mr. McLaughlin, the respondent also stated that he would take the amount of the overage at the end of his work day.

Mr. McLaughlin took a folded \$20 bill from Mr. Zimmerman's pocket and Mr. Zimmerman stated that it was his own money. Mr. McLaughlin had no evidence to disprove this statement.

Based on his observations, Mr. McLaughlin filed a criminal complaint against the respondent at the Atlantic City Municipal Court and alleged the unlawful taking of the \$13, with intent to deprive the owner, a violation of N.J.S.A. 2C:20-3. Mr. Zimmerman entered a plea of guilty to the offense and was fined \$75.

Mr. Zimmerman testified that he had an alcoholic problem at the time of the April 9, 1985 incident and that he now recognizes that he is an alcoholic. Mr. Zimmerman stated that he used to drink alcoholic beverages at various times during the day and that he was subject to blackouts. The respondent felt that because of his alcohol consumption, he used to do things without thinking. Since the April 9, 1985 incident, Mr. Zimmerman has attended a 28-day rehabilitation program at the Riverside House in Philadelphia, Pennsylvania (R-1) and attends AA meetings approximately three times a week (R-2, R-8). Recently, Mr. Zimmerman has completed a course to be a tour agent (R-11) and has received vocational counseling. If his casino license is not revoked, Mr. Zimmerman plans to attend school to become a dealer.

As to the April 9, 1985 incident, Mr. Zimmerman stated that he thought he had overpaid a customer and since he did not want to have a shortage, he removed several coins from the rolls in his booth. Mr. Zimmerman stated that he only removed three coins before his booth was closed by Mr. McLaughlin. Also, Mr. Zimmerman denied that he told Mr. McLaughlin that it was his intent to keep the amount of the overage for himself.

In addition, the respondent stated that he was never told by Trump that he could not have his own money in his pocket while working as a cashier. It was Mr. Zimmerman's custom to have some money so that he could purchase items such as cigarettes or mints during his break.

Prior to his employment with Trump, Mr. Zimmerman was employed for one year as a housekeeper by the Brighton Hotel and Casino in 1980. After completing a

course to be a cashier, the respondent worked for approximately one and a half years at the Claridge Hotel and Casino (Claridge) as a booth cashier. After leaving the Claridge, Mr. Zimmerman worked for a while in the Hammonton, New Jersey area. Thereafter, for a six-month period in 1983, Mr. Zimmerman worked as a booth cashier for the Playboy Hotel and Casino and left this job after he was involved in a car accident. Mr. Zimmerman was employed as a cashier by the Sands Hotel and Casino for approximately one and a half years until he was laid off. Thereafter, the respondent worked as a cashier for Trump until he was fired. Before the April 9, 1985 incident, Mr. Zimmerman had received good evaluations from Trump. Currently, Mr. Zimmerman is employed as a jewelry salesman.

On behalf of the respondent, Thomas P. Quinn, a blackjack dealer employed by Trump, wrote a letter (R-5) and testified that he has known the respondent for approximately two years and has been his roommate for one and a half years. Mr. Quinn confirmed that the respondent had a drinking problem until shortly after April 9, 1985. According to Mr. Quinn, the respondent drank alcoholic beverages but it was difficult to determine when the respondent was drunk since he did not visibly show any of the indicia of drunkenness. Mr. Quinn stated that the respondent is a nice person and that he regularly pays his share of the rental expenses.

Sometime after the April 9, 1985 incident, Mr. Zimmerman admitted to Mr. Quinn that he had an alcoholic problem and needed help. Mr. Quinn confirmed that the respondent attended a rehabilitation program (R-1), and now regularly attends AA meetings (R-2, R-8). To the best of Mr. Quinn's knowledge, the respondent no longer drinks any alcoholic beverages. It is Mr. Quinn's opinion that the respondent can now handle the pressures of life without drinking alcoholic beverages. It is also Mr. Quinn's opinion that the respondent's drinking problem was responsible for the April 9, 1985 incident.

In addition, a number of his other friends submitted letters in which they stated that the respondent is a person of good character, honesty and integrity (R-3, R-4, R-6, R-7, R-11, R-12, R-14). The respondent also had admitted into evidence a letter from his landlady indicating that he was a good tenant (R-13).

I **FIND** that the facts as stated above are not in dispute except for the testimony as to coins that Mr. Zimmerman had removed from the rolls on April 9, 1985.

Based on the testimony at the hearing, I **FIND** that Mr. McLaughlin was a credible witness and that the amount of money involved was \$13 rather than \$3 as alleged by the respondent. In addition, I **FIND** that the respondent admitted that at the end of his work day, he would take the overage. Although I do not disbelieve Mr. Zimmerman's statement that he initially began to take coins on April 9, 1985, from the rolls because he thought that he would have a shortage, clearly Mr. Zimmerman would have pocketed any excess of money for the converse reason; namely, to avoid having an overage.

CONCLUSIONS OF LAW

In closing, Mr. Mountford acknowledged that the Division had not shown that the respondent was guilty of a statutory disqualifier pursuant to either N.J.S.A. 5:12-86c(1) or 5:12-86g. However, he stated that the April 9, 1985 incident could render the respondent's continued licensure and registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). Mr. Mountford noted that in order to determine the issue of inimicality, it is necessary not only to consider the nature of the criminal offense, but also the factors normally considered when deciding the issue of rehabilitation, pursuant to either N.J.S.A. 5:12-90h or 5:12-91d. See, Donna Davis v. Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (August 12, 1985), modified, Commission (Dec. 27, 1985).

In this matter, the criminal activities of Mr. Zimmerman occurred in a casino and involved the altering of coin rolls to be sold to the public. If this were made known to the customers, such action by a cashier could affect the public confidence and trust in the integrity of casino operations. Balanced against this factor, I recognize that the fact that Mr. Zimmerman was an alcoholic may have affected his judgment on April 9, 1985, and the fact that since April 9, 1985, he has made a sincere effort to abstain from alcoholic beverages.

However, based on the nature of the offense and the fact that the offense in issue took place approximately one year ago, I **CONCLUDE** that insufficient time has lapsed to show that Mr. Zimmerman is rehabilitated. Therefore, I **CONCLUDE** that at this time Mr. Zimmerman's continued licensure and registration would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). Also for the same reasons, I **CONCLUDE** that the respondent cannot show at this time, by clear and

convincing evidence, his reputation for good character, honesty and integrity as required for licensure as a casino employee, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

Finally, I **ORDER** that the license of Frank A. Zimmerman as a casino employee and his registration as a casino hotel employee be **REVOKED**.

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

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

March 26, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 27, 1986  
DATE

Bernadette J. Fry  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 1 1986  
DATE

Ronald J. Parker / R.S.  
OFFICE OF ADMINISTRATIVE LAW

m1/E

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

None.

**FOR THE RESPONDENT:**

- R-1 A letter from Stan Shore of the Riverside House, dated October 22, 1985
- R-2 Acknowledgment of attendance at the AA meeting on November 11, 1985
- R-3 Letter from Stan Shore, dated October 23, 1985
- R-4 Letter from Ms. Kathryn Ryan
- R-5 Letter from Thomas Quinn, dated November 12, 1985
- R-6 Letter from Cheryl Buxton, dated September 12, 1985
- R-7 Letter from John T. Williams, dated September 25, 1985
- R-8 Acknowledgment of attendance at 11 AA meetings between November 1, 1985 and January 31, 1986
- R-9 Schedule for AA meetings
- R-10 Letter from Fred Hauber of Associated Business Careers
- R-11 Letter from Matthew C. Calabria, dated February 10, 1986
- R-12 Letter from Christine Selepato, dated February 17, 1986
- R-13 Letter from Estelle Arafican, dated November 16, 1985
- R-14 Letter from Tom Prstit, dated February 18, 1986

WITNESSES

**FOR THE PETITIONER:**

Albert Paris  
John E. McLaughlin

**FOR THE RESPONDENT:**

Thomas P. Quinn  
Frank A. Zimmerman

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APPLICATION OF VITO C. ZUPPARDO  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 11, 1986,

IT IS on this 12<sup>th</sup> day of June 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Vito C. Zuppardo for a casino employee license with a sole owner/operator junket enterprise endorsement is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Vito C. Zuppardo, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4291-85

AGENCY DKT. NO. 85-EA-108

**VITO C. ZUPPARDO,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**David M. Satz, Jr., Esq.,** for petitioner (Saiber, Schlesinger, Satz, and Goldstein, attorneys)

**Anthony V. D'Elia,** Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: March 11, 1986

Decided: May 6, 1986

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

**STATEMENT OF THE CASE**

This matter concerns the application of Vito C. Zuppardo to the Casino Control Commission for licensure as a casino employee, permitting him to act as a junket representative, sole owner/operator junket enterprise. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner, with specific reference to his alleged payment of fees in connection with junkets to Atlantic City, his business dealings with Tom Duffy (Irv Nowick), Nathan Teplis, Innovative Travel Group, Inc. and Casino Caravans, and his handling of a business dispute with

junket representative Betty Cohn concerning an August 1985 Nevada junket, has demonstrated, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of Sections 89b(2), 90b and 102b of the Casino Control Act.

2. Whether the petitioner, with specific reference to the foregoing, has demonstrated, by clear and convincing evidence, that he possesses the requisite financial stability, integrity and responsibility for licensure, within the meaning of Sections 89b(1), 90b and 102 of the Casino Control Act.

At the prehearing conference held in this matter on August 13, 1985, the Division of Gaming Enforcement contended that the petitioner's alleged payment of fees in connection with junkets to Atlantic City constituted an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct had not been prosecuted under the criminal laws of New Jersey, within the meaning of 86c(4) and 86g of the act. The specific offense alleged was commercial bribery, contrary to N.J.S.A. 2C:21-10(c). As a result of further investigation following the prehearing conference, the Division determined that it was unable to establish a violation of N.J.S.A. 2C:21-10(a), and this issue has been removed from consideration. The allegations concerning the petitioner's handling of his dispute with junket representative Betty Cohn were raised following the prehearing conference. The petitioner did not object to incorporation of these allegations into the issues identified at the prehearing conference.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter to the Casino Control Commission, dated May 10, 1985. On June 26, 1985, the petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on July 11, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on August 13, 1985 and the matter was originally scheduled to be heard on October 28, 1985. For good cause shown,

the matter was adjourned from that date at the joint request of the parties. The matter was rescheduled to be heard on January 16, 1986, but was adjourned from that date at the request of the Division of Gaming Enforcement, which sought the adjournment to permit further investigation. The hearing was then held on March 11, 1986.

FINDINGS OF FACT

The petitioner is a 39 year old resident of New Orleans, Louisiana. On April 13, 1983, the Casino Control Commission awarded temporary licensure to the petitioner as a junket representative. This temporary license was renewed once and it has subsequently expired. The petitioner operates Southern Travel Club, which is licensed in the State of Nevada as a junket enterprise doing business with Harrah's Tahoe Casino Hotel and The Riviera Casino Hotel.

The petitioner became involved in the junket business in 1975. He has operated numerous junkets to Nevada casinos, and he has maintained an employment relationship with Harrah's Tahoe since 1977. According to the petitioner, he is the number two revenue producing junket representative for Harrah's Tahoe.

According to the representation of the Deputy Attorney General, the petitioner was honest with the Division of Gaming Enforcement during his sworn interview, and as a result, it was possible for the parties to enter into many stipulations of fact(Exhibit J-1). The following facts are undisputed and are stipulated between the parties:

1. Vito C. Zuppardo ("Zuppardo") has applied with the Casino Control Commission for licensure as a casino employee in the position of a sole owner operator/junket enterprise.
2. Beginning in 1970, Mr. Zuppardo while in the furniture business made approximately two trips a year to Las Vegas as a player.
3. In September 1975 a business acquaintance, Rhodes Mazer, made reservations to go to the Frontier Hotel Casino in Las Vegas through Nathan Teplis, an Atlanta, Georgia, junket representative authorized to do business in Nevada at the Sands and Frontier Hotel Casinos.

4. Subsequent to his trip to the Frontier Hotel Casino in Las Vegas and upon becoming disenchanted with the furniture business he had telephone discussions with and then met Mr. Teplis concerning becoming involved in the junket representative business.
5. Thereafter, in late 1975, Mr. Zuppardo arranged for Mr. Teplis to charter airplanes for flights from New Orleans to the El Casino Hotel in Freeport, the Bahamas.
6. On these charters, three in number, Mr. Teplis paid for the cost of the charter; Mr. Zuppardo received a per person service fee of \$30 directly from each passenger/customer. Each passenger would be required to deposit \$500 front money with the casino as an assurance that the minimum amount of gambling would take place.
7. During this period of time Mr. Zuppardo organized the Southern Sportsmans Club which subsequently became known as the Southern Travel Club, which eventually became incorporated in Las Vegas, Nevada, in 1983. During this time his wife became involved in a related retail travel agency known as Skyway Travel, Inc.
8. Thereafter, between January and July 1976, Mr. Zuppardo began to run junket trips to the Marina Casino/Hotel in Las Vegas, Nevada, through Tom Forbes, a licensed North Carolina junket representative to whom Mr. Zuppardo had been introduced by Nathan Teplis. Mr. Zuppardo obtained a license to perform these services as a junket representative in Nevada.
9. The junket trips referred to in Stipulation #8 were not chartered air trips, but, rather, were strictly commercial flights.
10. On the junket trips referred to in Stipulation #8, above, each individual junket player purchased an air ticket, and if that person met the hotel minimum gambling requirements the hotel directly reimbursed the junket player for the price of that ticket. Mr. Zuppardo charged each player a service charge.

11. Mr. Zuppardo did not arrange for the junket dates of the trips referred to in Stipulation #8 above directly with the casino, but, rather, got the junket dates from Tom Forbes, another junket representative.
12. Bernie Gillman, a Nevada licensed junket representative, contacted Mr. Zuppardo in the latter part of 1976 and asked Mr. Zuppardo if he would be interested in running junket trips to the Stardust Casino/Hotel in Las Vegas.
13. Subsequently, between mid-1976 and February of 1977, Mr. Zuppardo ran junket trips to the Stardust Casino/Hotel through Mr. Gillman.
14. On the junket trips referred to in Stipulation #13 above, Mr. Gillman supplied an airplane for Mr. Zuppardo's junket trips, and Mr. Zuppardo agreed to reimburse Mr. Gillman for any empty plane seats.
15. In addition to the arrangements referred to in Stipulation #14 above, Mr. Zuppardo agreed to pay Mr. Gillman \$25.00 per person.
16. Mr. Zuppardo's sole compensation for the trips referred to in Stipulation #13 above were per person service fees.
17. Between February of 1977 and some time in 1978, Mr. Zuppardo ran junket trips through Bernie Gillman to the Frontier Casino/Hotel in Nevada.
18. On those junket trips referred to in Stipulation #17 above, Mr. Zuppardo's sole compensation was commission payments received from the Frontier Casino/Hotel based upon his junketeers' rated play.
19. On those junket trips referred to in Stipulation #17 above, Mr. Gillman arranged for all air transportation, and Mr. Zuppardo paid an unspecified per head service charge back to Mr. Gillman.
20. Sometime in 1978, Mr. Zuppardo began running junket trips to Harrah's Casino in Lake Tahoe, Nevada.

21. For his first two trips to Harrah's Tahoe, Mr. Zuppardo ran junket trips with an individual by the name of Circuit.
22. After the first two trips referred to in Stipulation #21 above, Mr. Zuppardo began dealing directly with Harrah's Tahoe Casino, and is still affiliated with that hotel.
23. In the Spring of 1978, Mr. Zuppardo was invited by Nathan Teplis to supply qualified gaming customers to help fill planes chartered by Mr. Teplis for junket trips from Atlanta to Monte Carlo.
24. Between the Spring of 1978 and the Fall of 1979, on two occasions Mr. Zuppardo sent ten copies (20 persons) by commercial airline to Atlanta for the subsequent trip to Monte Carlo. For these efforts Mr. Zuppardo received a commission from Nathan Teplis for all qualified players.
25. On the trips referred to in Stipulation #24 above, Mr. Teplis would call Mr. Zuppardo with junket dates, and would arrange to have a chartered airplane scheduled for those dates.
26. For approximately one year, in 1980, Mr. Zuppardo ran junket trips to the Imperial Palace in Nevada.
27. On the trips referred to in Stipulation #26 above, Mr. Zuppardo charged a per person service fee, and would pay for the chartered airplane. His costs for the charter were reimbursed by Imperial Palace.
28. Mr. Zuppardo was compensated for any airplane expenses referred to in Stipulation #27 above by the Imperial Palace Casino/Hotel.
29. Sometime in 1980 or 1981, Mr. Zuppardo was contacted by Roy Goldberg regarding junket activities to Atlantic City.
30. Beginning in late 1981, Mr. Zuppardo ran junket trips to Caesars Casino/Hotel in Atlantic City.

31. Mr. Roy Goldberg supplied the chartered airplanes for the junket trips referred to in Stipulation #30 above.
32. Mr. Zuppardo's relationship with Roy Goldberg, as described in Stipulations #30 and #31 above, ended in late December 1981.
33. In early 1982, Mr. Zuppardo began running junket trips to Harrah's Marina in Atlantic City.
34. On and about various, unspecified dates between 1978 and the present, Mr. Zuppardo has run a number of junket trips to the Riviera Casino/Hotel in Las Vegas, and Harrah's Tahoe Hotel in Nevada, in addition to those trips enumerated in the above stipulations.
35. Harrah's Marina chartered the airplanes from Roy Goldberg, Harrah's Marina then would provide dates to Mr. Zuppardo on which he could run his junket trips.
36. In late 1982, Mr. Zuppardo began running junket trips to Caesars Casino/Hotel in Atlantic City.
37. On the junket trips referred to in Stipulation #36 above, Mr. Zuppardo dealt directly with Roy Goldberg for junket dates and chartered airplanes.
38. Mr. Zuppardo's sole compensation on the junket trips referred to in Stipulation #36 above, was his retention of a per persone service charge.
39. In December of 1982, Mr. Zuppardo was contacted by a Nathan Teplis, who informed Mr. Zuppardo that he (Nathan) was representing the Claridge Hotel in Atlantic City.
40. In December of 1982 and January of 1983, Mr. Zuppardo ran a number of junket trips to Claridge Casino/Hotel in Atlantic City through Nathan Teplis.

41. On the trips referred to in stipulation #41 above, Mr. Zuppardo charged a per person servite fee.
42. On the junket trips referred to in stipulation #41 above, Mr. Zuppardo paid Nathan Teplis \$30.00 per person.
43. Sometime in early 1983, Mr. Zuppardo contacted Mr. Roy Goldberg and requested airplanes for junket service to the Riviera Casino/Hotel in Nevada.
44. Mr. Goldberg told Mr. Zuppardo to contact Tom Duffy with Casino Caravans Limited in Florida regarding junket trips to the Riviera Casino/Hotel in Nevada.
45. Subsequently, Mr. Zuppardo did contact Tom Duffy and ran junket trips to the Riviera Casino/Hotel between March of 1983 and August of 1983.
46. In, approximately, May of 1983, Mr. Zuppardo began running junket trips to Caesars Casino/Hotel in Atlantic City.
47. After running one junket trip to Caesars Casino/Hotel in Atlantic City in May of 1983, Mr. Zuppardo was contacted by Innovative Travel Group (a company owned by Roy Goldberg) and was instructed to forward all junket manifests to Casino Caravan Limited in Florida.
48. Subsequently, Mr. Zuppardo called Tom Duffy at Casino Caravan Limited in Florida for any junket dates to Caesars Casino/Hotel in Atlantic City.
49. After November 1983, with the assistance of Mr. Duffy, junket dates and chartered aircraft were provided by Casino Caravan.
50. On those junket trips referred to in stipulation #49 above, Mr. Zuppardo charged a per person service fee.
51. On those junket trips referred to in stipulation #49 above, Mr. Zuppardo paid \$30.00 per person to Casino Caravans Limited.

52. On one or two of the junket trips referred to in stipulation #49 above, Mr. Duffy instructed Mr. Zuppardo to send his payments directly to Terry Weiner at Atlantic Tour and Transit.
53. In approximately August or September of 1983, Mr. Giles Robb of the Reno Ramada Casino/Hotel contacted Mr. Zuppardo.
54. Mr. Rob told Mr. Zuppardo that he was having a problem with a junket trip and needed a junket representative to bring a chartered junket trip into the Reno Ramada Casino/Hotel.
55. At the time he was contacted by Mr. Giles Rob, Mr. Zuppardo was running, approximately, 5 junket trips per month to the Riviera Casino/Hotel with the assistance of Tom Duffy.
56. Mr. Zuppardo has not had any business dealings with Nathan Teplis; Roy Goldberg or Tom Duffy (Irv Norwick) since November of 1983.

Testifying on his own behalf at the hearing, the petitioner explained that he paid \$5.00 per seat to Nate Teplis for the 3 junkets to the El Casino Hotel in Freeport, the Bahamas, in 1975. According to the petitioner, Teplis had stated that the hotel would reimburse him at a rate of \$115 per seat, but the plane cost Teplis \$120 per seat. From the \$30 per person service fee which the petitioner collected, he then paid \$5 per seat to Teplis to reimburse him for the remaining cost of the chartered airplane.

In regard to the junket trips which the petitioner ran to the Marina Casino/Hotel in Las Vegas, Nevada, in 1976, he testified that he collected approximately \$125 to \$135 from the players. Licensed junket representative Tom Forbes would be paid a service fee of \$30 per person for these junkets, as compensation for his efforts to obtain the junket dates and for handling the junket manifest and performing other junket representative duties. This service charge was paid by check to the company operated by Forbes.

As noted in the stipulated facts, the petitioner ran junket trips to the Stardust Casino/Hotel in Las Vegas, Nevada, between mid-1976 and February 1977. As his compensation for these junkets, the petitioner received a per person service fee. Bernie

Gillman supplied the planes for these junkets and he handled the manifest and credit. For his efforts, the petitioner paid Gillman a service fee of \$30 per person. A similar arrangement existed for junket trips which the petitioner ran through Bernie Gillman to the Frontier Casino/Hotel in Nevada between February 1977 and sometime in 1978.

The petitioner testified at the hearing that he was contacted by Roy Goldberg in 1981 and was asked to take part in a marketing program for Caesar's Casino/Hotel in Atlantic City, New Jersey. The petitioner subsequently ran approximately 6 junkets to Caesars. He obtained the dates for these trips from Goldberg, and his junket manifests were called into Goldberg or his staff at Innovative Travel. According to the petitioner, he received a per person service fee of \$100 from the patrons of these junkets. He was not required to share this fee with anyone.

In December 1982 and January 1983, the petitioner ran junket trips to the Claridge Casino/Hotel in Atlantic City. Arrangements for these trips were handled through Nate Teplis. The petitioner received a service fee of \$100 per patron. From that fee, the petitioner paid Teplis \$30 per person, for his efforts in supplying the junket date and for handling the manifest. In addition, this payment compensated Teplis for obtaining the airplane, which was expensive. The payments for the aircraft compensation were made by check.

It was the testimony of the petitioner that he obtained his application for licensure in New Jersey through Nate Teplis. In November 1982, he received a memo from Teplis that stated that he would be working under Teplis for the Claridge Hotel and Casino(Exhibit P-1). The petitioner was asked by Teplis to fill out the application for licensure and return it to him for forwarding to the Casino Control Commission. The petitioner also received instructions from Teplis in November 1982 to mail all manifests to Teplis in Atlanta, Georgia, and subsequently, to Casino Caravans in Ft. Lauderdale, Florida(Exhibit P-2). It was the candid testimony of the petitioner that it was just as easy for him to send the manifest to one location as to another, and the instructions had no particular significance to him.

It was the testimony of the petitioner that he organized junket trips to the Riviera Casino/Hotel in Nevada between March and August, 1983. In order to obtain airplanes for these junkets, he contacted Roy Goldberg. Goldberg did not have planes that could make the trip between New Orleans and Las Vegas non-stop, and Goldberg advised

the petitioner to contact Tom Duffy with Casino Caravan Ltd. in Florida. Duffy was able to provide an airplane on dates obtained by the petitioner. The Riviera Casino/Hotel paid for the plane.

The petitioner stated that he did not actually meet Tom Duffy until April 1983. He and Duffy had dinner at the Riviera and Duffy sought credit approval so that he could gamble. The Riviera had authorized the petitioner to determine whether or not to approve credit applications and the petitioner asked Duffy to fill out a credit form. It was at that time that the petitioner learned that Tom Duffy's real name was Irv Nowick. A credit check showed that Nowick was in debt to many of the casinos. Under the name Tom Duffy, he had a line of credit at the Sand's Casino/Hotel. However, because Nowick was using an alias and owed money, the petitioner would not approve his credit application.

As noted above, the petitioner began running junket trips to Caesars Boardwalk Regency Casino/Hotel in Atlantic City in May 1983. He was then contacted by Innovative Travel Group, which was owned by Roy Goldberg, and was instructed to forward his junket manifest to Casino Caravans Ltd. in Florida. After November 1983, junket dates and chartered aircraft were provided by Casino Caravans Ltd. through Tom Duffy. The petitioner charged a per person service fee to his patrons on these junkets. He also paid \$30 per person to Casino Caravans Ltd. In his testimony at the hearing, the petitioner characterized this payment as compensation for the cost of the chartered aircraft.

The petitioner testified credibly that he dealt with Tom Duffy only in Duffy's capacity as a supplier of airplanes. At no time did Duffy supply even one junket patron for the petitioner. The petitioner also testified credibly that he has never knowingly utilized the services of a junket representative who was not licensed, or who was not expected to be able to obtain a sheriff's work card in Nevada when bringing in an initial junket.

The petitioner testified at length concerning his dispute with junket representative Betty Cohn arising from a junket from Jacksonville, Florida, arriving at the Riviera Casino/Hotel in Las Vegas, Nevada, on August 22, 1985. The petitioner began dealing with Ms. Cohn in June 1984. He would charter the aircraft and Ms. Cohn would collect a service fee from the patrons she solicited for the junket. The petitioner handled

coordination of the flights, credit applications, and manifests. For his efforts and the expense of obtaining the aircraft, Ms. Cohn paid the petitioner a fee of \$30 per person (Exhibits P-4, P-5, P-6).

The petitioner would purchase the flights for these junkets. He obtained a reimbursement from the Riviera for each player. According to the petitioner, Ms. Cohn met her requirement to bring quality players to gamble. Although the trips were not always full, enough was wagered by the players for the hotel to reimburse the petitioner for the flight.

Subsequently, The Riviera changed its program because junket representatives were too frequently bringing in flights that were not filled. The flight reserved by the petitioner for the August 22, 1985 junket solicited by Ms. Cohn cost the petitioner approximately \$36,000. He paid a \$5,000 deposit for the plane approximately 30 days before the flight, and was required to pay the balance in full 10 days before the trip. Ms. Cohn signed an agreement (Exhibit P-8) on August 20, 1985, whereby she accepted responsibility for filling 110 seats of the 120 seat airplane. She also agreed to supply qualified players who would gamble for 10 to 12 hours at a minimum bet of \$25. These qualified players would entitle the petitioner to an airfare refund from The Riviera. If a player did not qualify, he was to pay airfare of \$330 to Ms. Cohn prior to departure. Each empty seat beyond the 10 empty seats allowed by the agreement would cost the junket representative \$330, which was to be paid prior to departure of the junket from Las Vegas (Exhibit P-8).

Prior to the August 22, 1985 junket, Ms. Cohn submitted a preliminary manifest, which was then typewritten by the petitioner's office (Exhibit P-10). After pre-flight cancellations and additions were made, the petitioner expected that Ms. Cohn would bring 117 patrons to the casino. When he met the group in Las Vegas, Ms. Cohn handed the petitioner a handwritten manifest showing that there were only 78 people on the flight.

It was the testimony of the petitioner that he explained to Ms. Cohn that she would be responsible under their agreement to pay for the empty seats. Her liability for the empty seats was approximately \$10,000. The petitioner further explained to Ms. Cohn that he would need the payment prior to the departure of the junket from Las Vegas, because he needed to pay the charter company for the aircraft which would be used in the

next week for the next junket. The petitioner also explained that the casino/hotel would not be completely reimbursing him for airfare, since the flight had only 78 people on board.

While the petitioner waited for Ms. Cohn to fulfill her financial obligation under their agreement, he made arrangements with a commercial air carrier to return the junket patrons because he felt it would be cheaper than bringing back the charter aircraft for their return flight. The petitioner informed Ms. Cohn that he would reduce the amount which she owed him, and return the patrons on the charter flight, if she would pay him part of the debt she owed. According to the petitioner, Ms. Cohn paid him \$3,000 and said that she would wire him \$4,300 when she returned to Jacksonville, Florida. Almost all of the patrons then returned to Jacksonville on the charter flight on August 25, 1985. The petitioner testified that he was then informed by Ms. Cohn that she would not be sending him the \$4,300, and he has instituted suit against her in Jacksonville.

The petitioner testified that he had been investigated for suitability as a junket representative by the Nevada State Gaming Control Board in 1978 and 1980, and he was found to be suitable. A certified statement from Dan Orlich, Vice President, Special Casino Programs, for Harrah's Hotels and Casinos in Reno, Lake Tahoe, and Las Vegas, Nevada, was admitted into evidence as Exhibit P-14. According to the statement of Mr. Orlich, the petitioner has been under his direct supervision since 1977, and Mr. Orlich has always found the petitioner to be honest and trustworthy and to have conducted his business in a very serious and professional manner. A certified statement from Giles A. Robb, Casino Manager in charge of Special Casino Programs for Holiday Inn's/Holiday Casino in Las Vegas, Nevada, was admitted into evidence as Exhibit P-15. According to the statement of Mr. Robb, he has known and worked with the petitioner for the past 10 years. He has always found the petitioner to be honest and trustworthy, and Mr. Robb vouches for the petitioner's good character.

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

#### CONCLUSIONS OF LAW

Pursuant to Sections 89b(2), 90b and 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq), an applicant for a casino employee license which would permit him to act

as a junket representative, sole owner/operator junket enterprise, must demonstrate by clear and convincing evidence his reputation for good character, honesty, and integrity. Pursuant to Sections 89b(1), 90b and 102 of the act, an applicant must demonstrate by the same burden that he possesses the requisite financial stability, integrity and responsibility for licensure.

A primary area of concern in regard to the petitioner's application for licensure was his payment of fees in connection with junkets to Atlantic City. He testified credibly that such payments were for services rendered; especially for the handling of manifests and other arrangements. In addition, some compensation was paid to defray the cost of aircraft. Commissions for junkets to Las Vegas were split on the basis of services which were provided.

Another area of concern in regard to the petitioner's application for licensure was his business dealings with Tom Duffy (Iry Nowick), Nathan Teplis, Innovative Travel Group, Inc., and Casino Caravans. It was the credible testimony of the petitioner that Duffy never supplied any patrons for a junket and he acted only as an aircraft broker. In addition, the petitioner had no reason to believe that Teplis was not properly licensed by the New Jersey Casino Control Commission. It was the candid and credible testimony of the petitioner that he was not aware of any illegal activity conducted by the individuals and enterprises with whom he did business.

Finally, the petitioner testified in a straightforward and candid manner concerning his dispute with junket representative Betty Cohn. He carefully detailed the terms of their contractual relationship and the manner in which he believed she had breached those terms. It is apparent from his believable testimony that he acted prudently and honestly to rectify the dispute with Cohn in a way which would not adversely affect patrons of the junket.

Based upon the foregoing discussion and findings of fact, I **CONCLUDE** that the petitioner has sustained his burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b, of the Casino Control Act, as incorporated in Section 102 of the act. I further **CONCLUDE** that the petitioner has sustained his burden of establishing that he possesses the requisite financial stability, integrity and responsibility for licensure, within the meaning of Sections 89b(1) and 90b of the Casino Control Act, as incorporated in Section 102 of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Vito C. Zuppardo for a casino employee license, permitting him to act as a junket representative, sole owner/operator junket enterprise, 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 6, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 6, 1986  
DATE

A. Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 9 1986  
DATE

Chicko Lopez  
OFFICE OF ADMINISTRATIVE LAW

bc

OAL DKT. NO. CCC 4291-85

WITNESSES

For the petitioner:

Vito C. Zupardo

For the respondent:

None

INVENTORY OF EXHIBITS

**Joint Exhibit:**

**J-1 Stipulations of fact**

**For the petitioner:**

- P-1 Memo, dated November 16, 1982**
- P-2 Memo, dated November 16, 1982**
- P-3 Memo, dated November 17, 1982**
- P-4 Manifest, dated August 16, 1984**
- P-5 Manifest, dated September 16, 1984**
- P-6 Manifest, dated June 10, 1984**
- P-7 Representation and Commission Agreement, dated May 1985**
- P-8 Junket Agreement for August 22, 1985**
- P-9 Air Craft Charter Agreement**
- P-10 Manifest for August 22, 1985**
- P-11 Handwritten Manifest**
- P-12 Charter Flight Manifest**
- P-13 Money Transfer**
- P-14 Certified statement of Dan Orlich dated January 9, 1986**
- P-15 Certified statement of Giles A. Robb, dated December 27, 1985**

**For the respondent:**

- R-1 State Grand Jury Indictment**
- R-2 Charter Cancellation Notice**
- R-3 Charter Reinstatement Notice**
- R-4 Riviera Junket Program Agreement**

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1986

PREPARED BY THE LEGAL DIVISION

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2	2. State of New Jersey v. <u>Hassan Ali</u>	OAL CCC 5269-85 Agency 83-339	07/31/86	19
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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 86-154;  
86-EA-22  
OAL DOCKET NOS. CCC 1659-86;  
CCC 3180-86  
REGISTRATION NO. 60015-40  
APPLICATION NO. 56900-21

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

Complainant,

v.

JOSEPH L. ABBOTT, SR.,

Respondent.

AND

APPLICATION OF JOSEPH L. ABBOTT, SR.,  
FOR A CASINO EMPLOYEE LICENSE

---

FINAL ORDER

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed by an administrative law judge; and the Commission having considered the entire record of the consolidated cases at its public meeting of October 15, 1986,

IT IS on this 16<sup>th</sup> day of October 1986, ORDERED that the initial decision is modified to dismiss the complaint against Mr. Abbott's casino hotel employee registration rather than to deny the complaint; and

IT IS FURTHER ORDERED that the initial decision, as modified, is affirmed and incorporated by reference; and

IT IS FURTHER ORDERED that Mr. Abbott's casino employee license is granted and the complaint against his casino hotel employee registration is dismissed based substantially on reasons stated in the initial decision.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 1659-86 and  
CCC 3180-86 (CONSOLIDATED)  
AGENCY DKT. NOS. 86-EA-22 and  
86-154

**JOSEPH L. ABBOTT, SR.,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY,**

Respondent.

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**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY,**

Petitioner,

v.

**JOSEPH L. ABBOTT, SR.,**

Respondent.

---

**Joseph L. Abbott, Sr., petitioner/respondent, pro se**

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

Record Closed: July 15, 1986

Decided: August 29, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. First, Joseph L. Abbott, Sr., petitioner/respondent, applied to the Casino Control Commission (Commission) for licensure as a casino employee (accountant/auditor), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent/petitioner, opposed licensure because of its contention that the petitioner/respondent had committed a disqualifying offense under section 86c(1) of the Casino Control Act (Act), that the petitioner/respondent did not possess the requisite good character, honesty and integrity under sections 90b and 89b(2), and that the petitioner/respondent could not establish that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency under sections 90b and 89b(3). The petitioner/respondent contended that he was rehabilitated under section 90h. Second, the Division charged that the petitioner/respondent, the holder of casino employee registration no. 60015-40, had committed a criminal offense which disqualified him from continued registration under section 86c(1), for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The petitioner/respondent opposed the action and, in the alternative, contended that he was rehabilitated under section 91d.

PROCEDURAL HISTORY

Mr. Abbott filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on October 1, 1984 (J-1). By letter, the Commission advised the petitioner/respondent that, based upon the information received in a report from the Division, dated February 3, 1986, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed with the Commission on March 10, 1986, the petitioner/respondent requested a hearing. On March 12, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 15, 1986. On April 21, 1986, the Division filed its complaint with the Commission. On May 12, 1986, the Commission transmitted the matter of the Division's complaint to the Office of Administrative Law and requested that it be consolidated for hearing with the application

for licensure. On May 23, 1986, a prehearing order was issued in which the matters were consolidated. The matter was heard on July 15, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Abbott is 62 years of age (J-1). He has resided in Margate for the past seven years. He is married, but separated. He is the father of three children who are emancipated.

The petitioner/respondent is a 1942 graduate of Catonsville High School, Catonsville, Maryland.

From February 4, 1943 to January 12, 1945, the petitioner/respondent was in the U.S. Navy, and achieved the rank of seaman first class. He earned an honorable discharge.

In 1948, the petitioner/respondent returned to Atlantic City. He was employed in an accounting capacity by several banks. Ultimately, he had responsibility for the Atlantic City Expressway Authority and Garden State Parkway accounts, which totalled \$150 million, and he supervised 15 people. He had no difficulty in this employment.

In the late 1960s, the petitioner/respondent attended Glassboro State College at night, was employed in a bank in Philadelphia, Pennsylvania, during the day, and had a part-time accounting business which was operated from his home in Brigantine. Also, the petitioner/respondent and his family owned and operated Brigantine Distributors, which was a newspaper distributorship in Atlantic County for the Philadelphia Bulletin.

In 1971, the petitioner/respondent graduated from Glassboro State College with a bachelor of arts degree in elementary education.

From September 1971 to June 1977, the petitioner/respondent was employed by Holy Spirit High School in Absecon, where he taught mechanical drawing and business math. He was laid off from this position by reason of economics.

Although the petitioner/respondent had not been close to his father for 20 years, they had begun to communicate immediately prior to his father's death in 1977.

Also in 1977, the Philadelphia Bulletin began to suffer financial problems and Atlantic News began to distribute newspapers in Atlantic County, both of which created a severe financial hardship upon Brigantine Distributors. Ultimately, the distributorship lost monies and went out of business.

During this period, the petitioner/respondent collected Unemployment Insurance Benefits (UIB) under his name because of the closing of the distributorship. His claim for benefits was based upon his unemployment during the summer. The petitioner/respondent was later declared to be ineligible for UIB, because he was an officer of the corporation. He repaid all benefits received.

From September 1977 to June 1978, the petitioner/respondent was employed as a teacher by St. Nicholas School in Atlantic City.

At or about this time, the petitioner/respondent incurred severe personal problems, which will be discussed, infra. Also, the petitioner/respondent began to drink excessively. These factors affected his accounting business, which became virtually nonexistent. Ultimately, his son took over the business and saved it.

On September 8, 1978, the petitioner/respondent was arrested in the Toms River UIB office. On April 17, 1980, he was named in an accusation which alleged three counts of violations of N.J.S.A. 2A:111-1, obtaining money under false pretenses, analogous to N.J.S.A. 2C:20-4 (P-1). More specifically, the petitioner/respondent was charged with fraudulently obtaining unemployment benefits between August 22, 1977 and August 25, 1978 and between June 6, 1978 and September 7, 1978 (two counts). The accusation reflected benefits obtained in an approximate amount of \$4,300. On the same date, the petitioner/respondent pled guilty to the accusation (P-2). On June 27, 1980, he was sentenced to 364 days in jail, concurrent on each count, sentence suspended, probation for a period of five years, restitution in the amount of \$4,300, and a penalty of \$50 on each count. The statement of reasons for the sentence is as follows:

This defendant has no prior record at age 56, and has cooperated with law enforcement officials in his case. He has made an attempt to pay for the crime he committed. Under the particular circumstances, supervision, psychological counseling, fine and restitution are indicated.

The petitioner/respondent explained the circumstances underlying the charges.

In the summer of 1977, Mr. Abbott, at the request of the owner of a florist shop, an accounting client of the petitioner/respondent, applied for and collected unemployment benefits in the name of another person, which person was a former employee of the florist shop. Although the florist suggested the scheme to obtain benefits, the petitioner/respondent did not attempt to deny nor diminish his culpability. The petitioner/respondent obtained a false birth certificate by mail from a magazine advertisement and used a post office box. He then applied for benefits, which were shared with the florist. He never advised the police, prosecutor or judge that the florist had first suggested the scheme. However, he did advise his attorney and probation officer.

During the summer of 1978, the petitioner/respondent again decided to collect unemployment benefits, this time on his own. Again, he obtained false birth certificates and made applications at separate UIB offices under two false names. The petitioner/respondent continued to receive benefits until his arrest.

Although the accusation reflected benefits received in the amount of \$4,300, the petitioner/respondent ultimately repaid in excess of \$9,000. This included reimbursement to the state for benefits and a federal tax lien, which concerned the failure to pay taxes on the income fraudulently received.

The petitioner/respondent has not committed any other violations of the criminal laws.

Following his arrest, the petitioner/respondent worked at a variety of jobs, including as a night clerk for motels.

From July 1980 through January 1981, the petitioner/respondent was employed by the Atlantic County Supported Work Program as a senior accountant (R-1). His duties

and responsibilities included the management of Manpower and CETA grants. This employment was positive in all respects. At the time of his employment, the petitioner/respondent disclosed his criminal record history to the program director.

In February 1981, the petitioner/respondent was employed by Ireland Coffee. He did not disclose his criminal record history, and he was fired when the company discovered his record.

Thereafter, the petitioner/respondent again worked as a night clerk for various motels and occasionally did accounting work for his son. He began to drink again.

During 1981, the petitioner/respondent taught at the Taylor Business Institute (R-5 and R-6). However, he did not disclose his criminal record history.

On October 21, 1983, the Ocean County Probation Department granted Mr. Abbott's request for an early termination of probation (R-7). The order reveals that the petitioner/respondent had made full restitution in a timely manner and had otherwise complied with all conditions of his probation.

The petitioner/respondent continued to work at various jobs.

On or about May 1, 1985, the petitioner/respondent was sent by Manpower on a two-week assignment to GNAC Corp. (Golden Nugget). At the completion of this assignment, the Golden Nugget offered him a full-time position. Mr. Abbott advised his supervisor of his criminal record history. Nevertheless, on May 20, 1985, the petitioner/respondent was employed as an accounts payable clerk (food and beverage). At this time he obtained his registration from the Commission. The petitioner/respondent's duties and responsibilities included paying invoices for food and beverages, utilities and engineering supplies. Essentially, he verified entries on invoices, prepared payment authorization forms and verified payments issued. He earned a very commendable performance evaluation (R-8), and his employment was positive in all respects. On April 4, 1986, the petitioner/respondent left the Golden Nugget upon one month's notice. His reason for leaving was that his \$12,000 salary provided insufficient income.

The petitioner/respondent desires a casino employee license in order to be employed within the casino industry as an accountant/auditor. At the Golden Nugget, the

duties and responsibilities of an accountant/auditor would be to verify payment records and be responsible for an entire payment process. There would be no contact with casino patrons.

The petitioner/respondent is currently employed by his son's accounting firm, Abbott Associates, Inc., of Cherry Hill. He does varied accounting work and prepares individual tax returns.

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

**(B) DISPUTED FACTS**

In dispute were the petitioner/respondent's rehabilitative efforts and his good character, honesty and integrity.

The petitioner/respondent described the circumstances underlying his misconduct. More specifically, he was more vulnerable during 1977 and 1978 than at any other time in his life. During each of these years he had been released from his permanent employment as a teacher, the newspaper distribution business had become financially unsuccessful, his part-time accounting business was unsuccessful, his marriage was in shambles and he was drinking heavily. Each of these factors detrimentally affected the others and culminated in his criminal misconduct. The petitioner/respondent testified that he has dealt with each of his problems and put them behind him. More specifically, he has paid his debt to society, including full restitution, has divested himself of his financially failing enterprises, has established a positive record of employment subsequent to his misconduct and has eliminated his problem with alcohol consumption.

The petitioner/respondent's prior consumption of alcohol and his assertion of current abstinence were of some concern. Although he conceded that he may have been an alcoholic and occasionally resumed heavy consumption of alcoholic beverages until 1984, the petitioner/respondent claimed to have cured this problem. This claim is supported by his employment record during the past year. My concern stems from the fact that there was no medical evidence of either the petitioner/respondent's prior or current condition. It appears that Mr. Abbott's prior difficulties manifested themselves, in part, by the heavy consumption of alcoholic beverages, but that this consumption may

not have been sufficient to classify him as an alcoholic. Further, the petitioner/respondent recognized his problem and had the capacity to correct his behavior.

The petitioner/respondent offered several letters on his behalf. John M. Bettis, Director of the Atlantic County Supported Work Program, described his employment relationship with the petitioner/respondent in a supervisory capacity (R-1). Mr. Bettis was aware of petitioner/respondent's prior problems. Second, was a letter from Virginia J. Plevinsky, who taught with Mr. Abbott for approximately 15 years, and who was aware of his problems (R-2). Daniel F. Loen, the petitioner/respondent's probation officer, stated that Mr. Abbott had performed his probationary requirements in a positive manner (R-3). Next, John F. Huber, III, the petitioner/respondent's brother-in-law, was aware of Mr. Abbott's problems and described his rehabilitation (R-4). Letters were also offered from Rosalind Chadwick of the Taylor Business Institute, for whom petitioner/respondent taught; however, Ms. Chadwick was unaware of Mr. Abbott's misconduct (R-5 and R-6). Each of these persons was of the opinion that the petitioner/respondent has rehabilitated himself from his prior problems and is a hard-working, trustworthy, dependable person. Mr. Abbott ~~also offered his performance~~ evaluation from the Golden Nugget, on which he was rated highly ~~(R-8)~~. In addition, the petitioner/respondent offered several newspaper articles concerning persons licensed by the Commission who have incurred problems, but retained their licenses (R-9A, B, C and D). The articles were offered to establish that all persons are fallible and should be entitled to a second chance.

Although the Division did not attempt to refute the petitioner/respondent's testimony concerning his rehabilitation and current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As an applicant for licensure and as a holder of a registration, he has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the petitioner/respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence, that the petitioner/respondent testified truthfully in every regard. More specifically, his description of his misconduct as well as his conduct since was corroborated by documentary evidence. Further, the petitioner/respondent candidly admitted his

misconduct and described in detail the nature thereof. Accordingly, I am persuaded to accept his testimony in all respects. I so FIND.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The petitioner/respondent's convictions were for violations of N.J.S.A. 2A:111-1, obtaining money under false pretenses, which are analogous to N.J.S.A. 2C:20-4, and are, therefore, disqualifying offenses under section 86c(1).

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner/respondent committed disqualifying criminal offenses under section 86c(1).

(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

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

First, Mr. Abbott is an applicant for a casino employee license and seeks employment as an accountant/auditor, and is a registrant and was formerly employed as an accounts payable clerk. As an accountant/auditor, the petitioner/respondent would be responsible for an entire vendor-payment process, which is a substantial responsibility. However, he would have no contact with casino patrons.

Second, the petitioner/respondent's criminal misconduct is serious as a disqualifier under section 86c(1). In addition, the fact that the petitioner/respondent committed his misconduct by means of a complex scheme, and the misconduct constituted the theft of public monies, substantially enhanced the seriousness thereof.

Third, the misconduct was committed knowingly by a person who possessed special knowledge which facilitated the scheme. Although the petitioner/respondent's explanation of the circumstances underlying the misconduct were believable, they do not serve to mitigate his misconduct.

Fourth, the misconduct occurred during the summers of 1977 and 1978 and ended approximately eight years ago.

Fifth, at the time of the misconduct the petitioner/respondent was in his mid-50s. There was no indication that his misconduct was due to immaturity.

Sixth, the petitioner/respondent's criminal misconduct involved three separate but similar events during 1977 and 1978. Given the petitioner/respondent's age and the absence of any other criminal misconduct, the criminal activity was isolated.

Seventh, there were no social conditions which contributed to the offenses.

Eighth, the petitioner/respondent has made substantial rehabilitative efforts. At the time he was charged, he fully acknowledged his misconduct and accepted responsibility therefore. In addition, he fully satisfied the sentence imposed and earned

an early release from probation, including full restitution and tax penalties. In addition, the petitioner/respondent has not repeated his misconduct, despite continuing employment difficulties and continued matrimonial hardships. Mr. Abbott has earned a positive employment record, including one year within the casino industry in a capacity which is substantially similar to that which he seeks licensure. Also, it is evident that the petitioner/respondent has eliminated his problems with the consumption of alcoholic beverages. Further, Mr. Abbott has regained the trust of others, including employment supervisors. He has successfully reentered the community. Although the petitioner/respondent cannot eliminate his past record, there is little more he could have done to establish his rehabilitation.

I **CONCLUDE** that the petitioner/respondent has established by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d.

(C) N.J.S.A. 5:12-90b and N.J.S.A. 5:12-89b(2)

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

It is evident that commencing with the initiation of criminal proceedings, continuing throughout his probation and his employment within the casino industry, and until this date, the petitioner/respondent has regained control over his life in a positive manner. He has affirmatively demonstrated his rehabilitation. Accordingly, there is little likelihood, if any, that the petitioner/respondent will commit any unlawful acts in the future. He presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of licensure. An examination of the "whole man" clearly and convincingly establishes that Mr. Abbott is a person of good character, honesty and integrity and is suitable for licensure in this state. Boardwalk Regency Corp.

I CONCLUDE that the petitioner/respondent has established, by clear and convincing evidence, his good character, honesty and integrity, under sections 90b and 89b(2).

(D) N.J.S.A. 5:12-90b and N.J.S.A. 5:12-89b(3)

Under section 90b, which also incorporates section 89b(3) by reference, the petitioner/respondent was required to establish that he has sufficient business ability and casino experience to establish a reasonable likelihood of success and efficiency as an accountant/auditor. Of concern was the petitioner/respondent's criminal record history, i.e., the fact that his conduct was related to his activities as an accountant.

Although the petitioner/respondent's misconduct was related to his activities as an accountant which, in turn, are generally similar to the duties and responsibilities of the position for which he seeks licensure, there is no reason to now believe that his misconduct reflects adversely upon his qualifications. More specifically, the petitioner/respondent has affirmatively demonstrated his rehabilitation. Part of his rehabilitation included positive employment within the casino industry as an accounts payable clerk with substantially similar duties and responsibilities, as well as his past and current employment as an accountant and tax preparer. Although this current employment is with his son, it is fair to assume that his son would not risk his own reputation and business integrity by the employment of a corrupt father. It was evident that the petitioner/respondent's positive employment record within the past several years is sufficient to overcome the negative concerns raised by his prior misconduct.

I **CONCLUDE** that the petitioner/respondent 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 an accountant/auditor.

(E) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the registrant;
- b. the seriousness of the conduct of the registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the registrant;
- d. the prior history of the particular registrant involved with respect to gaming activity;
- e. the corrective action taken by the registrant to prevent future misconduct of a similar nature from occurring. . . .

For the reasons previously expressed, it is clear that the petitioner/respondent's prior misconduct does not now disqualify him from continued registration. Further, there is every reason to believe that he will not repeat his misconduct in the future. Accordingly, no penalty shall be imposed against his registration.

I **CONCLUDE** that no penalty shall be imposed against the registration held by the petitioner/respondent.

DISPOSITION

It is ORDERED that the application of Joseph L. Abbott, Sr., for licensure as a casino employee be GRANTED, and it is further ORDERED that the petition of the Division against the casino hotel employee registration held by the petitioner/respondent be DENIED.

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

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

August 29, 1986  
DATE

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

Sept 2, 1986  
DATE

Receipt Acknowledged:  
Richard Zayas  
CASINO CONTROL COMMISSION

SEP 4 1986  
DATE

Mailed to Parties:  
Ronald J. Park / x.5.  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission - Personal History Disclosure Form-2A, Joseph Lee Abbott, filed on October 1, 1984 (23 pages)
- P-1 State of New Jersey v. Joseph L. Abbott, Sr., Superior Court of New Jersey, Ocean County, Law Division - Criminal, Docket No. A-420-79, Accusation filed on April 17, 1980; Waiver of Indictment and Trial by Jury, April 17, 1980 (5 pages)
- P-2 State of New Jersey v. Joseph L. Abbott, Sr., Superior Court of New Jersey, Ocean County, Law Division - Criminal, Docket No. 420-79, Judgment of Conviction, July 3, 1980 (2 pages)
- R-1 Letter from John M. Bettis, Director, Atlantic County Supported Work Program, dated March 23, 1981
- R-2 Letter from Virginia J. Plevinsky, dated March 28, 1981
- R-3 Letter to Division of Gaming Enforcement from Daniel F. Loen, dated April 22, 1981
- R-4 Letter to Mr. Kent from John Huber, III, dated May 4, 1984 (2 pages)
- R-5 Letter to Joseph Abbott from Rosalind Chadwick, dated September 4, 1981
- R-6 Letter to Joseph Abbott from Rosalind Chadwick, dated November 25, 1981
- R-7 Ocean County Probation Department - Order granting termination of probation, filed on October 26, 1983
- R-8 Golden Nugget - Performance Evaluation, Joseph L. Abbott, dated August 21, 1985 (2 pages)
- R-9A Article from The Press, dated April 29, 1986
- R-9B Article from The Press, dated April 30, 1986 (2 pages)
- R-9C Article from The Press, dated May 8, 1986 (2 pages)
- R-9D Article from The Press, dated June 12, 1986

WITNESS LIST

For the petitioner/respondent:

Joseph L. Abbott, Sr.

For the respondent/petitioner:

Joseph L. Abbott, Sr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-339  
OAL DOCKET NO. CCC 05269-85  
REGISTRATION NO. 49020-40

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

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A hearing in this matter having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of May 21, 1986,

IT IS on this 31<sup>st</sup> day of July 1986, ORDERED that the initial decision is modified as follows:

The disposition portion of the initial decision is corrected to order that the complaint filed by the Division of Gaming Enforcement against Hassan Ali be dismissed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision as modified,

which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Commission's order of October 17, 1983, which suspended the respondent's casino hotel employee registration is vacated.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**FILED**

**APR 17 1986**

**CASINO CONTROL COMMISSION  
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 5269-85

AGENCY DKT. NO. 83-339

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

Petitioner,

v.

**HASSAN ALI,**

Respondent.

---

**Anthony V. D'Elia**, Deputy Attorney General, for the petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

**Michael Hawkins, Esq.**, for the respondent

Record Closed: March 13, 1986

Decided: April 10, 1986

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

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on September 28, 1983, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Hassan Ali 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.

PROCEDURAL HISTORY

A prehearing conference was held on October 4, 1985, before Administrative Law Judge Jeff S. Masin, and at that time, the parties agreed that the issues in this matter are:

- (a) Has the respondent engaged in conduct which indicates that his continued registration would be inimical to the policies of the Casino Control Act and the casino industry, thus requiring revocation pursuant to N.J.S.A. 5:12-86c(4)?
- (b) Has the respondent engaged in conduct which, while not prosecuted, would, had it been prosecuted, constitute an offense requiring disqualification from registration pursuant to N.J.S.A. 5:12-86c(1)?

It should be noted that at the time of the prehearing conference, the Division was represented by Deputy Attorney General William E. Mountford and the respondent appeared pro se.

The hearing took place before the undersigned on March 13, 1986, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that the pertinent facts in this matter are not in dispute.

Mr. Ali was born in 1960 and is a high school graduate. He worked as a parking attendant for Meyers Corporation at Bally's Park Place Casino for about one year in 1980, until he was laid off because of slack business. After receiving unemployment benefits for some time, he resumed his job with Meyers Corporation for an approximate 4 1/2-month period until he was again laid off. Thereafter, for approximately one year, Mr. Ali worked for his brother, a police officer, who at the time owned an ice cream store. After again receiving unemployment benefits for a period of time, Mr. Ali obtained a job as a valet parking attendant at Tropicana Hotel and Casino (Tropicana) at the end of July 1983.

On August 18, 1983, the valet parking area at the Tropicana was busy and the respondent did not get his regular break. Later that day, the respondent's cousin came in and while he was talking with his cousin, Janet Brenner, the respondent's supervisor, came over and asked him whether he was on a break. Mr. Ali stated that he was taking his break then and Ms. Brenner stated that he could not take a break when he wanted it and that he had to park a certain car.

Mr. Ali was upset and when he got into the car, he saw a \$5 bill and four single dollar bills in the car's ashtray. Mr. Ali took the \$5 bill. At the time, the respondent's financial situation was not good since he had not received his first salary payment and he probably would have used the \$5 to purchase food.

Shortly after he parked this vehicle, the respondent was taken into the office, read his rights and arrested. He was charged with theft by unlawful taking, a violation of N.J.S.A. 2C:20-3 (J-1). Mr. Ali was terminated by Tropicana on August 18, 1983.

Cynthia Boyd, an investigator employed by Tropicana, stated that she had been contacted by Ms. Brenner prior to the August 18, 1983 incident. Ms. Brenner told Ms. Boyd that three customers, within the short period that the respondent had been employed by Tropicana, had complained that their car's glove compartment had been ransacked, and that the three cars had been parked by Mr. Ali. Ms. Brenner, who is no longer employed by Tropicana, did not discuss the matter with the respondent; instead, with the concurrence of Ms. Boyd, she photographed some money, placed the money into the glove compartment of a car and then had the respondent park the vehicle. Mr. Ali took the \$5 bill from this car.

Michael Hawkins, Esq., on behalf of the respondent, objected to Ms. Boyd's testimony regarding the three alleged incidents prior to August 18, 1983, on the basis that it was hearsay. He also questioned the ability of the supervisor to be sure that the respondent had parked the three vehicles and/or that another person had not entered the vehicles and ransacked the glove compartments. I allowed this testimony; however, I stated that I would take Mr. Hawkins' argument into consideration in determining what weight to give to this testimony.

Mr. Ali admitted that he took the \$5 bill on August 18, 1983, and he pled guilty to the theft charge and was fined \$25 (J-1). Except for this one incident, Mr. Ali has not been involved in any criminal activities.

According to the respondent, the incident on August 18, 1983 was a mistake and he now regrets his action. Mr. Ali stated that he has lost a great deal because he took the \$5 bill.

After the incident, Mr. Ali was unemployed for approximately five months, and thereafter he worked for about a year and a half as a salesman at Dandy's Gentlemen's Boutique. Mr. Ali then was unemployed for some time. Since April 1985, the respondent has worked for Pep Boys as a salesperson and part-time stock person. In both of these positions, Mr. Ali has had responsibilities for the handling of cash receipts.

If Mr. Ali's registration is not revoked, he hopes to get another job with a casino and to go to a trade school for carpentry, electricity or plumbing. Also, Mr. Ali stated that he might go to school so that he could qualify for a casino license.

On behalf of the respondent, Barbara A. Camper, Administrative Assistant of the Cape-Atlantic Legal Services, wrote a letter stating that Mr. Ali has assisted her with various youth programs (R-1). Rick Murrel, III, the store manager, and Charles Drummond, the assistant manager of Pep Boys, wrote letters stating that the respondent is a capable, honest and cooperative employee (R-2, R-3). In addition, several friends of Mr. Ali wrote letters stating that he is a courteous person who has been involved in community activities (R-4, R-5, R-6).

#### CONCLUSIONS OF LAW

In closing, Mr. Hawkins argued that the Division had shown only that Mr. Ali had taken the \$5 bill on August 18, 1983, and that he had been punished enough for this mistake since he had been unable to obtain a casino position for 2 1/2 years. Mr. Hawkins equated the loss of the ability to work for a casino for the \$5 theft incident to using a sledge hammer to get a fly.

Deputy Attorney General Anthony V. D'Elia admitted that the Division had not shown that Mr. Ali had committed an offense that is a statutory disqualifier pursuant to

either N.J.S.A. 5:12-86c(1) or 5:12-86g; however, he argued that the respondent's continued registration would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). Mr. D'Elia stated that it is the Commission's position that a theft committed on the premises of a casino by a casino employee is an inimical offense pursuant to N.J.S.A. 5:12-86c(4).

Although I agree with Mr. Hawkins that the testimony of Ms. Boyd is insufficient to establish any misconduct by the respondent prior to August 18, 1983, her testimony does explain why Mr. Ali was asked to park the car with the planted money on August 18, 1983, and there is no question that he took the \$5 from the car.

Based on the facts in this matter, I **CONCLUDE** that the August 18, 1983 incident is not an inimical offense pursuant to N.J.S.A. 5:12-86c(4). In reaching this determination, I have considered the criminal offense committed by Mr. Ali as well as the factors normally considered when deciding the issue of rehabilitation pursuant to either N.J.S.A. 5:12-90h or 5:12-91d. See, Donna Davis v. Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (Aug. 12, 1985), modified, Casino Control Commission (Dec. 27, 1985). Although the offense occurred on the premises of a casino, I recognize that it involved a small amount of money, that it took place almost three years ago and that it is Mr. Ali's only criminal offense. Mr. Ali has shown sincere remorse about the incident and since then, he has been successfully employed in other positions where he has been responsible for money.

DISPOSITION

Therefore, I **ORDER** that the registration of Hassan Ali as a casino hotel employee not be **REVOKED**.

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

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

April 10, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

April 11, 1986  
DATE

Charlotte J. Frizer  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 15 1986  
DATE

Ronald D. Parker x 5  
OFFICE OF ADMINISTRATIVE LAW

ks/e

EXHIBITS ADMITTED INTO EVIDENCE:

JOINT EXHIBITS:

J-1 Request for Admissions, and response signed by Hassan Ali

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

R-1 Letter from Barbara A. Camper

R-2 Letter from Rick Murrel, III, dated November 22, 1985

R-3 Letter from Charles Drummond, dated November 4, 1985

R-4 Letter from Monica L. Camper, dated December 2, 1985

R-5 Letter from Marion Ringgold, dated December 4, 1985

R-6 Letter from Denise Devins, dated December 3, 1985

WITNESSES

FOR THE PETITIONER:

Ali Hassan

Cynthia Boyd

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-229(a)  
OAL DOCKET NO. CCC 2340-85  
REGISTRATION NO. 42345-40

---

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

Complainant, :

FINAL ORDER

v. :

ALFRED W. AUFFINGER, :

Respondent. :

---

A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 24, 1986,

IT IS on this *12<sup>th</sup>* day of November 1986, ORDERED that the initial decision is modified as follows:

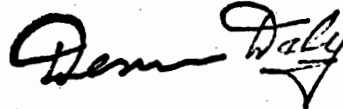
- (1) Mr. Auffinger's conduct in removing property from the warehouse of Bally's Park Place Casino Hotel is equivalent to the offense of theft by receiving stolen property in violation of N.J.S.A. 2C:20-7; and
- (2) The offense of theft by receiving stolen property, under the circumstances of this case, is an inimical offense which requires disqualification from registration pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

IT IS FURTHER ORDERED that the casino hotel employee registration of Alfred W. Auffinger is hereby revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2340-85

AGENCY DKT. NO. 84-229(a)

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

Petitioner,

v.

**ALFRED W. AUFFINGER,**

Respondent.

---

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

**Mary Noland, Esq., for respondent (Community Health Law Project)**

Record Closed: August 1, 1986

Decided: August 14, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division) seeks revocation of respondent's casino employee license no. 14842-21 and casino hotel employee registration no. 42345-40, pursuant to Section 129 of the Casino Control Act (Act) because of alleged criminal conduct.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on July 16, 1984. The Commission forwarded a copy of the complaint to respondent on July 17, 1984. In addition, the Division apparently applied and was granted an Order of Suspension concerning the respondent's casino employee license and casino hotel registration. On March 29, 1985, Mary Noland, Staff Attorney, Community Health Law Project, requested a hearing on behalf of respondent. On April 22, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was originally scheduled for June 10, 1985. The prehearing conference was adjourned until August 13, 1985 at the request of respondent. On August 6, 1985, respondent requested the matter be placed on the inactive list because of the institutionalization of respondent. On September 3, 1985, the matter was placed on the inactive list for a period of six months. On March 3, 1986, the matter was returned to the Administrative Law Judge for rescheduling. A prehearing conference was held on June 18, 1986 and the matter was scheduled for hearing on August 1, 1986. On August 1, 1986, a hearing was conducted in the Absecon Municipal Building, Absecon, New Jersey.

FINDINGS OF FACT

(A) CASINO EMPLOYEE LICENSE NUMBER 14842-21

Mr. Auffinger's casino employee license no. 14842-21 expired in June 1985, and the Division considers the revocation of Mr. Auffinger's casino employee license moot. I so **FIND.**

(B) CASINO EMPLOYEE HOTEL REGISTRATION NUMBER 42345-40

Mr. Auffinger suffers from chronic post-traumatic stress disorder and major depression as a result of his service in the Republic of South Vietnam.

Mr. Auffinger joined the United States Army in November 1964. During 1964, he received air borne training at Fort Bragg, North Carolina and ranger training at Fort Benning, Georgia. In 1965, Mr. Auffinger was ordered to the Republic of South Vietnam where, according to his clinical record dated May 14, 1984 (P-3):

He had no rest and recuperation at all, always out on the field. He mentioned one period of being 90 days out in the field. He was supplied solely by helicopter with respect to food and ammunition.

He states that they were always out on search and destroy missions. He mentions that they dealt mainly with regular North Vietnamese soldiers. He acknowledges that there were a couple of times he felt like running away and sometimes he felt like committing suicide.

Army rangers are an elite fighting force that usually operate well behind enemy lines. Their mission is to interdict and destroy enemy supply lines and to create havoc among the enemy, sometimes with minimal equipment and supplies. It appears that the constant stress and tension from Mr. Auffinger's service in the Republic of South Vietnam contributed directly to his mental state.

Following his discharge in 1967, Mr. Auffinger began to experience flashbacks, nightmares, explosive outbreaks of temper, difficulty holding jobs and difficulty with relationships (P-4).

On April 10, 1984, a search warrant was executed on the apartment occupied by Alfred W. Auffinger and Patricia Van Daley. As a consequence of the search warrant, respondent, Alfred W. Auffinger, was arrested and charged with possession of a controlled dangerous substance (Methamphetamine), in violation of N.J.S.A. 24:21-20a(1), possession of a prohibited weapon in violation of N.J.S.A. 2C:39-3(f), theft by receiving stolen property, in violation of N.J.S.A. 2C:20-7 and unlawful acquisition of a fire arm, in violation of N.J.S.A. 2C:39-10 and N.J.S.A. 2C:58-3(a). On or about May 15, 1984, an Atlantic County Grand Jury returned indictments as to all counts (P-2). On July 8, 1984, the Atlantic County Prosecutor, and Alfred W. Auffinger, entered into a plea bargain agreement whereas Mr. Auffinger pled guilty to possession of a prohibited weapon in violation of N.J.S.A. 2C:39-3(f) and possession of hollow-point ammunition. The rest of the charges were dismissed.

In all likelihood, there is more than a casual relationship between the episodes of criminal conduct delineated in the Division's complaint of July 16, 1984, and Mr. Auffinger's diagnosed mental illness. In fact, the act of testifying would place an inordinate amount of stress upon Mr. Auffinger. Therefore, Mr. Auffinger elected not to testify. Since the Allegations contained in the Division's complaint remain un rebutted, they are deemed admitted.

The above is uncontroverted, believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

This matter presents an unusual set of circumstances. There's no question that Mr. Auffinger committed acts, which at the time rendered his continued licensure inimical to the policies of the Casino Control Act. The remaining question is whether Mr. Auffinger's continued licensure is presently inimical to the policies of the Casino Control Act. By reason of his mental illness, he is unable to present evidence of rehabilitation. In fact, the documentary evidence indicates that his condition continues unabated. Therefore, I **CONCLUDE** that Mr. Auffinger presents a substantial risk to the industry and continued licensure would be inimical to the policies of the Casino Control Act. In the event his condition would improve, then Mr. Auffinger should be made aware of the opportunity to make early reapplication for licensure. Based upon the foregoing I **CONCLUDE** that Mr. Auffinger's casino employee license and casino hotel registration must be **REVOKED.**

ORDER OF DISPOSITION

It is **ORDERED** that the casino employee license (license no. 14842-21) and the hotel employee registration (registration no. 42345-40) held by Alfred W. Auffinger 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.

Aug 14 1986  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

Aug 15, 1986  
DATE

Neilus Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 19 1986  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ml

WITNESSES

For the Petitioner:

None

For the Respondent:

None

EXHIBITS

For the Petitioner:

- P-1 Somers Point Police Department Investigation Report, dated April 12, 1984
- P-2 Superior Court of New Jersey Law Division - Criminal - Atlantic County Indictment Number 0672-5-84-C, 1983 term
- P-3 Clinical Record, dated May 14, 1984
- P-4 Clinical Report of Dr. A. C. Amparo, M.D., undated
- P-5 Clinical Report of Dr. David Scola, M.D., Coatesville Veteran Administration Hospital undated
- P-6 Plea bargain agreement between Atlantic County Prosecutor and Alfred W. Auffinger, dated July 8, 1984
- P-7 Report of Richard Waddington, P.H.D., Atlantic Mental Health Center, Inc.

For the Respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-165  
LICENSE NO. 05662-21  
OAL DOCKET NO. CCC 1039-86

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. :  
TERRY S. AYJIAN, :  
Respondent. :

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FINAL ORDER

This matter having been transmitted to the Office of Administrative Law for a hearing; and the parties having submitted a proposed stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against the respondent for a violation of N.J.S.A. 5:12-100(n); and an initial decision having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 21, 1986,

IT IS on this 15<sup>th</sup> day of July 1986, ORDERED that the initial decision of the Office of Administrative Law, which incorporates the proposed settlement, is affirmed and adopted; and

IT IS FURTHER ORDERED that Terry S. Ayjian pay a civil penalty in the amount of \$350, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Terry S. Ayjian's casino employee license is suspended for five working days to be effective as follows: July 22, 23, 24, 25 and 26, 1986; and

IT IS FURTHER ORDERED that during this period of suspension Terry S. Ayjian shall not be entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon Terry S. Ayjian, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 1039-86

AGENCY DKT. NO. 85-165

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

Plaintiff,

v.

**TERRY AYJIAN,**

Respondent.

---

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

**Charles A. Matison, Esq., for respondent (Cooper, Perskie, April, Neidelman,  
Wagenheim and Weiss, attorneys)**

Record Closed: April 2, 1986

Decided: April 4, 1986

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

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on April 22, 1985, seeking to discipline Terry S. Ayjian for violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder. Specifically, the petitioner charged that Mr. Ayjian, while an employee at Harrah's Marina Hotel and Casino, was observed gambling in the Tropicana Casino, a violation of N.J.S.A. 5:12-100(n).

Mr. Ayjian requested a hearing on the matter, and the case was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Thereafter, the parties entered into discussions which have led to the formulation of a written Stipulation of Settlement, which document is attached to this initial decision and made a part hereof. Pursuant to the terms of the Stipulation, Mr. Ayjian has agreed to accept a five-day suspension of his casino employee license and has further agreed to pay a civil penalty of \$350, these penalties being in full settlement of the violation of N.J.S.A. 5:12-100 (n).

An examination of the Settlement indicates that the parties entered into the same voluntarily and that the terms and conditions thereof are within the confines of law and the normal parameters for such violations. Therefore, it is **ORDERED** that the parties comply with the terms and conditions of the settlement and that Mr. Ayjian make payment of the civil penalty within 30 days of the issuance of a final decision of the Casino Control Commission accepting this settlement. The contested case is **DISMISSED.**

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

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

April 4, 1986  
DATE

[Signature]  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

4/7/86  
DATE

[Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 9 1986  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS

None

RECEIVED  
STATE OF N.J.  
OFFICE OF ADM. LAW  
APR 2 3 04 PM '86

W. CARY EDWARDS  
Attorney General of New Jersey  
Attorney for Plaintiff  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: WILLIAM E. MOUNTFORD, JR.  
Deputy Attorney General  
(609) 292-8883

SUPERIOR COURT OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO.

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

Plaintiff, )

v. )

Terry Ayjian )

Respondent. )

Civil Action

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by William E. Mountford, Jr., Deputy Attorney General, and Charles A. Matison, Esq., and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Respondent presently holds casino employee license no. 05662-21 issued by the Casino Control Commission on April 3, 1979.

(2) WHEREAS on or about March 17, 1985, Respondent, Terry Ayjian, was observed gaming in the Tropicana Hotel/Casino, in violation of N.J.S.A. 5:12-100(n).

(3) WHEREAS on or about March 17, 1985, Respondent, Terry Ayjian, was employed by Harrah's Marina Hotel/Casino as a Floorperson.

(4) WHEREAS Respondent, Terry Ayjian, is presently employed by Harrah's Marina Hotel/Casino as a Floorperson.

(5) Attached hereto and made a part hereof is a memorandum dated March 18, 1985, by an inspector of the Casino Control Commission relating to the events which occurred on or about March 17, 1985.

(6) WHEREAS it is admitted that the aforementioned conduct as described in paragraphs 2 through 5 supra, did, in fact, occur.

(7) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the aforementioned statutory and regulatory provision in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between parties hereto that:


1. The facts stated herein, supra, are true and did, in fact, occur.

2. The casino employee license of Respondent shall be suspended for a period of five (5) days.

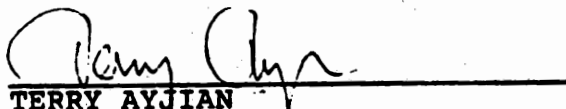
3. Respondent shall be fined a civil penalty of \$350.00.

4. This settlement shall be a full and final settlement for the aforementioned violation of N.J.S.A. 5:12-100(n), subject to the approval and acceptance of the Casino Control Commission.

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

  
WILLIAM E. MOUNTFORD  
Deputy Attorney General  
Attorney for Plaintiff

  
CHARLES A. MATISON  
Attorney for Respondent

  
TERRY AYJIAN  
Respondent

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

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This matter having been opened to the New Jersey Casino Control Commission upon the motion of the Division of Gaming Enforcement to dismiss its complaint for violations of N.J.S.A. 5:12-119(b) against respondent; and the Commission having considered the entire record of these proceedings at its public meeting of December 3, 1986,

It is on this <sup>23<sup>rd</sup></sup> day of December 1986, ORDERED that the complaint filed by the Division of Gaming Enforcement against Bally's Park Place, Inc. is dismissed for good cause shown.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4447-86

AGENCY DKT. NO. 86-135

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

Petitioner,

v.

**BALLY'S PARK PLACE, INC.,**

Respondent.

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

**Shelley C. Waxman, Esq., for respondent**

Record Closed: October 2, 1986

Decided: October 7, 1986

**BEFORE LILLARD E. LAW, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, The Division of Gaming Enforcement (Division), Department of Law and Public Safety, alleges, among other things, that respondent permitted an underaged individual entry to its licensed premises for the purpose to gamble, in violation of N.J.S.A. 5:12-119(a); whereby it seeks judgment and the imposition of an appropriate penalty by the Casino Control Commission (Commission) against respondent. The respondent denies the allegations and opposes the requested action against it.

PROCEDURAL HISTORY

Petitioner filed its complaint with the Commission on or about April 23, 1986. Respondent filed its answer by way of Notice of Defense and Request for Hearing on June 16, 1986. On July 2, 1986, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. After notice, a prehearing conference was held on September 3, 1986, at the Atlantic City OAL at which, among other things, the issues to be determined were settled and discovery procedures were established.

On September 30, 1986, Deputy Attorney General Way advised the undersigned of the need to entertain petitioner's motion to withdraw the herein action together with oral argument on the motion to be heard. As a consequence, a telephonic conference and oral argument was set down for October 2, 1986.

MOTION

Petitioner moves to withdraw the complaint against respondent based upon information revealed to it by way of discovery. The documents transmitted to petitioner demonstrate that respondent's security personnel identified the underaged individual on its premises and subsequently turned the identified underaged individual over to the custody of the Division's on-site personnel. The underaged individual was thereafter placed under arrest and charged with Theft by Unlawful Taking (N.J.S.A. 2C:20-3). As a consequence of the discovery information, petitioner may not sustain its action by a preponderance of the credible evidence and, therefore, requests that the instant matter be withdrawn. Respondent does not object nor oppose petitioners motion.

FINDINGS OF FACT AND CONCLUSIONS

Having carefully reviewed and considered the entire record before me including the arguments of the parties to this controversy, I **FIND** and **CONCLUDE** that petitioner has insufficient proofs to sustain its action of a violation of N.J.S.A. 5:12-119(b) against respondent.

Accordingly, I **CONCLUDE** that the herein matter is hereby withdrawn and, therefore, no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is hereby **ORDERED** that the herein complaint of the Division of Gaming Enforcement against Bally's Park Place, Inc., be and is hereby **DISMISSED WITH PREJUDICE**; and

It is further **ORDERED** that the instant matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

7 October 1986  
DATE

Lillard E. Law  
LILLARD E. LAW, ALJ

Oct. 8, 1986  
DATE

Receipt Acknowledged:

M. Donohue  
CASINO CONTROL COMMISSION

OCT 10 1986  
DATE

Mailed to Parties:

Ronald J. Parker / x 5  
OFFICE OF ADMINISTRATIVE LAW

ml

DOCUMENTS IN EVIDENCE

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-283  
OAL DOCKET NO. CCC 1476-86  
LICENSE NO. 54794-21  
REGISTRATION NO. 13330-40

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

Complainant,

FINAL ORDER

v.

MELVIN BAZEMORE, Jr.,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 2, 1986,

IT IS on this 3rd day of November 1986, ORDERED that the initial decision is modified to remove the condition that the respondent's continued licensure and registration be contingent upon successful completion of his probation; and

IT IS FURTHER ORDERED that the complaint for revocation of the respondent's casino employee license and casino hotel employee registration be dismissed substantially based upon

the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1476-86

AGENCY DKT. NO. 85-283

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

Petitioner,

v.

**MELVIN BAZEMORE, JR.,**

Respondent.

---

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

**Mark Vasser, Esq.,** for the respondent (Vasser, Spitalnick, Bloom, Mazin & Stein, attorneys)

Record Closed: May 9, 1986

Decided: May 23, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Melvin Bazemore, Jr., respondent, the holder of casino employee license no. 54794-21 and casino hotel employee registration no. 13330-40. The Division contended that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal conduct which rendered him statutorily disqualified from holding a casino license or registration pursuant to Sections 86c and 86g of the Act. In addition, the Division asserts that respondent does

not possess the requisite degree of good character, honesty and integrity for continued licensure, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Act. The respondent does not feel that revocation of his casino license and registration is warranted under the circumstances.

#### PROCEDURAL HISTORY

The Division filed its complaint on June 25, 1985. The respondent requested a hearing on January 21, 1986. On February 27, 1986, the Casino Control Commission (Commission) transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 8, 1986, and the matter was scheduled for a hearing. On May 9, 1986, the hearing was conducted at the Hamilton Township Municipal Building, Mays Landing, New Jersey. The record closed on the date of the hearing.

#### FINDINGS OF FACT

##### (A) Uncontested Facts

On December 21, 1984, the Atlantic City Police Department received a telephone call from respondent, Melvin Bazemore, Jr. Mr. Bazemore reported a stabbing at 306B Maryland Avenue, Atlantic City, New Jersey. Detective Joseph McCullough, Atlantic City Police Department (A.C.P.D.) was assigned to investigate the matter. Detective McCullough's investigation revealed that the victim, Yvonne Huggup, had been stabbed repeatedly with a kitchen knife by the respondent, Melvin Bazemore, Jr. (P-1). Mr. Bazemore was arrested and charged on December 21, 1984, with attempted murder in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3; aggravated assault in violation of N.J.S.A. 2C:12-1b(1); possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4, and possession of a weapon in violation of N.J.S.A. 2C:39-5(b).

On January 25, 1985, respondent was arrested and charged by Edward Smith in the Brigantine Municipal Court with making terroristic threats in violation of N.J.S.A. 2C:12-3(b) (P-4, P-5). Those charges were dismissed at the request of the complaining witness, Edward Smith. Edward Smith was and is the boyfriend of Yvonne Huggup.

On February 5, 1985, the Atlantic County Grand Jury returned indictments as to all charges against Mr. Bazemore (P-2).

On April 15, 1985, the respondent retracted his pleas of not guilty to the charges and entered a plea of guilty to one count of possession of a weapon for unlawful purposes, in violation of N.J.S.A. 2C:39-4.

On January 14, 1986, Mr. Bazemore was sentenced to five years probation, a 15-day jail sentence in the Atlantic County Jail (credit for time served), \$25 fine for the Violent Crimes Compensation Board (VCCB), was ordered to participate in the Atlantic Mental Health Clinic and to submit quarterly reports pertaining to those visits (P-3).

In his reasons for sentencing, the Honorable Arthur V. Guerrero, J.S.C. stated:

This bizarre incident appears to have been an aberant [sic] incident in the life of this defendant. The defendant was a paramour of the victim and she had a child by the defendant. The defendant during his time in the service sent his allotment check to the victim. When the defendant was discharged the victim would not permit him to see his daughter. The victim in writing to the court, has clearly indicated that she provoked the incident. While this should not excuse the defendant's behavior, it explains why it happened.

The only aggravating factor listed by Judge Guerrero in his reasons for sentencing stated the need for deterring the defendant (respondent) and others from violating the law. Among the mitigating factors cited on behalf of Mr. Bazemore were: the defendant did not contemplate that his conduct would cause or threaten serious harm; the defendant acted under a strong provocation; the victim of the defendant's conduct induced or facilitated its commission; the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense; the character and attitude of the defendant indicate that he is unlikely to commit another crime or offense; the defendant is particularly likely to respond affirmatively to probationary treatment; the imprisonment of the defendant would entail excessive hardship to himself or his dependents and the willingness of the defendant to cooperate with law enforcement authorities (P-3, at 3).

Although Detective Josph McCullough, A.C.P.D., was called by the State to establish a statutorily disqualifying offense pursuant to Sections 86c and 86g of the Act,

his testimony resulted in a glowing character reference for the respondent. The incident that occurred on December 21, 1984, was characterized as a "one-time act" that occurred because of an "extreme emotional situation." Detective McCullough credits Mr. Bazemore with being a loving father who, when threatened with not being able to ever see his child again, snapped and acted totally out of character by stabbing his paramour. Detective McCullough stated that Mr. Bazemore was cooperative and honest throughout the investigation. In fact, Mr. Bazemore attended to Ms. Huggup's wounds while waiting for the ambulance to arrive.

Respondent testified that he resides with his mother, stepfather and sister in Atlantic City, New Jersey. He received his high school graduate equivalency degree (G.E.D.) while serving with the United States Marine Corps in 1981. He was employed by Bally's Park Place Casino Hotel prior to entering the armed forces. After his discharge from the Marine Corps, he was employed at the Sands Casino Hotel as a change person for approximately three months. He was laid off in December 1984 because of a seasonal employee reduction.

On May 17, 1985, Mr. Bazemore commenced employment with the Tropicana Casino Hotel as a hard count attendant. He has been successfully employed in that capacity and continues to work a regular 40-hour week. In addition, he averages approximately 10 hours in overtime per week.

Since the birth of his daughter, Mr. Bazemore has sent approximately \$400 per month to Ms. Huggup for the support and care of his infant daughter. It is noteworthy that no support order has been or is presently entered against respondent. He baby-sits for his daughter at least three times per week and expresses great love and affection for his daughter. Respondent expressed deep remorse over the incident that occurred on December 21, 1984, and indicated that it could never happen again. When queried as to why it could never happen again, Mr. Bazemore replied that he is able to control his temper and that he is aware that legal means of redress are available rather than violence. Mr. Bazemore emphatically stated that under no circumstances would he ever again use violence.

In addition to providing an affidavit of Yvonne Huggup (R-1) and other statements provided by Ms. Huggup (R-4, R-5, R-14), respondent provided a progress report from Associated Business Careers (R-2), a psychiatric evaluation dated October 31,

1985, from Atlantic City Medical Center (R-3), various references as to Mr. Bazemore's family (R-7, R-8), various character references (R-9, R-10, R-11, R-12, R-13, R-15 and R-16), and a copy of his honorable discharge from the United States Marine Corps (R-17).

The testimony of both Detective Joseph McCullough and Melvin Bazemore, Jr. was internally consistent, believable and along with the documentary evidence produced, is **FOUND AS FACT**.

(B) Contested Facts

While the conduct and severity of respondent's action cannot be condoned or exonerated, there remains an issue as to whether respondent possessed the requisite mental state on December 21, 1984, in order to commit an aggravated assault in the second or third degree, a disqualifying offense.

Respondent was convicted of a single count of possession of a weapon for unlawful purposes in violation of N.J.S.A. 2C:39-4. That offense is not enumerated in Section 86c of the Act. The Division asserts that respondent committed an act which constitutes disqualification pursuant to Section 86g. It is incumbent upon the Division to establish by a preponderance of the credible evidence the elements constituting said disqualifier (i.e., aggravated assault, second or third degree).

Aggravated assault is a crime of the second degree if a person:

Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly, or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury. (N.J.S.A. 2C:12-1b)

Third degree aggravated assault is when a person "[a]ttempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon." N.J.S.A. 2C:12-1b(2).

A person is guilty of aggravated assault in the fourth degree if he "[r]ecklessly causes bodily injury to another with a deadly weapon." N.J.S.A. 2C:12-1b(3).

The distinction among the degrees of aggravated assault may be characterized by differing mental states, causation and the type of injury sustained.

Both second and third degree aggravated assault require that a person act "purposely" or "knowingly"; in other words, with mens rea or with criminal intent. However, a second degree aggravated assault provides that "extreme indifference to the value of human life recklessly causing such injury" may also suffice as the requisite mental state.

Objectively, the act of the stabbing itself provides the requisite mens rea essential to second or third degree aggravated assault. Mr. Bazemore admitted to the stabbing and P-1 supports that admission. However, no testimony was adduced at the hearing concerning the seriousness of the wounds sustained by the victim. Therefore, after reviewing the testimony and documentary evidence, I am persuaded by a preponderance of the credible evidence that the Division has established the offense of aggravated assault, third degree, pursuant to section 86g. However, respondent's conduct was mitigated to a large extent by the fact that he immediately called the police, he attended to the victim's wounds until the ambulance arrived, he has been a law-abiding citizen with this exception, and the fact that the victim provoked the incident.

#### DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g incorporates the enumerated statutory disqualifying offenses in Section 86c(1). The Act mandates that a person who has been convicted of any offense which is enumerated in the Section be disqualified from licensure. The Division contends that it has established by a preponderance of the credible evidence that an aggravated assault occurred on December 21, 1984. It further contends that the assault was committed by the respondent, Melvin Bazemore, Jr.

Respondent admits that he stabbed his paramour, Yvonne Huggup, with a kitchen knife on December 21, 1984. That admission, along with the police report entered into evidence (P-1), persuade me that an aggravated assault, third degree, occurred.

Therefore, I **CONCLUDE** that respondent, Melvin Bazemore, Jr., committed an aggravated assault, third degree, a disqualifying offense, on December 21, 1984. I further **CONCLUDE** that respondent's admission, along with the documentary evidence, has established, by a preponderance of the credible evidence pursuant to Section 86g, that the respondent is statutorily disqualified from being a licensee or registrant.

(B) N.J.S.A. 5:12-90h/91d

A licensee/registrant faced with existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h, N.J.S.A. 5:12-91d. These sections set forth the following specific criteria to be evaluated when considering rehabilitation: (1) the nature and duties of the licensee/registrant's position; (2) the nature and seriousness of the offense; (3) the circumstances under which the offense occurred; (4) the date of the offense; (5) the age of the licensee/registrant when the offense was committed; (6) whether the offense was an isolated or repeated incident; (7) any social condition which may have contributed to the offense; (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the licensee/registrant under their supervision.

First, Mr. Bazemore is employed as a hard count attendant by the Tropicana Casino Hotel. As such, he is responsible for great sums of money. He has been employed in this capacity since May 17, 1985, and appears to be a valued employee.

Second, the respondent was convicted of possession of a weapon for unlawful purposes on April 15, 1985 (P-3). However, after weighing the evidence and the documentary evidence, I am satisfied that respondent committed an aggravated assault, third degree, pursuant to section 86g. Aggravated assault, third degree, is a statutory disqualifier under Section 86c(1) of the Act. Although respondent's conduct can be mitigated to a great extent, aggravated assault is an extremely serious offense. The victim has stated in writing that she provoked the incident. However, that does not exonerate respondent from his conduct.

Third, the respondent was in an extreme emotional state. When his paramour informed him that he could no longer see his infant daughter, respondent's mind just "snapped."

Fourth, the respondent committed the offense on December 21, 1984.

Fifth, the respondent was approximately 23 years of age when the offense occurred.

Sixth, the offense occurring on December 21, 1984 (along with the related charges on January 25, 1985), appears to be an isolated incident. Mr. Bazemore is a life-long resident of Atlantic City. Detective McCullough testified that he has no juvenile arrest record nor an adult arrest record prior to or since this incident.

Seventh, there are no social conditions which may have contributed to the offense.

Eighth, the respondent secured employment with the Tropicana Casino Hotel in May 1985. It appears that he has been successfully employed as a hard count attendant since that time. In addition, respondent has attended Associated Business Careers, taking courses in clerical accounting, introduction to automated data processing and data entry on the microcomputer. Respondent presented character references attesting to his honesty and integrity and his good work habits. He has complied with all terms of his probation, including visits to the Atlantic Mental Health Center, Atlantic City, New Jersey (R-18).

It is apparent that respondent has made an excellent start towards rehabilitation. I am persuaded that this was an isolated incident that is not likely to reoccur. In addition, respondent is successfully employed in the industry and has been since May 1985. The only factor weighing against respondent's rehabilitation is the fact that respondent was sentenced to five years probation only two months ago. But in effect, respondent has been on probation since December 1984, and respondent has used that time successfully to pursue his career and to attend school.

It is my general impresssion that Mr. Bazemore's offense will not be repeated. Therefore, I **CONCLUDE**, but for the fact that respondent has approximately five years

remaining on probation, that Mr. Bazemore has demonstrated, by clear and convincing evidence, his rehabilitation pursuant to N.J.S.A. 5:12-90h and 91d (see, N.J.S.A. 5:12-89b(2)).

(C) 5:12-89b(2)

Under Section 89b(2) of the Act, Mr. Bazemore is required to demonstrate, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Comm. (February 26, 1979). When the Division raises objection to continued licensure under Section 89b(2) of the Act, it is incumbent upon respondent to present clear and convincing proof of fact 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). The testimony of Detective Joseph McCullough and that of Melvin Bazemore, Jr., was consistent and believable. Detective McCullough emphasized that Mr. Bazemore had been honest throughout the investigation. Mr. Bazemore expressed deep remorse over the incident and appeared to be truthful. I **CONCLUDE** that Mr. Bazemore has demonstrated through testimony and documentary evidence and by clear and convincing evidence, his good character, honesty and integrity.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the licensee/registrant who has committed a violation of the Act. Here, the Division seeks revocation of respondent's casino employee license and registration. I do not agree. Given the fact that respondent is successfully employed in the industry, the fact that this incident appears to be an isolated one, the fact that respondent has expressed deep remorse and that an incident of a similar nature is not likely to occur, a sanction less than revocation should be imposed. Therefore, I **RECOMMEND** that Mr. Bazemore's license and registration be continued, contingent upon Mr. Bazemore's successful completion of the terms of his probation. If Mr. Bazemore violates any condition of his probation, it is **ORDERED** that his license and registration be immediately revoked.

ORDER OF DISPOSITION

It is **RECOMMENDED** that the petition of the Division be **DENIED** and **DISMISSED WITHOUT PREJUDICE** conditioned upon Mr. Bazemore's successful completion of the terms of his probation.

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

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

5-23-86  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

5-27-86  
DATE

Debra Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 28 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ml

WITNESS LIST

For the Petitioner:

Detective Joseph McCullough, Atlantic City Police Department

For the Respondent:

Melvin Bazemore, Jr.

EXHIBIT LIST

- P-1 Police report, dated December 21, 1984, from the Atlantic City, New Jersey Police Department
- P-2 Indictment No. 85-02-0156-A, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, 1984 term
- P-3 Judgment of Conviction and Order for Commitment, dated January 14, 1986, New Jersey Superior Court, Atlantic County Law Division - Criminal, SBI No. 935589A
- P-4 Investigation report, dated January 9, 1985, from the Brigantine Police Department, Brigantine, New Jersey
- P-5 Municipal Court complaint, dated January 25, 1985, from the Brigantine Municipal Court, Brigantine, New Jersey
- R-1 Affidavit of Yvonne Huggup, dated April 9, 1985
- R-2 Letter addressed to Melvin Bazemore from Richard P. Thomason, Vice President Operations, Associated Business Careers
- R-3 Psychiatric evaluation of Melvin Bazemore, dated October 31, 1985
- R-4 Undated statement from Yvonne Huggup
- R-5 Notarized statement of Yvonne Huggup, dated October 24, 1983
- R-6 Letter from Tim Duckerey, dated February 13, 1985
- R-7 Letter from Carolyn W. Greenidge, Supervisor, Elementary Services, Atlantic City Public Schools, dated July 3, 1985
- R-8 Undated letter from J. Mason
- R-9 Letter from Mrs. Shirley B. Chambers, dated July 1, 1985

- R-10 Letter from Earl E. Johnson, Administrative Assistant, Atlantic City Public Schools, dated June 26, 1985
- R-11 Letter from Louis S. Palmer, United States Marine Corps, dated February 11, 1985
- R-12 Undated letter from Tropicana Impressment Team (signatures indistinguishable)
- R-13 Letter from Kenneth Burch, Impressment Team Supervisor, Tropicana Hotel and Casino
- R-14 Undated statement of Yvonne Huggup
- R-15 Statement of Jenny Bingham, Hard Count Lead, undated
- R-16 Undated statement of J. Fox, Tropicana Hard Count Mechanic
- R-17 United States Marine Corps form DD 214, Honorable Discharge
- R-18 Copies of receipts of Atlantic Mental Health Center, Atlantic City, dated February 18, 1986 and January 31, 1986

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-297  
OAL DOCKET NO. CCC 7288-85  
REGISTRATION NO. 35154-40

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

Complainant,

FINAL ORDER

v.

CARLOS BERRIO,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 20, 1986,

IT IS on this <sup>4<sup>th</sup></sup> day of September 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration held by Carlos Berrio is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7288-85

AGENCY DKT. NO. 83-297

**STATE OF NEW JERSEY,**  
**DEPARTMENT OF LAW AND PUBLIC**  
**SAFETY, DIVISION OF GAMING**  
**ENFORCEMENT,**  
Petitioner,  
v.  
**CARLOS BERRIO,**  
Respondent.

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

**Lorraine Gormley, Esq.,** for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed: May 22, 1986

Decided: June 24, 1986

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

This is a remanded proceeding in which the Division of Gaming Enforcement seeks the revocation of Carlos Berrio's casino hotel employee registration no. 35154-40. The case originally arose out of a complaint filed by the Division of Gaming Enforcement (Division) against Mr. Berrio in August 1983. At that time, the Division requested that the Casino Control Commission (Commission) revoke Berrio's registration pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically sections 91(b), 86(c)(d) and 86(g). The Division complaint alleged that Mr. Berrio was an illegal alien, having entered the United States of America without inspection in violation of applicable Immigration and Naturalization laws.

A hearing on the complaint was held in July 1984. At that time, the Division sought to amend its complaint to allege that Mr. Berrio had provided a false social security number to the Division of Gaming Enforcement during the application process. Because of a lack of notice of the amendment, the administrative law judge ruled that the Division would be required to file a formal amendment to its original complaint.

In August 1984, the Division filed a motion to reopen the proceedings in order to present evidence of Mr. Berrio's use of a false social security number during the registration process. Respondent opposed this motion.

On January 7, 1985, at a further hearing, the Division withdrew its request to reopen its case against Mr. Berrio. Thereafter, on January 21, 1985, the administrative law judge ruled that the case against Mr. Berrio would be dismissed because of rulings made by the Casino Control Commission in the case of Division of Gaming Enforcement v. Ospina Lopez, CCC 3131-84. The Commission had concluded in that decision that a respondent's status as an illegal alien did not provide any basis for revocation or other action against a registration. In addition, the Commission held that the presentation of a false social security number by a registrant did not constitute a violation of section 86(b) of the Act, as there was no evidence that the social security number was a "material fact," as required by that section.

In May 1985, the Commission, after considering the decision of the administrative law judge, issued a decision on Mr. Berrio's case. The Commission determined to remand the matter to the OAL for additional testimony. In the course of its ruling, the Commission agreed that the respondent's status as an illegal alien in and of itself provided no basis for any action against his registration. However, the Commission ruled that with respect to the provision of a false social security number the Ospina Lopez decision had merely indicated that there was no evidence in the record of that case to establish that the social security number was a material fact and the Commission went on to conclude that:

The failure to adduce evidence on the point in the Ospina Lopez case does not establish the proposition that a Social Security Number is not a material fact in any subsequent case. Based upon the record in this case, including the representations of counsel at the Commission's meeting of May 1, 1985, the Commission has

determined that a Social Security Number is a material fact pertaining to qualification criteria within the meaning of N.J.S.A. 5:12-86(b).<sup>1</sup>

The Commission also indicated in its remand order of October 31, 1985 that it wished the A.L.J. to consider, as a further issue in addition to whether Berrio had violated section 86(b), the issue of:

Whether either respondent<sup>2</sup> committed false swearing in violation of N.J.S.A. 2C:28-1 or purgery in violation of N.J.S.A. 2C:28-2 in the course of their testimony at the hearing in this matter conducted on July 31, 1984, and, if so, whether either respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

On December 18, 1985, a prehearing conference was held. At that time, the representative of the Division advised that the Division had no further evidence to present against Carlos Berrio. The parties agreed that the sole issue with respect to him was whether he had "willfully or in conscious disregard for the regulatory process" provided a fraudulent social security number to the Division and Commission during the application process.

Hearings were scheduled but a number of adjournments were granted because of the Division's difficulty in obtaining a witness from the Social Security Administration and because of the failure of the Division to supply certain discovery. A hearing was ultimately held on April 10, 1986. Thereafter, counsel for respondent requested permission to file a brief. This was ultimately filed on May 22, 1986, after a short extension was granted due to counsel's trial commitments. The record closed on May 22, 1986.

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<sup>1</sup>The Commission determination that the number is a material fact precludes any consideration at this time of that issue. Counsel for respondent continues to argue in her brief that the Division failed to prove materiality, however, the question is no longer open to dispute.

<sup>2</sup>The other respondent was Conrado Berrio, Carlos' brother and the respondent in a companion case, originally consolidated with Carlos' case, but severed on the remand.

STIPULATED FACTS

At the original July 31, 1984 hearing the Division and respondent entered into certain stipulations of fact. At the time, several of these were more significant than at present because of the then existing "alien status" issue. However, in order to understand the full context, it is appropriate to set forth the stipulations again at this time. They are:

1. Carlos Berrio is an alien from Columbia, South America.
2. Mr. Berrio entered the United States without inspection during the month of July 1981.
3. Prior to December 1981, Mr. Berrio filed a PHD form - 4.
4. Mr. Berrio was arrested April 27, 1986, by I.N.S. and at the time of his arrest he had neither applied for nor received employment authorization from I.N.S.
5. On May 6, 1983, Berrio requested employment authorization, but such had not been granted or denied as at the time of the July 31 hearing.
6. On January 10, 1982, Mr. Berrio married Marie Torez in Atlantic City.
7. Ms. Torez filed an application (I130 petition) with the I.N.S. on January 27, 1982, seeking an adjustment of Mr. Berrio's immigration status. At the time of the July 31 hearing, no decision had yet been made regarding the petition.
8. A stay of deportation was granted pending the results of Mr. Berrio's hearing on his wife's I130 petition.
9. Mr. Berrio listed Columbia as his birthplace on the PHD no. 4 form.

TESTIMONY

A summary of the testimony presented in connection with Mr. Berrio's case during the various hearings held in this matter indicates that Mr. Berrio's supplied a social security number 147-60-6829 to the Division of Gaming Enforcement's representative at some time during the photographing and fingerprinting process which is a normal part of the application process for a registration. Apparently, it was the normal practice of the Division to request applicants for their social security number during this photographing and fingerprinting procedure.

Mr. Berrio never disputed that he had provided this social security number to the Division. His contention is that he believed that the number was indeed a valid social security number which he had obtained in a valid fashion and that therefore he did not willfully or in conscious disregard for the regulatory process provide false or misleading information concerning this material fact.

The Division's evidence presented at the April 10, 1986 hearing came from Dennis Chornomaz and Henry C. Willett. Mr. Chornomaz, an operations supervisor and employee of the social security administration for the past 12 years, testified as an expert with respect to the procedures involved in obtaining social security numbers. According to Mr. Chornomaz, in order to obtain a number an applicant must generally come to the social security office, fill out a form, provide his or her date of birth, the name of his or her father, the maiden name of his or her mother, present proof of age, citizenship or alien status and identity. The applicant must also sign the form. Mr. Chornomaz further explained that it is possible for someone to obtain a social security card without personally coming to the social security office. In such a case, an individual appearing on behalf of the applicant could come into the social security office and obtain the necessary form which could then be filled out at the applicant's home or some other place outside the actual office of the Social Security Administration. When either the applicant, or an agent for the applicant, brings in the completed form, the person taking the application is required to review the original evidence with respect to identification, age, etc. Where an agent is the one bringing in the completed application, a situation which Chornomaz described as "unusual," a supervisor would review, would perhaps make phone calls to the applicant to determine whether indeed the circumstances were as they were represented, and would generally probe the situation to determine why the applicant had not personally appeared.

The testimony presented by Henry C. Willett, who is an agent for the Immigration and Naturalization Service, concerned the social security card which Mr. Berrio had at the time of his arrest by I.N.S. This card was examined by Willett, who in the course of his duties with the I.N.S. has had extensive experience examining such documents. In his view the card was not a validly issued social security card. Willett identified certain "identifiers" which "would tell an experienced person whether or not you're looking at a valid card." These included little asterisks in the columns would not appear in the column," an actual card would have "much clearer printing" and there would also not be bleeding on the "bar along the bottom of the card." Other than these "identifiers," Willett conceded that the card "bears a resemblance to a legitimately issued card." Willett answered affirmatively when questioned as to whether "you would have to have experience in reviewing social security cards in order to know these indicators as you've testified."

The only other evidence presented by the Division was a certification by Joseph A. Higgins, Director, Division of Registration Operations, Office of Central Records Operations, for the Social Security Administration. Higgins certified that he was the legal custodian of records for the Department of Health and Human Services of which the Social Security Administration is a part, and that "social security no. 147-60-6829 is not assigned in the name Luis Carlos Berrio-Echeverri."

Carlos Berrio testified on April 10, 1986, concerning the social security number. According to the respondent, who testified through an interpreter, he obtained his social security card when he came to the United States in 1981. He entered illegally in the Miami area in July of that year. He then came north and sometime toward the end of July or early August he applied for a social security card. He did this through his brother, Conrado, who had been here since 1980. At the time, Carlos did not know how to do anything in this country and did not speak English. His brother told him that it was necessary to obtain a social security card and that he knew a man who could get a card for Carlos. This individual supposedly had "business relations" with Social Security. According to Carlos' testimony, Conrado paid approximately \$150 "for . . . stamps." Carlos understood at the time that it was necessary to pay this money and believed that, as in his country, it was necessary to pay for tax stamps when one obtained official documents. Berrio stated that he met the "man" for a "short while." He never knew that there was any problem with the social security card until it was taken from him by Agent Willett of the I.N.S. in 1983. He had used the card in obtaining employment and had filed

state and federal income taxes. He had never heard anything from any authority that the social security number or card were invalid.

Mr. Berrio could not recall who actually filled out the social security application, although he believed that this was performed in Bridgeton and he knew that he signed the application.

#### DISCUSSION

The sole issue before this judge and the Commission with respect to the propriety of the continued registration of Carlos Berrio deals with whether he knowingly and willfully, in conscious disregard of the regulatory process, provided a false social security number to the Division and Commission during the application process for his registration. There is no dispute as to the fact that Mr. Berrio was an illegal alien and as such, having no legitimate status within this country, was not permitted to have a social security card. I so find. The Division has presented evidence in the form of a certification from the appropriate custodian of the records that the social security number presented by Mr. Berrio to the Division was not issued to Luis Carlos Berrio-Echeverri. The administrative law judge took judicial notice at the hearing of the fact that it is quite common for individuals of Hispanic background to use either the father or mother's surname and sometimes both. Mr. Berrio testified that he only used the Berrio surname in connection with his United States job applications and other forms. Although it is not entirely certain from the certification that the number given by Berrio was not actually issued to Carlos Berrio rather than to Luis Carlos Berrio-Echeverri, it seems from all of the evidence, including Mr. Willett's testimony as to his review of the actual card, that the card which Berrio had at the time of his arrest was not a valid social security card and that the number which he provided to the Division was not a valid number issued to him by the Social Security Administration. I **FIND** that at the time of his arrest Berrio did not have a valid social security number and that the card that he had in his possession was a fraudulent one.

The significant question in this case is not whether the card and number were fraudulent. If Berrio sincerely believed that he had a legitimate social security card and number which he was presenting to the Division, he cannot be faulted because in fact the documents were fraudulent. A violation of section 86(b) can only exist where there is a knowing and intentional provision of false information of a material nature.

In deciding this case, it is necessary to concentrate on the evidence presented. Because Mr. Berrio entered the United States illegally and obtained a social security number from his brother, who he may have also known entered illegally (the record is not clear on this), there might well be an overriding suspicion that Mr. Berrio knew that the documents he was going to be provided with through his brother and "the man" were fraudulent. However, the only evidence in the record is that Berrio, new to the United States, unfamiliar with the procedures, speaking no English, and in contact with his brother who had been in the country for some period of time prior to Carlos' own entry, relied upon his brother to obtain a social security card for him so that he could obtain employment. Mr. Berrio, coming from a country, where, according to his testimony, it was necessary in order to pay for obtaining various official documents, was aware that his brother paid on his behalf approximately \$150 to someone who supposedly had the ability through "business relations" to obtain a social security card. According to the witness, he signed an application, although he was not sure who actually filled it out.

The Division has presented no direct evidence to demonstrate that Mr. Berrio was not being truthful when he testified concerning how he obtained a social security card and his belief, or at least his lack of any knowledge or reason to doubt the authenticity of the card and number. It should be noted that during the hearing the Division attempted some exploration of Berrio's family and marital situations since the time he obtained the card in an attempt to show that Mr. Berrio's testimony was generally unreliable. During the course of the hearing this judge ruled that the Division's attempts constituted a "fishing expedition" aimed at attempting to find some point on which Mr. Berrio might be criticized for a lack of truthfulness. After extensive argument, I **CONCLUDED** that if the Division had direct evidence to present concerning improprieties in Berrio's testimony concerning his marriage, his lack of children, etc., it could do so, but that its continued attempt to probe these areas without some direct evidence to show that Berrio was testifying falsely was nothing more than a "fishing expedition" and could not be permitted to continue ad nauseum. While recognizing the necessity for a wide latitude in the testing of credibility, it was this judge's conclusion that the Division's attempt at the hearing had gone on long enough and should be halted.

It is, of course, quite difficult to probe the inner-workings of an individual's mind and find what one actually knew in the past. Mr. Berrio testified that he did not know that there was anything wrong with his social security card or number for quite sometime after he obtained it and presented it to the Division representative. Given the

circumstances of his arrival in the United States, his lack of familiarity with this country's procedures, his reliance on his brother who had already been in this country, his unfamiliarity with the language, his desire to obtain the necessary documentation in order to allow him to apply for work, and the lack of any evidence that would demonstrate that Mr. Berrio's testimony was generally unreliable, I **CONCLUDE** that Mr. Berrio did not knowingly and intentionally provide the Division at the time of his application with either a false social security card or a false social security number. I **FIND** that he believed at the time that the document and number were valid, or at least that he had no reason to think that they were not.

For the reasons expressed, I **CONCLUDE** that Carlos Berrio did not violate section 86(b) of the Act. Since this question was the only issue upon which the Division proceeded at the April 10, 1986 hearing, I **CONCLUDE** that the Division has failed to prove by a preponderance of the evidence any basis for revoking Mr. Berrio's casino hotel employee registration. Therefore, it is **ORDERED** that the complaint against him be **DISMISSED**.

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

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

June 24, 1986  
DATE

Jeff Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

June 25, 1986  
DATE

Alvin Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 27 1986  
DATE

Ronald L. Parks  
OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

On behalf of petitioner:

No exhibits.

On behalf of respondent:

R-4 Certificate of Marriage between Luis Carlos Berrio and Maria Torres, January 19, 1982, City of Atlantic City

R-5 Letter of December 12, 1984, from Manager, Atlantis Casino Hotel

R-6 Letter of June 15, 1984, from Robert S. Rago

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-281  
OAL DOCKET NO. CCC 8280-85  
REGISTRATION NO. 27767-40

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

Complainant,

FINAL ORDER

v.

CONRADO BERRIO,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 20, 1986,

IT IS on this 4<sup>th</sup> day of September 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration held by Conrado Berrio is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8280-85

AGENCY DKT. NO. 83-281

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

Petitioner,

v.

**CONRADO BERRIO,  
Respondent.**

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

**Lorraine Gormley, Esq.,** for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed: May 22, 1986

Decided: June 24, 1986

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

This is a remanded proceeding in which the Division of Gaming Enforcement seeks the revocation of Conrado Berrio's casino hotel employee registration no. 27767-40. The case originally arose out of a complaint filed by the Division of Gaming Enforcement (Division) against Mr. Berrio on August 25, 1983. At that time, the Division requested that the Casino Control Commission (Commission) revoke Berrio's registration pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically sections 91(b), 86(b), 86(c), 86(d) and 86(g). Basically, the Division's complaint charged that Berrio was an illegal alien, having entered the United States of America in violation of immigration laws, and further, that in the course of his application for a casino hotel employee registration, Mr. Berrio had provided the Division and Commission with a fraudulent social security

number on his Personal History Disclosure form no. 4. The Division claimed that these matters required the revocation of Berrio's registration because his continued registration would be inimical to the policies of the Act and casino operations, because he had provided untrue or misleading information as to a material fact pertaining to the qualification criteria, because his fraudulent acts might constitute disqualifying offenses under section 86(c) and because his continued licensure would be inimical as it might "unavoidably tend to erode public trust and confidence and the credibility, integrity and stability of casino operations in the regulatory framework created by the Casino Control Act."

A hearing on the complaint against Mr. Berrio was held on July 31, 1984. During that hearing, Mr. Berrio testified concerning his marital status, his children, and his lack of any contact with his former wife and child for several years prior to the July 1984 hearing date. Following the hearing, in August 1984, the Division of Gaming Enforcement filed a motion to reopen, alleging that Berrio's testimony during the July hearing had been false and that it wished to present evidence to demonstrate the falsity of some of the testimony.

On January 7, 1985, a hearing was held at which the Division presented evidence regarding the alleged false swearing by Mr. Berrio. However, the entry of the evidence at that time was limited by the administrative law judge to consideration with respect to the credibility of Berrio's previous testimony concerning the allegedly fraudulent social security number. The motion to reopen the matter to add as additional grounds of revocation the alleged false swearing was denied.

On January 21, 1985, the administrative law judge ruled that the case against Mr. Berrio would be dismissed in light of the ruling by the Commission in the case of Division of Gaming Enforcement v. Ospina Lopez, CCC 3131-84. The Commission had concluded in that decision that a respondent's status as an illegal alien did not provide any basis for revocation or other action against the registration. In addition, the Commission held that the presentation of a false social security number by a registrant did not constitute a violation of section 86(b) of the Act, as there was no evidence that the social security number was a "material fact," as required by that section.

In May 1985, the Commission considered Mr. Berrio's case. After giving consideration to the decision of the administrative law judge, the Commission determined

to revise its position as expressed in the Ospina Lopez decision. While affirming its conclusion that illegal alien status in and of itself provided no basis for any action against registration, the Commission ruled that with respect to the provision of a false social security number the Ospina Lopez decision had merely indicated that there was no evidence in the record of that case to establish that the social security number was a material fact. The Commission then stated:

The failure to adduce evidence on the point in the Ospina Lopez case does not establish the proposition that a Social Security Number is not a material fact in any subsequent case. Based upon the record in this case, including the representations of counsel at the Commission's meeting of May 1, 1985, the Commission has determined that a Social Security Number is a material fact pertaining to qualification criteria within the meaning of N.J.S.A. 5:12-86(b).

The Commission remanded Mr. Berrio's case to the Office of Administrative Law for further consideration on two issues. The first of these dealt with whether Mr. Berrio had knowingly and intentionally provided a false social security number and thus violated section 86(b) of the Act. The second issue was stated as:

Whether . . . respondent committed false swearing in violation of N.J.S.A. 2C:28-1 or purgery in violation of N.J.S.A. 2C:28-2 in the course of . . . testimony in the hearing in this matter conducted on July 31, 1984, and, if so, whether . . . respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

On June 25, 1985, the Division filed an amended complaint against Mr. Berrio, alleging, in addition to the 86(b) and false swearing matters, a shoplifting conviction of January 1985 which the Division asserted rendered Berrio's continued registration as inimical.

On December 18, 1985, a prehearing conference was held. It was determined that in addition to the matters remanded by the Commission and charged in the June complaint, the issue of rehabilitation would be considered, if necessary, pursuant to N.J.S.A. 5:12-91d, as well as what sanction, if any, might be appropriate for Mr. Berrio's violations, if any, under sections 129 and 130 of the Act. In addition, the applicant requested that, if violations were determined, a waiver of disqualification "in the interest of justice" be considered, pursuant to N.J.S.A. 5:12-86(e).

Following a number of adjournments granted because of difficulties with discovery and witnesses, a hearing was held on April 10, 1986. Thereafter, counsel for respondent requested permission to file a brief. This was ultimately filed on May 22, 1986, after an extension was granted due to counsel's trial commitments. The record closed on May 22, 1986.

STIPULATED FACTS

At the July 31, 1984 hearing, the Division and respondent entered into certain stipulations of fact. At the time, several of these were more significant than at present because of the then existing "alien status" issue. However, in order to fully understand the context in which this case arises, it is appropriate to set forth the stipulations at this time. They are:

1. Conrado Berrio is an alien from Columbia who entered the United States without inspection during the month of September, 1980 somewhere near Miami, Florida.
2. Conrado Berrio filed a PHD form 4 for Hotel Employee Registration.
3. Prior to Mr. Berrio's arrest on April 27, 1982 by the Immigration and Naturalization Service, Mr. Berrio had not applied for employment authorization.
4. After Mr. Berrio's arrest by I.N.S., Mr. Berrio made application for employment authorization but said authorization had not been granted and said application was still pending.
5. On May 5, 1982, Conrado Berrio married Carol Linn Jerousek.
6. Carol Linn Berrio filed a form I-130 petition with I.N.S. requesting adjustment of Conrado Berrio's immigration status to that of a permanent resident. This petition was filed on May 7, 1982.
7. I.N.S. had stayed deportation proceedings pending a decision on the I-130 petition.

8. Conrado Berrio gave Columbia as his place of birth on his PHD form 4.
9. When Mr. Berrio was photographed and fingerprinted by the Division of Gaming Enforcement, he orally gave them a social security number.
10. The social security number given by Mr. Berrio was not one validly issued.

At the time that Ms. Gormley filed her brief on behalf of Conrado Berrio, she informed this judge and counsel that Mr. Berrio had been deported to Columbia shortly following the hearing held on April 10. She raised the issue of whether this case might therefore be moot. Because of the lengthy proceedings which have occurred, and the fact that Mr. Berrio still holds a registration, it appears reasonable to proceed to a decision on this matter. Although it is uncertain whether Mr. Berrio will ever again enter the United States, either legally or illegally, there is certainly the possibility that he may at some time return to the Atlantic City area. Rather than leave this matter in an uncertain condition, it appears appropriate that the case be decided.

#### TESTIMONY

A review of the testimony presented in connection with Mr. Berrio's case during the various hearings held in this matter indicates that Mr. Berrio supplied a social security number to the Division of Gaming Enforcement at sometime during the photographing and fingerprinting process which is a normal part of the application process for a registration. Apparently, although there was no specific request for a social security number on the form itself, it was the normal practice of the Division to request applicants for their number during this photographing and fingerprinting procedure.

Mr. Berrio does not dispute that he provided the social security number to the Division. He contends that he believed that the number was a valid one which had been obtained in a valid fashion and that therefore he did not willfully or in conscious disregard for the regulatory process provide false or misleading information concerning a material fact, elements which would be necessary in order to establish a violation of section 86(b) of the Act.

During the April 10, 1986 hearing, the Division presented Dennis Chornomaz as a witness. Mr. Chornomaz, an operations supervisor and employee of the Social Security Administration for the past 12 years, testified as an expert with respect to the procedures involved in obtaining social security numbers. According to Mr. Chornomaz, in order to obtain a number, an applicant generally must come to the Social Security Office, fill out a form, provide his or her date of birth, the name of his or her father, the maiden name of obtain a number, an applicant generally must come to the Social Security office, fill out a form, provide his or her date of birth, the name of his or her father, the maiden name of his or her mother, proof of age, citizenship or alien status and identity. The applicant must also sign the form. Chornomaz further explained that it is possible for someone to obtain a social security card without personally coming to the Social Security Office. In such a case, an individual appearing on behalf of an applicant would come into the Social Security Office and obtain the necessary form, which could then be filled out at the applicant's home or some other place outside the actual Social Security office. When either the applicant, or an agent for the applicant, brings in the completed form, the person taking the application is required to review the original evidence with respect to identification, age, etc. Where an agent is the one bringing in the completed application, a situation which Chornomaz described as "unusual," a supervisor would review it, would perhaps make a phone call to the applicant to determine whether indeed the circumstances were as they were represented and would generally probe the situation to determine why the applicant did not personally appear.

The Division presented a certification by Joseph A. Higgins, director of Registration Operations, Office of Central Records Operations for the Social Security Administration. Higgins certified that he was the legal custodian of records for the Department of Health and Human Services of which the Social Security Administration is a part, and that "social security number 265-11-3948 is not assigned in the name of Conrado Berrio-Echeverri."

On April 10, 1986, the Division presented testimony by Henry C. Willett, an agent for the Immigration and Naturalization Service. Mr. Willett testified that the social security card obtained by Conrado Berrio, which he examined in the course of his duties with the I.N.S., was fraudulent. Willett had extensive experience examining such documents as an I.N.S. agent. In his view, the card contained certain "identifiers" which "would tell an experienced person whether or not you're looking at a valid card." These included little asterisks in the column, "an actual card would have "much clearer printing"

and there would also not be bleeding on the "bar along the bottom of the card." Other than these "identifiers," Willett conceded that the card "bears a resemblance to a legitimately issued card." The witness answered affirmatively when questioned as to whether "you will have to have experience in reviewing social security cards in order to know these indicators as you have testified."

Conrado Berrio testified on July 31, 1984 concerning the social security number. According to Mr. Berrio, who testified through an interpreter, he obtained his social security number after arriving in the United States in 1980. He had been in the country approximately 15 days. He knew no one and was "handicapped," apparently because of his unfamiliarity with the country, language, or anyone here. He testified that he:

Asked for the cooperation for someone to help me that would speak Spanish and then this man brought me an application so that I could apply for the social security. I filled in and he told me that I had to pay some money for the stamps. And you had to pay it so it could be stamped and then to wait so I could start work.

Mr. Berrio testified further that it was his understanding that everyone in the United States obtained a social security card. He did not go directly to the Social Security Office because "here in a lot of places they don't speak my language and I only speak Spanish." Berrio denied that he had any knowledge that the social security card issued to him was fraudulently obtained or was a false social security number. In fact, he still believed that the number was a good one "because I get paid my income taxes with it."

On April 10, 1986, Mr. Berrio testified further concerning the use of his social security card and explained that he had been paying taxes and had never been advised by the Social Security Administration of any problem with his number. He also was never contacted by the Internal Revenue Service concerning any such problem.

During cross-examination on April 10, 1986, Mr. Berrio denied any knowledge at the time that he had obtained the social security card that there was no charge for the document. He could not remember the name of the person who obtained the number for him "because he never gave me his name. He simply told me that he could help me out." This was the same individual through whom Conrado was later able to obtain a social security number for his brother Carlos, who arrived in the country some time after Conrado.

On July 31, 1984, Conrado Berrio testified concerning his living arrangements in Atlantic City and his contact, or lack thereof, with his previous wife and child. It is this testimony which the Division claims was at least in part fraudulent. Mr. Berrio's testimony at the time of the original hearing was that he had lived in Atlantic City for three years. He was married at the time of the hearing to Carol Linn Jerousek, who had been born in Maryland. They were married on May 5, 1982 and lived as man and wife. They remained together for a while and then Carol, who did not like Atlantic City, returned to her parents in Baltimore. According to Conrado, he maintained communication with Carol.

The witness testified that he was previously married to one Amanda Berrio. This marriage took place in Columbia. Conrado and Amanda were the parents of a four-year-old girl. At the time of the July 31, 1984 hearing, Conrado contended that he did not know exactly where Amanda and the child were. He and his wife had separated sometime in 1982, after a six year marriage. At the time, Amanda was in New York. A New York divorce was obtained. Conrado was paying support to Amanda and mailing it to her in Columbia. He did not know exactly where she was at the time of the hearing.

The witness claimed that he had last lived with Amanda in Columbia. He was living on Caspian Avenue in a home owned by his mother.

The witness testified that he met Carol Jerousek in Atlantic City in December 1981. He began to date her. At the time of the hearing, Carol, who was in Baltimore, was six to seven months pregnant with a child, who she told him was not his.

At the hearing held on January 7, 1985, Henry C. Willett, an agent for the Immigration and Naturalization Service, testified that following the July 31, 1984 hearing he had obtained a copy of a lease agreement, dated June 7, 1984, for premises located at 115 South Sovereign Avenue. The landlord was Thompson Real Estate Company. The document bore a signature which he believed to be that of Conrado Berrio. In addition to the lease agreement, Mr. Willett had also obtained an occupancy permit application required by the city, which bore the signature of Conrado Berrio and lists the proposed tenants at 115 South Sovereign Avenue as Conrado, Carol and Lena Marie, who is the daughter of Conrado and Amanda. In addition, Willett also obtained a copy of a tenant payment record maintained by Thompson Real Estate which listed the name of Conrado Berrio, typed on the form. In addition, written on the form was the name Amanda Rivera. The payment record was for June 7, 1984 through December 1984.

Mr. Willett testified further that in the course of his investigation he had determined that Amanda Berrio, also known as Amanda Rivera, was employed at Harrah's Marina Casino Hotel. He had also observed Amanda and Lena Marie outside the premises of 1911 Artic Avenue in Atlantic City. Willett also testified that from his investigation he had determined that Conrado Berrio was not living at 1910 Caspian Avenue, the address that Mr. Berrio had given during the July hearing, a property owned by his mother. However, Willett acknowledged that he had seen Berrio at the Caspian Avenue address "on occasion."

Mr. Willett was asked to explain how the entry of names on the payment record took place. The name Amanda Rivera had been handwritten beneath the typed name of Conrado Berrio. According to Willett, he spoke to April Winchester, a clerk employed by Thompson Realty, and she explained that the handwritten notation was made because:

A woman known to her as the wife of Conrado Berrio and known to her as Amanda Rivera would bring her own pay check to pay for the rent at 115 South Sovereign Avenue, Apartment 2, and for that reason the handwritten notation was made on the card in the event that someone else from the agency would have a contact with this person.

Mr. Willett concluded from this information that "a female was residing there." Mr. Willett conceded that he had never seen Mr. Berrio, Lena Marie Berrio or Amanda Berrio at that address. He further agreed that the only proof he had, other than supposition, that Amanda or Lena was living at the South Sovereign Avenue address, was the presence of Amanda's name on the rent card.

Mr. Willett also testified that he had observed Conrado, Amanda and Lena Marie walking on the streets of Atlantic City after July 31, 1984, but never before that date. He had observed them in the area of Michigan Avenue around New York Avenue, some considerable distance from Sovereign Avenue.

On cross-examination, Mr. Willett conceded that he had visited 1910 Caspian Avenue on three occasions between April 1982 and June 1984 and that in each of the three occasions he encountered Conrado at that address. He had made no further visits to that address during the latter part of 1984.

On April 10, 1986, the Division presented April Winchester, the clerk for Thompson Realty, as a witness. She testified that she knew Conrado. She had first met him in June 1984 and had taken a rental application from him for the property at 115 South Sovereign Avenue. A certificate of occupancy which she prepared listed Conrado, Carol and Lena Marie, a four-year-old daughter, as the occupants. Ms. Winchester was shown a photocopy of the rent card which contained the handwritten name Amanda Rivera. She testified that she did not know how the handwritten name came to be put on the form, but:

The reasons we put names on cards are because somebody comes in with a check, that name is on a check . . . .

Ms. Winchester testified that the name was placed on the form by Dennis Thompson, son of the owner of the realty company, and stated that the writing was his.

Ms. Winchester claimed that she might have met Carol, but was not sure, and did not know if he had ever met Amanda. She also did not know if she had ever met Lena Marie.

Conrado Berrio testified at the April 10, 1986 hearing. At the time of the hearing, he was living at 23 South North Carolina Avenue and had been there for one year. Mr. Berrio testified that his wife Carol Berrio, from whom he was separated at the time of the July 1984 hearing, had been murdered in Baltimore on November 20, 1985.

According to the witness his ex-wife, Amanda Berrio, does come to visit him at his present address. He also has contact with his daughter Lena Marie.

Mr. Berrio testified that in July 1984 he was living at 1910 Caspian Avenue, a home owned by his brother, sisters and mother. He agreed that he had rented 115 South Sovereign Avenue for one year and had rented it during 1984, although he could not remember the exact date. He stayed at the South Sovereign Avenue address two to three days a week and was living there with a male friend, Adel Hernadez. According to Berrio, neither Amanda nor Lena Marie ever lived with him at the South Sovereign Avenue address. The witness explained that at the time he testified in July 1984 his residence was 1910 Caspian Avenue. He did not mention the South Sovereign Avenue address because he considered it his "personal, personal business, personal life style." He went on

to state that "my personal life is my private life, and that's the way it is." He considered his permanent address as 1910 Caspian Avenue because that was where his family lived. He received mail at the Caspian Avenue home. He paid the rent for the Sovereign Avenue address. He denied that Amanda ever paid rent for him for the Sovereign Avenue address.

On cross-examination, Mr. Berrio was questioned as to when he had last seen Lena Marie before the July 31, 1984 hearing. He stated that it had been about two years. After the hearing, he first saw her approximately two months later when she came to see him. He was not sure how she and her mother, who came with her, found out exactly where he was. They visited him at the Sovereign Avenue address and he was surprised when they arrived.

The witness conceded that he had filled out the rental application and occupancy form for the Sovereign Avenue address and had put in the names of Carol Berrio and Lena Marie Berrio, even though they were not going to be living at the address and he had not seen Lena for two years. He put Lena's name down because "she's my daughter, and because I could rent it better as a family apartment." He denied that he lied on the application, "Because when the girl came and visited, and people would see, they would see that she's there, and they couldn't say anything." However, Berrio insisted that at the time he filled out the application he didn't know whether Lena would be visiting him or not, he was "always keeping my daughter in mind" even though he hadn't seen her.

Carol Berrio sometimes came and stayed "for a week" at the Sovereign Avenue address, but her residence was in Maryland.

During cross-examination, Mr. Berrio was again questioned as to why he had not listed the Sovereign Avenue address when questioned about where he resided during the July hearing. He stated that "I reserve certain things in my personal life." "I'm a human being, and I have a right to reserve many things. Those are human rights to hold back." Mr. Berrio further explained that he did not want Carol Berrio to know that his friend was living with him at Sovereign Avenue, although she did eventually find out. He apparently also did not want her to know where he was living because he "had to pass her money to help her out. Sometimes she didn't find me at home." "There's other reasons why, and if you wish to ask me things about my intimate life, then we can talk about that." He denied that one of the reasons he did not let Carol know about the Sovereign Avenue address was because he was living with or seeing Amanda there.

In addition to his other testimony, Mr. Berrio acknowledged that he had been arrested for shoplifting in 1984 and in January 1985, pled guilty to that offense. He "picked up some lotions, and I didn't want to pay them." Mr. Berrio was fined and required to attend a meeting which apparently was of an educational nature, intended to "show you what you must do when you go shopping, and not to touch this or that." Berrio had never been charged with any other criminal offense and when asked about his feelings concerning the shoplifting incident, stated:

To me its a big shame, and I know I made a mistake, and I know I'm not supposed to do that over again.

A complaint issued against Mr. Berrio in the Egg Harbor Township Municipal Court in connection with the shoplifting incident was introduced in evidence. According to the complaint, the incident occurred at a Sears department store and the items possessed by Berrio were valued at \$46.50. He attended the shoplifting course on February 2, 1985. He was actually fined \$150. and \$25 costs and given a 15-day suspended jail term.

In support of his continued registration, and in connection with his character, which was brought into question by the allegations concerning his credibility and the alleged inimicality of his continued registration, Mr. Berrio presented as evidence a letter from Michele C. Ellenbart, executive chef's secretary, signed by the executive chef as well, verifying Mr. Berrio's employment at Bally's Park Place Casino Hotel since January 28, 1982. In addition, perfect attendance awards presented for December 1985 and April 1 through June 30, 1985 were also placed in evidence.

#### DISCUSSION

The Division's allegation that Mr. Berrio knowingly and intentionally provided a false social security number is based largely upon the premise that Conrado Berrio must have known that the circumstances under which he obtained the card were questionable and in fact may well have known that he had no right to a card. The only direct evidence presented by the Division is that of Mr. Willett, who testified as to the counterfeit nature of the card, and the certification of the custodian of the records that the number was not issued to Mr. Berrio. The question to be determined is whether Berrio legitimately thought that he was obtaining a valid social security card issued to him through the auspices of a friendly Spanish-speaking individual who charged him a fee which he thought

necessary, or whether Berrio, after entering the United States illegally, knowingly obtained a fraudulent card so that he could obtain employment and blend into the society.

An examination of Mr. Berrio's testimony reveals only that he claims innocence as to the fraudulent nature of the card and argues that as a stranger in a strange land, he relied on someone who offered to help him, paid what he was told to and got a card which he thought was valid. As Berrio also points out, neither the Internal Revenue Service or any of his employers ever suggested to him that the card, or number, were not valid.

Based on the testimony presented, and giving consideration to the credibility of Mr. Berrio's explanation, I am hard-pressed to find that the Division has established by a preponderance of the evidence that Conrado Berrio knew that the social security number which he presented to the Division during the fingerprinting and photographing process was not a legitimate one. While one could easily be swayed to that opinion if one allowed suspicion and cynicism to enter into one's view, the mere fact that an illegal alien is in possession of a social security card does not in and of itself mean that the person knew that the document was not valid. While it is no doubt quite difficult to prove what Mr. Berrio's state of mind was at the time he obtained the card, without more evidence than has been presented here, and without more to demonstrate that Berrio was lying, I am not convinced that the Division has met its burden.

In reaching the above conclusion, I have considered the affect on Mr. Berrio's overall credibility of the allegations that he lied in his July 1984 testimony concerning his relationships with Amanda and Lena Marie Berrio. If indeed Mr. Berrio's testimony concerning his contacts with his former wife and child was untrue, such could taint the reliability of his testimony concerning how he obtained the social security card and lead to the conclusion that he knew that the card was false when he presented the number to the Division. On the other hand, if Berrio's testimony as to his contacts with Amanda and Lena Marie was not false, nothing about that testimony would tend to support the Division's contention concerning the social security number.

An analysis of Mr. Berrio's testimony with respect to his relationships with his ex-wife and his young child does not convince me by a preponderance of the evidence that Mr. Berrio lied. While certain of Mr. Berrio's statements concerning why he did not give the South Sovereign Avenue address as a residence during the July hearing and the reasons

why he did not wish anyone to know about that address do raise some concerns, Mr. Berrio apparently had not abandoned involvement with the Caspian Avenue home of his family as of July 1984 and might well have felt that that was truly his residence and that the other apartment on Sovereign Avenue was a convenience, a second home, or a "hideout." Mr. Berrio was quite reluctant to discuss the exact reasons why he rented the Sovereign Avenue property, but ultimately he disclosed that at least in part his reasons related to his faltering marriage to Carol Berrio. Whatever the exact nature of his relationship with Mr. Hernandez (I do not mean to imply that I am drawing any conclusions of an improper nature) or the exact details of why he sought to evade Carol, I can **FIND** no evidence from which to conclude by a preponderance of the evidence that he was living at Amanda at that property or that he had any contact with her at that property.

With respect to the handwritten entry on the Thompson Realty Company rental payment card showing the name Amanda Rivera, the evidence presented does not permit a reasonable individual to draw any conclusion as to how and why that name appeared on the card. Inspector Willett's testimony given at the January 1985 hearing was that he had been told by Ms. Winchester of Thompson Realty that name was on the card because Amanda had come in and paid the rent. In fact, when Ms. Winchester testified in the April 1986 hearing she denied that she had ever seen Amanda Berrio-Rivera or that she had placed the handwriting on the form. She said that she recognized the handwriting as that of the son of the owner, however, he was not produced as a witness and the actual reasons why he placed the name on the card are therefore not in the record. The evidence thus allows only "educated" suppositions. If the Division intended to establish the facts concerning how the name came to be on the card, it should have assured itself that the witness that it was going to produce at the hearing was indeed the person who placed the name on the card. Based on this type of evidence, one would be hard-pressed to conclude as a matter of fact that Amanda Rivera actually paid rent for the property. Further, there is no evidence that Amanda Rivera was ever at the property, even if perhaps under some circumstance not fully explained, she may have sent in a check for the rent. There is just an insufficient amount of evidence from which to conclude that Amanda, or Lena Marie, was ever at the Sovereign Avenue property.

The fact that Mr. Berrio chose to list Lena Marie, along with his wife Carol, as residents of the Sovereign Avenue property is another seemingly significant fact. However, Mr. Berrio apparently rented this apartment with no intention of having Carol stay there. According to his testimony, he listed her in order to make it appear that he

was renting the apartment for a family. There is nothing very unusual about an individual, attempting to rent a property for himself, listing family members even when he doesn't actually intend to have his family stay at the property. Again, the reasons why he was staying with Mr. Hernandez are uncertain, but I cannot **FIND** any evidence sufficient to allow a finding that he had contact with Lena Marie prior to the time he rented the Sovereign Avenue address and or had any reasonable basis for concluding that he was going to have her at the property or to see her in the immediate future.

The accusation that Mr. Berrio committed false swearing or perjury during his testimony of July 1984 is an extremely serious one. There are few charges more serious than that one has testified falsely under oath. Where such a finding is to be made, reasonable men would demand that the evidence be clear. While not intending to imply that the standard for proving such is anything more than preponderance of the evidence, the preponderance must be clearly established. Here, while one can rely on supposition, suspicion, and distrust in order to raise the level of the evidence presented, striped of such untoward additions, the evidence falls short of proving the Division's claims.

I **FIND** from the evidence, including a consideration of the credibility of the witnesses, that at the time that Mr. Conrado Berrio testified on July 31, 1984 he had not had contact with Amanda or Lena Marie Berrio for approximately two years. During that time he may have sent support payments to Mrs. Berrio for Lena Marie, but he did not know exactly where she was actually living. Following the hearing, Amanda and Lena Marie, who had at some time moved to Atlantic City, did contact Mr. Berrio at the Sovereign Avenue property, approximately two months after the hearing.

I **FIND** that Mr. Berrio truthfully testified at the July 1984 hearing concerning the status of his relationship with Amanda and Lena Marie. I **FIND** that he did not testify as to the complete truth concerning his residences because he did not advise at the time that he had rented a property on Sovereign Avenue at which he was living several days a week. However, I **FIND** that he was residing, albeit it not all the time, at his family's home on Caspian Avenue.

I **CONCLUDE** that Mr. Berrio did not commit perjury nor did he engage in false swearing when he testified at the July 31, 1984 hearing. With respect to his testimony concerning Amanda and Lena Marie, I **FIND** that the testimony was truthful. With respect to the testimony concerning his residences, I **FIND** that he did not give a

complete and accurate picture as to exactly where he lived, but I do not **FIND**, based on the totality of the circumstances, that he intentionally told untruths or in any way attempted to mislead anyone by his testimony. Therefore, I **CONCLUDE** that the Division has failed to establish by a preponderance of the evidence that Mr. Berrio committed false swearing or in any way violated the sanctity of his oath.

With respect to Mr. Berrio's shoplifting conviction, the incident appears to be an isolated one. There is no indication that Mr. Berrio has ever done anything otherwise contrary to the laws of this country, with the exception of his admitted illegal entry. Given the nature of the offense, and Mr. Berrio's limited role in the casino/hotel industry as a food runner, I cannot **FIND** that the conviction for shoplifting in any way constitutes a sufficient basis for a conclusion that his continued registration would be inimical.

For the reasons expressed, I **CONCLUDE** that the Division has failed to establish any grounds for revoking Mr. Berrio's casino employee registration. The Division has neither proven the false swearing assertions nor has it established by the requisite standard of proof the allegations concerning the knowing and intentional provision of false or misleading information. I **FIND** no violation of N.J.S.A. 5:12-86(b) nor of N.J.S.A. 2C:20-1 or 2C:28-2. Further, I **FIND** no basis for a finding of inimicality under 5:12-86(c)4.

The complaint is **DISMISSED**.

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

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

June 24, 1986  
DATE

*Jeff S. Masin*  
JEFF S. MASIN, ALJ

June 25, 1986  
DATE

Receipt Acknowledged:  
*Neilos Zayas*  
CASINO CONTROL COMMISSION

JUN 26 1986  
DATE

Mailed to Parties:  
*Ronald J. Parkes* 5  
OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of petitioner:

Exhibits from initial hearings:

- P-1 Two-page extract from Conrado Berrio's Personal History Disclosure Form
- P-1B Rental Application for 115 South Sovereign Avenue, Atlantic City, Apartment 2
- P-2 Lease between Conrado Berrio and Thompson Realty Company for 115 South Sovereign Avenue, Apartment 2, Atlantic City, New Jersey
- P-3 Occupancy Permit

Exhibits from April 10, 1986:

- P-4 Certification, Re: Social Security Card Not Issued to Conrado Berrio-Echeverri

On behalf of respondent:

- R-1 Divorce Decree, In the Matter of Conrado Berrio v. Amanda Berrio, entered in the Supreme Court, State of New York, New York County, January 7, 1982
- R-2 Letter of Recommendation of December 10, 1984, from Heiko Bendixen, Executive Chef, Bally's Park Place Casino Hotel
- R-3 Certificate of Marriage between Conrado Echeverri-Berrio and Carol Linn Jerousek

R-4 No exhibits

- R-6

R-7 Letter of March 21, 1986, from Michele C. Ellenbarth

R-8 Certificate of Perfect Attendance, December 1985

R-9 Certificate of Perfect Attendance, April 1 through June 30, 1985

R-10 Photocopy of front and back of Social Security Card

R-11 1983 Income Tax Return

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-209  
LICENSE NO. 29284-21  
OAL DOCKET NO. CCC 00918-86

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

Complainant, :

v. :

MICHAEL BERRY, :

Respondent. :

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FINAL ORDER

This matter having been transmitted to the Office of Administrative Law (OAL) for a hearing; and an initial decision resolving the complaint by the Division of Gaming Enforcement against the respondent for a violation of N.J.S.A. 5:12-100(n) having been filed; and the parties subsequently having entered a written stipulation of settlement in which the respondent admits the gaming violation alleged in the complaint; and the Commission having considered the entire record of these proceedings at its public meeting of July 30, 1986,

IT IS on this 5<sup>th</sup> day of August 1986, ORDERED that the initial decision of the OAL is adopted, as supplemented by the written stipulation of settlement; and

IT IS FURTHER ORDERED that Michael Berry pay a civil penalty in the amount of \$400, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Michael Berry's casino employee license is suspended for seven-working-days to be effective as follows: September 15,16,17,18,19,20, and 21, 1986; and

IT IS FURTHER ORDERED that during this period of suspension Michael Berry shall not be entitled to receive any form of compensation or remuneration from any casino licensee.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 0918-86

(CCC 0417-85 ON REMAND)

AGENCY DKT. NO. 84-209

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

Petitioner,

v.

**MICHAEL BERRY,**

Respondent.

---

**William E. Mountford, Jr., Deputy Attorney General, on behalf of the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Michael Berry, respondent - pro se**

Record Closed: May 6, 1986

Decided: June 18, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Michael Berry, respondent and the holder of casino employee license no. 29284-21, with a violation of N.J.A.C. 5:12-100n, for which the Division seeks the imposition of a penalty pursuant to section 129 of the Casino Control Act (Act). The respondent denied the allegation.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 13, 1984. The Commission notified the respondent of the complaint and advised him of his right to a hearing. By letter filed with the Commission, the respondent denied the charge and requested a hearing. On January 17, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted by telephone on March 13, 1985.

By reason of the respondent's failure to appear at the hearing on October 29, 1985, in the Brigantine Municipal Building, an initial decision, dated December 2, 1985 (OAL DKT. NO. CCC 0417-85) was issued, in which it was concluded that the respondent had abandoned his right to a hearing.

On January 27, 1986, the Commission ordered that the matter be returned to the Office of Administrative Law for a hearing by reason of the respondent's appearance before the Commission and his request for an additional hearing. The matter was retransmitted on February 4, 1986.

FINDINGS OF FACT AND CONCLUSIONS

At the hearing, the parties agreed to a settlement and set forth the following settlement terms on the record:

1. The respondent is subject to \$400 civil penalty which shall be remitted to the Commission; and
2. The respondent's credentials shall be suspended (non-paid) for a period of seven days.

After being placed under oath, the respondent testified that he fully understood and consented to all of the terms and conditions of the settlement. Deputy Attorney General Mountford entered consent on behalf of the Division.

I have reviewed the record and the terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement on the record.
2. The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be **CONCLUDED**.

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

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

June 18, 1986  
DATE

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

Receipt Acknowledged:

June 19, 1986  
DATE

Kenneth J. Fisher  
CASINO CONTROL COMMISSION

Mailed to Parties:

June 23, 1986  
DATE

Eric S. Lutz  
OFFICE OF ADMINISTRATIVE LAW

ks

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-EA-13  
OAL DOCKET NO. CCC 1891-86  
APPLICATION NO. 58921-21

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APPLICATION OF LAWANDA K. BOWERS :

FOR A CASINO EMPLOYEE LICENSE :

FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 17, 1986,

IT IS on this 18<sup>th</sup> day of December 1986, ORDERED that the findings of fact in the initial decision are adopted; and


IT IS FURTHER ORDERED that the following conclusion of law is rejected:

The conclusion that the applicant had failed to demonstrate her good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and -90(b) is rejected. The fact that the applicant has not disclosed her past life to her fiance is irrelevant to her license qualifications. The Commission finds, based on the applicant's "remarkable transformation in her behavior since 1982" (Initial Decision at 9), that the applicant possesses the good character, honesty and integrity required for licensure.

IT IS FURTHER ORDERED that the casino employee license application of Lawanda K. Bowers is granted.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:



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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1891-86

AGENCY DKT. NO. 86-EA-13

**LAWANDA K. BOWERS,**

Petitioner,

v.

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

Respondent.

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**Lawanda K. Bowers, petitioner, pro se**

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

Record Closed: June 27, 1986

Decided: July 30, 1986

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

**STATEMENT OF THE CASE**

Lawanda K. Bowers, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity because of her criminal record history, pursuant to section 90b.

PROCEDURAL HISTORY

Ms. Bowers filed her Personal History Disclosure Form-2A (PHDF-2A) with the Commission on January 7, 1985 (R-3). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated January 13, 1986, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. The petitioner requested a hearing. On March 19, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 24, 1986. The matter was heard and the record closed on June 27, 1986.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Bowers is 26 years of age (R-3). She was born in New York City, New York, and currently resides in Long Island with her family. The petitioner is the mother of a three-year-old girl and is pregnant with twins. She is engaged to be married on August 23, 1986, to the father of her unborn children. The petitioner's fiance is currently employed in the casino industry in Atlantic City.

In 1979 and at age 19, the petitioner left home at the request of her father because of family disputes. Between 1979 and 1982, the petitioner was occasionally employed by various businesses.

On September 26, 1979, the petitioner was arrested by the New York City Police Department under the name of Quiann Johnson and was charged with loitering for prostitution (R-4). No record of the disposition was available.

On February 2, 1980, the petitioner was arrested by the New York City Police Department under the name of Rose Munaco and was charged with loitering for prostitution (R-5). On the same date, the petitioner pled guilty, and was sentenced to time served (R-6).

On August 19, 1980, the petitioner was arrested by the New York City Police Department under the name of Tiffany Johnson and was charged with loitering for prostitution (R-4 and R-7). The charges were dismissed (R-4 and R-6).

On August 21, 1980, the petitioner was arrested by the New York City Police Department under the name of Tiffany Jackson and was charged with loitering for prostitution (R-8). On August 22, 1980, the petitioner pled guilty, and was sentenced to time served (R-6).

On September 23, 1980, the petitioner was arrested by the New York City Police Department under the name of Tiffany Johnson and was charged with loitering for prostitution (R-9). On September 24, 1980, the petitioner pled guilty, and was sentenced to ten days in jail and a fine of \$100 (R-6).

On December 4, 1980, the petitioner was arrested by the New York City Police Department under the name of Tiffany Johnson and was charged with prostitution (R-4 and R-10). On December 5, 1980, the petitioner pled guilty, and was sentenced to 15 days in jail and a fine of \$150.

On June 17, 1981, the petitioner was arrested by the New York City Police Department under the name of Karen Johnson and was charged with prostitution (R-4 and R-11). On June 18, 1981, the petitioner pled guilty, and was sentenced to 40 days in jail (R-4 and R-6).

On July 23, 1981, the petitioner was arrested by the New York City Police Department and was charged with prostitution (R-12). On the same date the petitioner pled guilty, and was sentenced to ten days in prison (R-6).

On October 13, 1981, the petitioner was arrested by the New York City Police Department and was charged with prostitution (R-13). On October 22, 1981, the petitioner pled guilty, and was sentenced to 15 days in prison (R-6).

On August 10, 1982, the petitioner was arrested by the Atlantic City Police Department under the name of Tiffany Johnson and was charged with violations of N.J.S.A. 2C:34-1a(2), prostitution, and of N.J.S.A. 2C:39-5d, unlawful possession of a weapon - a kitchen knife (R-1 and R-4). On August 31, 1982, the petitioner was indicted.

for a violation of N.J.S.A. 2C:39-5d, possession of a weapon (R-2). On October 25, 1982, the petitioner retracted her plea of not guilty and entered a plea of guilty to the indictment. On November 12, 1982, the petitioner was sentenced to a 14-day jail term with credit given for time served and \$25 payable to the Violent Crimes Compensation Board. In addition and on the charge of prostitution, the petitioner was fined \$500.

On October 15, 1982, the petitioner was arrested by the New York City Police Department under the name of Karen Brown and was charged with loitering for prostitution (R-4 and R-6). The petitioner failed to appear in court and on November 8, 1982, a bench warrant was issued. The petitioner satisfied the bench warrant and was sentenced to time served and a fine of \$40 (R-14).

The petitioner did not deny that she had committed any of the charged offenses and admitted that she had used the stated aliases.

In 1982, the petitioner began to work for an employment agency in New York City. During the following three years, she was assigned to work in various businesses. Primarily, she made data entries on computers.

Subsequent to 1982, the petitioner became a born-again Christian.

In 1983, the petitioner relocated to Atlantic City. In July 1984, she received casino hotel employee registration no. 55498-40. From July through September 1984, she was employed as a VIP coordinator by the Greate Bay Hotel and Casino, Inc. — Sands. Her job consisted of presenting gifts to high rollers. The petitioner voluntarily left this position because of sexual harassment by her supervisor, who later lost his license.

The petitioner was also employed through an employment agency as a gift shop attendant at the Golden Nugget for a period of two weeks.

In February 1985, the petitioner successfully completed a craps dealer course of instruction at the Casino Career Institute.

On April 16, 1985, the petitioner was arrested by the Egg Harbor Township Police Department upon three complaints which had been filed with the Township Municipal Court (R-15 and R-16). More specifically, on January 30, 1985, four complaints were filed on behalf of J.C. Penneys, and on October 18, 1984, two complaints were filed on behalf of Sears Department Store, each of which alleged that the petitioner had committed a violation of N.J.S.A. 2C:20-4, theft by deception, concerning the use of checks from a closed bank account (R-15). On May 13, 1985, all charges were dismissed; however, the petitioner was required to pay \$25 court costs for each charge. The petitioner made good on each of the checks.

Currently, the petitioner works for an employment agency on Long Island. During the recent strike at AT&T, she was assigned to work there for approximately one month.

The petitioner did not produce character witnesses. She explained that she is too embarrassed to tell her new friends and associations of her past.

Ms. Bowers has not advised her fiance of her past.

The petitioner has never been involved with illegal drugs, which testimony was supported by notations on the various arrest reports.

The petitioner desires employment involving computers in the casino industry. She has had substantial experience working with computers and enjoys the work.

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

**(B) DISPUTED FACTS**

In dispute were the circumstances underlying the petitioner's involvement in prostitution; the circumstances underlying her possession of a knife on August 10, 1982, in Atlantic City; her current attitude about her prior misconduct; the circumstances underlying the 1985 bad check incidents; the petitioner's credibility and her good character, honesty and integrity.

Ms. Bowers testified that her involvement in prostitution was the manifestation of family problems. More specifically, she was subjected to substantial pressures by her father, who was a preacher. She rebelled against these pressures and, because she was irresponsible and immature, became involved in prostitution. After several unsuccessful attempts to correct this pattern of behavior, the petitioner was successful following her October 15, 1982 arrest. The petitioner testified that she will not return to prostitution under any circumstances. She is now in control of herself and is able to handle responsibility and pressure in a different and mature manner. She has changed her entire lifestyle and no longer associates with any of her prior acquaintances.

The petitioner also described the circumstances underlying her conviction for possession of a knife in Atlantic City in 1982. She had borrowed the knife from an acquaintance and had forgotten to return it. She did not have the knife for purposes of protection; a kitchen knife is not suitable for protection. The knife was in her pocketbook because she intended to return it.

Joseph C. McCullough, a detective with the Atlantic City Police Department and the arresting officer, testified on behalf of the Division. At the time of the arrest, the petitioner's pocketbook contained only a knife, tissues and prophylactics, i.e., the pocketbook did not contain identification, financial resources or any other object usually found therein. The petitioner was cooperative during the arrest and admitted that she possessed the knife for self-protection.

The Division also produced Agent Thomas Hollinger, who investigated the petitioner's application and conducted a telephonic interview on October 3, 1985. The interview was an open and full discussion of the petitioner's life history. During the interview, the petitioner stated that she possessed the knife for purposes of self-protection.

The petitioner also described the circumstances underlying the 1985 bad check incident. She was not experienced with checking accounts and did not know that her account had been closed. On occasion the petitioner returned to New York City for temporary employment, during which she did not always receive her mail from Atlantic City on a timely basis. Accordingly, she was unaware that the account was closed at the time she wrote the checks. The petitioner covered each of the checks, paid her fines and has not incurred any subsequent problems. This explanation was fully consistent with the explanation provided by the petitioner to Agent Hollinger during the telephonic interview.

I am persuaded to believe the petitioner's testimony concerning her involvement in prostitution, her current attitude toward prostitution and the circumstances underlying the 1985 bad check incidents. Essentially, the petitioner's testimony on these issues is consistent with explanations she provided during the investigative phase, is consistent with the documentary evidence and is consistent with the absence of any subsequent difficulties. Also, there was no evidence contrary to the petitioner's testimony.

However, the petitioner's testimony concerning her possession of a knife was in conflict with the testimonies of Detective McCullough and Agent Hollinger, which must be resolved by an assessment of the credibility of each witness.

Neither Detective McCullough nor Agent Hollinger is a party in this matter and, therefore, neither has an interest in the outcome nor a bias in these proceedings. However, it should be noted that the agent is employed by the Division, which is a party. The testimonies of both witnesses on this issue were fully consistent each with the other and both testimonies consisted of separate admissions against interest made by the petitioner. Further, there was no apparent reason which would have led the petitioner to make such admissions if they were not true. Neither was there any apparent reason why the Division's witnesses would, independent of each other, fabricate such an explanation. Accordingly, I am persuaded to accept their testimonies in all respects.

Ms. Bowers is the applicant for a license and, as such, has a direct interest in the outcome and bias in these proceedings. Although the majority of her testimony was open, painfully candid, consistent with prior statements and consistent with the documentary evidence, the petitioner's testimony concerning the knife was contrary to her prior admissions against interest and inconsistent with the contents of her pocketbook. More specifically, the petitioner obviously purged her pocketbook of any items which she did not want to have stolen from her or which could enable the police to identify her in the event of an arrest. Under such circumstances, it is not logical for the petitioner, especially in anticipation of a possible arrest, to forget to remove the knife. Accordingly, I am not persuaded to accept the petitioner's exculpatory testimony on this point. Also highly significant is the fact that the petitioner pled guilty to the criminal charge.

Although the petitioner openly and candidly discussed her past, she has exhibited an unwillingness to openly and honestly disclose her history to others,

particularly her fiance. Her reluctance to disclose her past to new friends and acquaintances is understandable and probably justified; however, her nondisclosure to her fiance presents a different situation. The petitioner acknowledged that her failure to disclose the matter to her fiance creates a risk to their future relationship and that she knows that the past will inevitably come out into the open. The petitioner intends to disclose her past to her fiance when the time is right. She is also willing to deal with the consequences in the event he is unable to understand and accept her past. Although the petitioner's position is arguably reasonable, it similarly exhibits a disturbing failure to be honest with a person, i.e., a prospective spouse, who is entitled to such treatment. This is especially significant because the petitioner has become pregnant by her fiance. If the petitioner is as confident of her rehabilitation as she claims, as well as of her professed ability to handle difficult situations, she should have disclosed her past to her fiance prior to their engagement and prior to her becoming pregnant.

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

1. The petitioner's involvement in prostitution was the manifestation of her irresponsible and immature reaction to family pressures.
2. The petitioner has not been involved in prostitution since October 1982.
3. It is unlikely that the petitioner will again become involved in prostitution.
4. The testimonies of Detective McCullough and Agent Hollinger concerning the knife were consistent each with the other, consisted of admissions against interest made by the petitioner on separate occasions and were credible and persuasive in every respect.
5. Although the majority of the petitioner's testimony was credible and persuasive, her testimony concerning possession of a knife was inconsistent with her prior admissions against interest, the credible testimonies of the Division's witnesses, the contents of her pocketbook and her guilty plea to criminal charges. Accordingly, the petitioner's testimony on this point was not believable.

6. The petitioner's explanation of the circumstances underlying the bad check incident was credible and persuasive and is adopted fully as a finding of fact.
7. The petitioner's unwillingness to disclose her involvement in prostitution to her new friends and associates is understandable and reasonable.
8. The petitioner's unwillingness to disclose her involvement in prostitution to her fiance is unreasonable, irresponsible and exhibits a lack of honesty.

#### DISCUSSION OF LAW AND CONCLUSION

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

It is readily apparent that the petitioner has made a remarkable transformation in her behavior since 1982. I am persuaded that there is little, if any, likelihood that she will return to prostitution in the future. In addition, it is apparent that the bad check incident was an inadvertent mistake, which has been corrected, and which

should not reflect negatively upon the petitioner's qualifications. However, the petitioner's refusal to testify honestly about her possession of a knife in 1982 and her unreasonable refusal to disclose her past to her fiance prior to her becoming pregnant with his children and prior to their marriage casts serious doubts whether the petitioner possesses the requisite degree of good character, honesty and integrity. I am not persuaded to a degree of reasonable certainty that the petitioner satisfies the criteria for licensure.

I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that she possesses the requisite good degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

It is **ORDERED** that the application of Lawanda K. Bowers for licensure as a casino employee be **DENIED**.

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

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

July 30, 1986  
DATE

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

Receipt Acknowledged:

July 31, 1986  
DATE

M. Benczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 1 1986  
DATE  
bc

Ronald J. Parker / x 5  
OFFICE OF ADMINISTRATIVE LAW  
111

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- R-1 State of New Jersey v. Tiffany Johnson, Docket No. I8-237-82-A, Atlantic County Superior Court - Criminal Record; Complaint filed in the Atlantic City Municipal Court on August 12, 1982, Docket No. C-7684; and Complaint filed in the Atlantic City Municipal Court on August 12, 1982, Docket No. C-7685 (3 pages)
- R-2 State of New Jersey v. Tiffany Johnson A/K/A Lawanda Bowers, New Jersey Superior Court, Atlantic County, Law Division - Criminal, Docket No. I8-237-82-A, Judgment of Conviction, dated November 12, 1982 (3 pages)
- R-3 Personal History Disclosure Form-2A, Lawanda Karen Bowers, filed with the Casino Control Commission on January 7, 1985 (24 pages) This was a joint exhibit
- R-4 New Jersey State Police, State Bureau of Identification - Request for Criminal History Record Information, Lawanda Karen Bowers, dated January 23, 1985; United States Department of Justice, Federal Bureau of Investigation, Identification Division - Rap Sheet (4 pages)
- R-5 New York Police Department - Arrest Report, dated February 2, 1980
- R-6 State of New York, Division of Criminal Justice Services - Criminal History, dated May 2, 1985 (5 pages)
- R-7 New York City Police Department - Arrest Report, dated August 19, 1980 (2 pages)
- R-8 New York City Police Department - Arrest Report, dated August 21, 1980 (2 pages)
- R-9 New York City Police Department - Arrest Report, dated September 23, 1980 (2 pages)
- R-10 New York City Police Department - Arrest Report, dated December 4, 1980 (2 pages)

- R-11 New York City Police Department - Arrest Report, dated June 17, 1981 (2 pages)
- R-12 New York City Police Department - Arrest Report, dated July 23, 1981 (2 pages)
- R-13 New York City Police Department - Arrest Report, dated October 13, 1981 (2 pages)
- R-14 Criminal Court of the City of New York - Certificate of Disposition, Docket No. F-111976, provided by the petitioner
- R-15 State of New Jersey v. Lawanda Bowers, Egg Harbor Township Municipal Court, Docket Nos. C-I 9801, 9802, 9803, 9804, 9195 and 9196, Complaints filed on January 30, 1985 and October 18, 1984, and Orders of Dismissal entered on May 13, 1985 (3 pages)
- R-16 Egg Harbor Township Police Department - Arrest Report, dated April 16, 1985

WITNESS LIST

For the petitioner:

Lawanda K. Bowers

For the respondent:

Thomas Hollinger

Joseph C. McCullough

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-62  
LICENSE NO. 13313-21  
OAL DOCKET NO. CCC 7370-85

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
  
Complainant, :  
  
v. :  
  
LAWRENCE F. CARR, :  
  
Respondent. :

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FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision of the Office of Administrative Law (OAL) which incorporates a proposed stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against the respondent for a violation of N.J.S.A. 5:12-100(n); and the Commission having considered the entire record of these proceedings at its public meeting of August 6, 1986,

IT IS on this 13<sup>th</sup> day of August 1986, ORDERED that the initial decision of the OAL, which incorporates the proposed stipulation of settlement, is affirmed; and

IT IS FURTHER ORDERED that Lawrence F. Carr pay a civil penalty in the amount of \$300, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Lawrence F. Carr's casino employee license is suspended for five working days to be effective as follows: September 22, 23, 24, 25 and 26, 1986; and

IT IS FURTHER ORDERED that during this period of suspension Lawrence F. Carr shall not be entitled to receive any form of compensation or remuneration from any casino licensee.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 7370-85

AGENCY DKT. NO. 85-62

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

Petitioner,

v.

**LAWRENCE F. CARR,**

Respondent.

---

**Timothy C. Ficchi**, Deputy Attorney General, for the petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

**Stuart B. Finifter, Esq.**, for the respondent (Finifter & Finifter, attorneys)

Record Closed: June 23, 1986

Decided: July 1, 1986

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

This matter arises from the complaint filed by the Division of Gaming Enforcement with the Casino Control Commission on February 22, 1985, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by way of a telephone conference call on January 21, 1986, and the hearing was scheduled for February 21, 1986. The hearing was then rescheduled for April 10, 1986. Prior to this date, the parties advised the undersigned that a settlement had been reached and the matter was adjourned.

The parties have agreed to a settlement and have prepared a stipulation indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the terms of settlement, and I **FIND**:

- (1) The parties have voluntarily agreed to the settlement as evidenced by their signatures or that of their representatives.
- (2) The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

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

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

July 1, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

July 2, 1986  
DATE

Beatrice S. Tylutki  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 7 1986  
DATE

Ronald D. Parker  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

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DOCUMENTS IN EVIDENCE

None

W. CARY EDWARDS  
Attorney General of New Jersey  
Attorney for  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: TIMOTHY C. FICCHI  
Deputy Attorney General  
(609) 633-3729

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-62  
OAL DOCKET NO. 7370-85

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

Plaintiff, )

Civil Action

v. )

STIPULATION OF SETTLEMENT

LAWRENCE F. CARR )

Respondent. )

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Timothy C. Ficchi, Deputy Attorney General, and Lawrence F. Carr by and through his counsel, Stuart B. Finifter, Esquire, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Respondent presently holds casino employee license no. 13313-21 issued by the Casino Control Commission on May 14, 1980.

(2) WHEREAS on or about October 22, 1984, Respondent, Lawrence F. Carr, was observed gaming at Pit #2, Blackjack table #5, in the Golden Nugget Hotel/Casino, by Golden Nugget Security Officer Carol Thorgerson in violation of N.J.S.A. 5:12-100(n).

(3) WHEREAS on or about October 22, 1984, Respondent, Lawrence F. Carr, was employed by Harrah's Marina Hotel/Casino as a Casino Collector.

(4) WHEREAS Respondent, Lawrence F. Carr, is not presently employed by any Atlantic City hotel/casino.

(5) WHEREAS attached hereto and made a part hereof is a copy of a security report, dated October 22, 1984, which was made by Golden Nugget Security Officer Carol Thorgerson relating to her observation of Respondent's gaming activity at the Golden Nugget Hotel/Casino on or about October 22, 1984.

(6) WHEREAS it is admitted that the aforementioned conduct as described in paragraphs 2-5 supra, did, in fact, occur.

(7) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the aforementioned statutory and regulatory provision in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between parties hereto that:


1. The facts stated herein, supra, are true and did, in fact, occur.

2. The casino employee license of Respondent shall be suspended for a period of five (5) days.

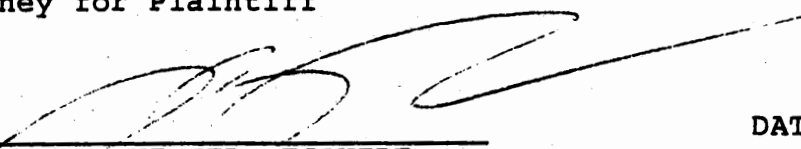
3. Respondent shall be fined a civil penalty of \$300.00.

4. This settlement shall be a full and final settlement for the aforementioned violation of N.J.S.A. 5:12-100(n), subject to the approval and acceptance of the Casino Control Commission.


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

  
\_\_\_\_\_  
TIMOTHY C. FICCHI  
Deputy Attorney General  
Attorney for Plaintiff

DATED: 4/15/86

  
\_\_\_\_\_  
STUART B. FINIFTER, ESQUIRE  
Attorney for Respondent

DATED: 10/20/82

  
\_\_\_\_\_  
LAWRENCE F. CARR  
Respondent

DATED: 5-10-86

A040886/55

1. INCIDENT REPORTED BY <i>SA Thorgersen</i>		2. UCR	3. INCIDENT LOCATION <i>Pit #2-Table #5</i>		C	H	4. NUMBER <i>84-23062</i>
5. COMPLETE ADDRESS (MUNICIPALITY AND ZIP) <i>E. McClellan Security</i>			6. TELEPHONE NUMBER <i>X7270</i>		35. AMB		
7. RECEIVED BY <input type="checkbox"/> TELEPHONE <input type="checkbox"/> RADIO <input checked="" type="checkbox"/> PERSON		8. INITIAL REPT INCIDENT <i>ILSO / Casino Emp. Playing B.J.</i>		9. UNIT(S) ASSIGNED OFFICER <i>Thorgersen</i>		34. FIRE	
10. VICTIM/ACCUSED/TRADE NAME <i>LAWRENCE CARL</i>		11. TELEPHONE <i>266-5075</i>		12. CASE/ACC NO		33. TOW	
13. COMPLETE ADDRESS (MUNICIPALITY AND ZIP) <i>Harrish's Colliery's Dept</i>			14. ACTUAL INCIDENT <i>ILSO / Casino Emp. Playing B.J.</i>		32. OTHER		
15. REMARKS <i>#1 observed MR. CARL (involved in best 300000 walk-out incidents in past) playing BJ. Sgt. Lutz this officer engaged in casual conversation with #10 and stated he worked at Harrish's - Colliery's Dept. He was not at table during shift. He was not employed there. He was not employed there. See photo of Mr. Murphy to look if he holds a license at this time.</i>			16. AREA <i>Casino</i>		17. SHIFT <i>SLC</i>		30. ARR
			18. LICENSE NO <i>18847-21</i>		29. DISP		
19. COMPLETE ADDRESS (MUNICIPALITY AND ZIP) <i>GOLDEN NUGGET CASINO/HOTEL</i>			21. DATE <i>10/22/84</i>		22. DISPATCHER <i>FOLKNER</i>		28. REC
23	24	25	26	27	GNS-24		

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-76  
OAL DOCKET NOS. CCC 1103-86; CCC 1315-85  
LICENSE NO. 23679-21 (ON REMAND)

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

Complainant,

FINAL ORDER

v.

EDWARD P. CATALANO,

Respondent.

---


A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 17, 1986,

IT IS on this 22<sup>nd</sup> day of September 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Edward P. Catalano is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Commission's order dated April 9, 1984, suspending the casino employee license of Edward P. Catalano is vacated.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1103-86

(ON REMAND CCC 1315-85)

AGENCY DKT. NO. 84-76

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**EDWARD P. CATALANO,**

Respondent.

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

**Robert A. Porter, Esq.,** for respondent, (Nathan A. Friedman, attorney)

Record Closed: June 9, 1986

Decided: August 4, 1985

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

**STATEMENT OF THE CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with Casino Control Commission on March 19, 1984, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 86c and 86g, 90e and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). This complaint is based upon the respondent's arrest on March 6, 1984, on charges of cheating at blackjack, in violation of N.J.S.A. 5:12-113. The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to the allegation that he cheated at blackjack between February 17 and March 6, 1984, has committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to sections 90 and 129 of the act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, and his business ability and casino experience, within the meaning of sections 89b(2) and (3) and 90b of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

On April 6, 1984, the respondent filed his notice of defense to the complaint of the Division of Gaming Enforcement. By this notice, the respondent requested a hearing and a deferral of the matter pending resolution of the outstanding criminal charges. By order dated April 9, 1984, the Casino Control Commission suspended the respondent's casino employee license pending the final disposition of the complaint.

By letter dated January 25, 1985, counsel for the respondent notified the Casino Control Commission that the criminal charges against the respondent arising from his arrest on March 6, 1984, had been dismissed. On March 8, 1985, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on March 25, 1985. At that time, it was scheduled to be heard on May 9, 1985, but it was necessary to adjourn the matter from that date because of the hospitalization of a witness. The hearing was then rescheduled and heard on September 24, 1985. During the course of the hearing, the parties agreed to submit a stipulation of facts, which stipulation was received on November 13, 1985. The record closed on that date and the Initial Decision was issued on December 31, 1985.

The Casino Control Commission considered the entire record of these proceedings at its public meetings of February 5 and February 11, 1986. By order dated February 13, 1986, the matter was remanded to the Office of Administrative Law for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated April 23, 1985. Without limiting the scope of the hearing on remand, the Commission desired to have the record expanded to include:

1. The videotape evidence concerning each of the incidents alleged to constitute a violation of N.J.S.A. 5:12-113; and
2. The testimony of Detective Richard Loufik with respect to each of the incidents investigated by him which is alleged to constitute a violation of N.J.S.A. 5:12-113; and
3. Evidence concerning the disposition of the criminal complaint brought against the respondent for violation of N.J.S.A. 5:12-113; and
4. Evidence concerning the respondent's successful completion of a pre-trial intervention program; and
5. Any other evidence concerning the respondent's rehabilitation.

The matter was retransmitted to the Office of Administrative Law on February 20, 1986. A prehearing conference was held on March 13, 1986, and the matter was scheduled to be heard on March 27, 1986. Following adjournments for good cause, the hearing on remand was held on June 9, 1986.

#### FINDINGS OF FACT

The respondent holds casino employee license no. 23679-21, issued by the Casino Control Commission on February 27, 1981. He is fifty-two years old and he resides in Philadelphia, Pennsylvania, with his wife and one of his two children. For approximately two years, he has worked at an auto dealer in Philadelphia, selling auto parts. He began his employment in the legalized gaming industry at Bally's Park Place Hotel and Casino as a blackjack dealer in 1982. Prior to his termination in 1984, the respondent was never disciplined by his supervisors.

On March 6, 1984, the respondent was arrested by Detective Richard Loufik, a New Jersey State Police Detective assigned to the Division of Gaming Enforcement, and charged with cheating at blackjack by setting up winning hands and failing to collect on losing bets, in violation of N.J.S.A. 5:12-113. At the time of his alleged violation, the respondent was engaged in the performance of his duty as a blackjack dealer at Bally's Park Place Hotel and Casino in Atlantic City, New Jersey. It is undisputed that the respondent applied for admission into the pre-trial intervention program upon the advise of his attorney. Upon the determination of the Division of Criminal Justice that the respondent had not been in collusion with a player, the criminal charges pertaining to the alleged violations were dismissed (Exhibit J-1). Nevertheless, the respondent completed the pre-trial intervention program by providing daily community service in the form of assistance to the Upper Darby Little League. He also paid a sum of money totalling no more than \$300 to Bally's Park Place Casino in compliance with the terms of his pre-trial intervention program. The charges were dismissed by order of dismissal dated January 3, 1985 (Exhibit J-2).

At the first hearing in this matter, Detective Loufik testified concerning 2 videotaped incidents which allegedly showed that the respondent did not deal blackjack hands properly on March 2, 1984. At 4:03 p.m. and 5:29 p.m., patron Louise Marino was playing two hands at the respondent's table. In the opinion of Detective Loufik, the respondent on both occasions improperly dealt a card to the patron's second hand when the card should have been dealt to the first hand.

Patron Louise Marino, a seventy-nine year old resident of Brooklyn, New York, testified at the hearing that she occasionally would sit at the respondent's table because he is very pleasant. She has never met him outside of the casino and she does not know the respondents' last name. She testified in an entirely credible manner that she never had any agreement with the respondent that he would let her win. She also testified credibly that she could not recall the respondent ever dealing her a losing hand and failing to collect her wager.

At the conclusion of the testimony of Detective Loufik and Ms. Marino on the original hearing date, the parties agreed that the remainder of the evidence would be presented in the form of a stipulation of fact. Subsequently, the parties submitted the following written stipulation of facts:

1. Edward P. Catalano did violate the rules of the game;
2. There was no compensation or profiteering by Edward P. Catalano in regards to such violations;
3. There was no conspiracy, collaboration, or collusion on the part of Edward P. Catalano to involve anyone else in said violation;
4. There was no solicitation by Edward P. Catalano to involve anyone else in said violations;
5. The violations before the court are isolated incidents, and Edward P. Catalano has an otherwise unblemished record with the casino industry;
6. All criminal charges pertaining to said violations have been dismissed.

At the hearing session on remand, Bally's Surveillance Manager Patrick A. Gazzara testified on behalf of the Division of Gaming Enforcement. On February 17, 1984, Mr. Gazzara was present at Bally's as a Surveillance Shift Supervisor and he assisted in the making of a videotape of the respondent's dealing. Videotapes showing the relevant conduct of the respondent on February 17, March 2 and March 6, 1984, were admitted into evidence as Exhibits PR-1, PR-2, PR-3. Mr. Gazzara had no knowledge of any previous alleged wrongdoing by the respondent and he noted that nothing unusual about the respondent's dealing was observed between the dates in questions.

Exhibit PR-1 depicts three separate incidents occurring on February 17, 1984. According to Mr. Gazzara, the first incident occurred at 5:58 p.m., when the respondent was dealing to patron Marino. It was the opinion of Mr. Gazzara that the patron lost on two hands which she was playing simultaneously, but that the respondent did not collect her wagers. The next incident was at approximately 6:00 p.m., when patron Marino was again playing two hands. According to Mr. Gazzara, the respondent paid a tie as a winner on one hand and neither paid nor picked up the wager on the patron's other hand, which was a blackjack. The third incident occurred at 6:01 p.m., when the patron was again playing two hands. It was the testimony of Mr. Gazzara that the patron signaled for a card to be dealt to her second hand, but the respondent played the card to her first hand.

Mr. Gazzara testified that the first incident involving the respondent and patron Marino on March 2, 1984, occurred at 4:03 p.m. Ms. Marino was playing two hands and she signaled for a card to be dealt to her first hand. However, the respondent dealt the card to the player's second hand. Mr. Gazzara acknowledged that players commonly take liberties with the hand signals which they utilize. The second incident on March 2, 1984, occurred at 5:29 p.m. Patron Marino was playing two hands and she signalled for a card to be dealt to the first hand. However, the respondent dealt the card to the second hand.

The final incident occurred at 1:12 p.m. March 6, 1984. Patron Marino was again seated at the respondent's table, playing two hands. It was the opinion of Mr. Gazzara that Ms. Marino signalled for a card to be dealt to the first of the two hands, but the respondent dealt the card to the second hand. Significantly, Mr. Gazzara candidly acknowledged that it is very common for dealers to make errors. In his opinion, two or three errors per shift would not be unusual.

Mr. Gazzara and the respondent both viewed the videotapes at the hearing on the remand. Also viewing the videotapes was Donna Catalano, the respondent's daughter, who has been a blackjack dealer at the Golden Nugget Casino for five years. After viewing the videotape of the first incident on February 17, 1984, the respondent testified that he had a total of 22 for his hand and that he should have paid the customers because he was over. According to the respondent, this was simply an honest mistake. After viewing the second incident on February 17, 1984, the respondent acknowledged that he should have paid the patron's blackjack on the first hand instead of collecting her wager. He also acknowledged that he incorrectly paid her for a tie on the second hand. In regard to the third incident on February 17, 1984, the respondent viewed the videotape and testified that he could see nothing that he had done incorrectly. In his opinion, he correctly paid the patron on both hands. In the opinion of Donna Catalano, the patron moved her hand from the seven spot to the six spot and that is where the respondent dealt the card.

The respondent observed the first incident which occurred on March 2, 1984, and testified that the patron hesitated with her signal and he then dealt the next card to her second hand. He did not dispute that he dealt the card to the wrong hand. In the opinion of Donna Catalano, the patron indicated that she wished the card to be dealt to her first hand, but the respondent dealt the card to her second hand. She noted that he

did not hesitate when he dealt the card and that he could not possibly have seen its face before it was dealt. According to Ms. Catalano, the respondent obviously made a mistake on this hand. After viewing the second incident on March 2, 1984, the respondent testified that he believed the patron wanted the next card to be dealt to her second hand and not to her first hand.

The respondent also testified concerning the incident which occurred on March 6, 1984. According to the respondent, the patron's hand signal was not clear. It appeared to him that she was moving her finger from side to side. The respondent did not dispute that he dealt to the patron's second hand which was a winner, and that he collected her losing wager on the first hand.

Detective Loufik testified concerning his interview of the respondent and patron Marino after they were escorted from the casino floor on March 6, 1985. Both separately denied any wrongdoing, according to the detective. Detective Loufik verified that Ms. Marino was overall a loser at gambling and that she had a credit line at the casino. Detective Loufik found no evidence that the respondent and the patron ever met outside the casino and he also found no evidence that the respondent had profited from any wrongdoing.

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. A licensee who engages in conduct which adversely affects the establishment of his good character, honesty and integrity, and his business ability and casino experience, within the meaning of sections 89b(2) and (3) and 90b of the Casino Control Act, may be subject to revocation of licensure, or some other sanction, pursuant to section 129 of the act. In addition, a licensee who has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, is subject to revocation of licensure, pursuant to sections 86c(4), 86g and 129 of the act.

It is undisputed that the respondent was arrested on March 6, 1984, and charged with cheating at blackjack, in violation of N.J.S.A. 5:12-113. Section 113 of the act provides that any person who by any trick or sleight of hand performance, or by a fraud or fraudulent scheme, cards, dice or device, for himself or for another wins or attempts to win money or property or a representative of either or reduces a losing wager or attempts to reduce a losing wager in connection with casino gaming is guilty of a crime of the fourth degree and shall be subject to a fine of not more than \$25,000, if the value of such money or property or representative of either is over \$25. The Division of Gaming Enforcement has conceded that the Division of Criminal Justice decided not to prosecute the respondent because there was no collusion between the respondent and a patron. In addition, the respondent entered the pre-trial intervention program upon the advice of counsel and satisfactorily completed the program.

The Division of Gaming Enforcement and the respondent have agreed by a stipulation of facts that the respondent did violate the rules of blackjack. However, the parties have agreed further that there was no conspiracy, collaboration, or collusion on the part of the respondent to involve anyone else in said violations and that there was no compensation or profiteering by the respondent in regard to the violations.

Significantly, the Surveillance Manager at Bally's testified that it would not be unusual for a dealer to make three errors during a shift. The Division of Gaming Enforcement has established no more than that the respondent made errors while dealing blackjack on February 17, March 2, and March 6, 1984. Based upon the foregoing, I **CONCLUDE** that when the respondent misdealt in violation of the rules of blackjack there was no intent on his part to provide a winning hand or prevent a losing hand, within the meaning of section 113 of the Casino Control Act.

The parties have stipulated that the violations in question are isolated incidents and that the respondent has an otherwise unblemished record with the casino industry. Since the respondent is not in violation of section 113 of the act, it is apparent that his continued licensure would not be adverse to the public's confidence in the strict regulation of casinos. Therefore, I further **CONCLUDE** that the respondent has not committed an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act, within the meaning of sections 86c(4) and 86g of the act.

In the original Initial Decision issued in this matter on December 31, 1985, I concluded that the respondent's conduct, while not adversely affecting the establishment of his good character, honesty and integrity, did have a negative impact upon the establishment of his business ability and casino experience, within the meaning of sections 89b(2), (3) and 90b of the act. I further concluded that while revocation of the respondent's license for violation of the rules of the game would not be appropriate, within the meaning of sections 129 and 130 of the act, a 90 day suspension commencing with the entry of the Casino Control Commission's final order would be warranted. However, due consideration and weight must be given to the testimony of Surveillance Manager Gazzara, who had not testified at the original hearing. It was his candid and undisputed testimony that it would not be unusual for a dealer to make several errors during a shift. In light of this testimony and in light of the respondent's otherwise unblemished record with the casino industry, and with consideration given to the absence of intent on his part to profit from his violations, I **CONCLUDE**, pursuant to sections 129 and 130 of the act, that no sanction should be imposed for the respondent's violation of the rules of the game on February 17, March 2, and March 6, 1984.

**ORDER OF DISPOSITION**

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Edward P. Catalano be **DISMISSED**.

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

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

August 4, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

August 5, 1986  
DATE

Neilous Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 7 1986  
DATE

Ronald J. Parker / s  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

Joint Exhibits:

J-1 Memo, dated May 31, 1984

J-2 Order of Dismissal, dated January 23, 1985

For the petitioner:

PR-1 February 17, 1984 Videotape

PR-2 March 2, 1984 Videotape

PR-3 March 6, 1984 Videotape

For the respondent:

None.

WITNESSES

For the petitioner:

Richard Loufik

Patrick A. Gazzara

For the respondent:

Louise Marino

Edward P. Catalano

Donna Catalano

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
OAL DOCKET NO. 85-EA-181  
OAL DOCKET NO. CCC 0264-86  
APP. NO. 53523-21

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APPLICATION OF LIONEL R. DABNEY  
FOR A CASINO EMPLOYEE LICENSE

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 10, 1986,

IT IS on this 15<sup>th</sup> day of September 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Lionel R. Dabney for a casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0264-86

AGENCY DKT. NO. 85-EA-181

**LIONEL R. DABNEY,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC SAFETY,**

Respondent.

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**Lionel R. Dabney, petitioner, pro se**

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

Record Closed: June 27, 1986

Decided: July 30, 1986

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

STATEMENT OF THE CASE

Lionel R. Dabney, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (casino teller), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason that the petitioner had failed to disclose information material to licensure in violation of section 86b of the Casino Control Act (Act), and that the petitioner lacked the requisite good character, honesty and integrity under section 90b.

PROCEDURAL HISTORY

Mr. Dabney filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on April 13, 1984 (J-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated October 18, 1985, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By notice filed with the Commission on January 6, 1986, the petitioner requested a hearing. On January 13, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 28, 1986. The matter was first heard on April 18, 1986; however, the record remained open for additional information. Further testimony was taken on June 27, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Dabney is 28 years of age (J-1). He is a lifelong resident of Atlantic City.

The petitioner is a June 1977 graduate of Atlantic City High School. From July 19, 1977 to April 6, 1978, he was in the United States Army. He received an honorable discharge.

For the past eight years, the petitioner has been a member of Local No. 415 of the Laborers' International Union of North America (P-1). He has been employed steadily as a laborer and has worked on the construction phase of all casinos built in Atlantic City.

On September 9, 1978, the petitioner was arrested by the Bridgeton Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (R-1). On September 25, 1978, the petitioner was given a conditional discharge (R-2). On February 2, 1981, the charges were dismissed. The petitioner was a passenger in another's vehicle. The petitioner was observed throwing two bags of marijuana and rolling papers from the automobile.

From July 9 to 30, 1979, the petitioner was employed temporarily in the housekeeping department by Boardwalk Regency Corporation. He was fired for sleeping on the job. Mr. Dabney explained that he worked on the 12:00 a.m. to 8:00 a.m. shift; however, he was accustomed to working during the day. The petitioner returned to the construction industry.

On April 17, 1980, the petitioner was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (R-3). On June 4, 1980, he was found guilty and was fined \$100 (R-4). The petitioner was operating his motor vehicle at the time of the incident.

On March 9, 1981, the petitioner was arrested by the Atlantic City Police Department upon a complaint filed by a Michael Sutton concerning an incident which purportedly occurred on March 8, 1981 (R-5). The petitioner was charged with violations of N.J.S.A. 2C:12-3, terroristic threats, and of N.J.S.A. 2C:17-3, criminal mischief under \$500 (R-6 and R-7). Apparently, there was a companion complaint filed by the petitioner against Mr. Sutton, which alleged disorderly conduct. On May 6, 1981, the charges were dismissed because of lack of prosecution.

On November 28, 1981, the petitioner was arrested by the Hamilton Township Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (R-8). On January 19, 1982, the petitioner pled guilty, was fined \$150 and \$25 costs, and was placed on six months probation (R-9). The petitioner was a passenger in another's automobile.

In 1981, the petitioner received a casino hotel employee registration from the Commission, which remains current.

In March 1982, the petitioner successfully completed a blackjack dealer course of instruction the Casino Career Institute.

On October 9, 1982, the petitioner was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (R-10). On October 25, 1982, the petitioner pled guilty to the charge, and was fined \$100 and \$25 costs (R-11). The petitioner was arrested initially on a warrant for contempt of court issued by the Hamilton Township Municipal Court.

On April 13, 1984, the petitioner filed his PHDF-2A with the Commission (J-2). Although he responded in the negative to question no. 16, which inquired of his criminal record history, the petitioner attached a letter and copy of his criminal record from the Atlantic City Police Department (J-2). These attachments were not forwarded to the Division. The Division first learned of the existence of these attachments at the initial hearing in this matter on April 18, 1986. The attachment sets forth only the three incidents when the petitioner was arrested and charged by the Atlantic City Police Department. The PHDF-2A does not reflect the remaining two arrests and charges which had occurred prior to the date of filing.

On December 29, 1984, the petitioner was arrested by the New Jersey State Police as he operated a motor vehicle on the Atlantic City Expressway, and was charged with violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (R-12). On January 8, 1985, the petitioner pled guilty, and he was fined \$100 and \$25 costs (R-13). The petitioner was the driver of the vehicle and the marijuana was found in a passenger's coat.

The petitioner conceded that he occasionally used marijuana. However, he has not used marijuana during the past year.

The petitioner has not been arrested or charged with any violations of the criminal laws subsequent to the December 29, 1984 incident.

On September 5, 1985, Division Agent Richard A. Clark conducted a telephonic interview of the petitioner. The circumstances of the interview were in dispute.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the PHDF-2A, the telephone interview, the incidents for which the petitioner was arrested and charged, the petitioner's credibility, and the petitioner's good character, honesty and integrity.

Mr. Dabney explained the manner in which he completed the PHDF-2A. He believed that question no. 16 referred to indictable offenses; therefore, he did not set forth the incidents at that point. However, he was aware that his application could be denied if he failed to disclose his criminal record history. This he had learned from other persons employed within the casino industry. The petitioner went to the Atlantic City Police Department and obtained a copy of his criminal record in Atlantic City, which he attached to his PHDF-2A (J-2). The petitioner did not attempt to obtain information about the other two offenses from any other municipality. He explained that he did the best he could at the time. Further, he did not try to hide anything and believed that the Division would be aware of the entirety of his criminal record history. In addition, the petitioner testified that he is not a "paper person" and did not recall all of the incidents.

Agent Clark described the telephonic interview of September 5, 1985. Since the agent was not provided with a copy of the petitioner's criminal record history from the Atlantic City Police Department, the agent believed that the petitioner had completely failed to disclose his criminal record history anywhere on his PHDF-2A. The agent testified that he read question no. 16 from the form to the petitioner, who then denied that he had ever been arrested, charged or convicted of any offense. However, when the agent confronted the petitioner with the details of the incidents, the petitioner admitted each. The petitioner explained that he had failed to disclose his criminal record history because he misinterpreted question no. 16, which he believed referred only to indictable offenses. The petitioner recalled some of the incidents, but was unable to recall all of them. During his testimony Agent Clark referred frequently to his report of the telephone interview, because he had a sparse recollection of the event. The agent does not now possess his handwritten notes of the interview, which were destroyed subsequent to preparation of the report.

The petitioner also described the telephonic interview. He recalled that the interview was a brief conversation of two to three minutes. Further, Agent Clark did not read question no. 16 and did not provide a detailed explanation of the question or recitation of each of the incidents. The petitioner stated that he would not have replied in the negative to a question about a criminal record because such a response would be contrary to the obvious; i.e., there was no possible way for the petitioner to hide his criminal record history, a portion of which he had previously disclosed. In addition, the petitioner did not advise the agent of the attachment to his application form because the petitioner assumed that the agent had it in his possession.

The petitioner also described the circumstances underlying each of the incidents. Concerning the September 9, 1978 incident in Bridgeton, the marijuana did not belong to the petitioner; however, he attempted to throw it out the window for his friend. Concerning the April 17, 1980 incident in Atlantic City, the petitioner acknowledged that the marijuana was his. Concerning the incident on March 9, 1981 in Atlantic City, the petitioner denied the commission of any misconduct and denied the presence of any weapon. The petitioner stated that the incident was resolved by mutual agreement prior to the municipal court hearing. Concerning the November 28, 1981 incident in Hamilton Township, the petitioner acknowledged that the marijuana was his. Concerning the incident on October 9, 1982 in Atlantic City, the petitioner stated that the marijuana belonged to a passenger in the car.

The petitioner also testified that has not used marijuana for approximately the past year. He has changed his pattern of behavior, in part, in consideration of the desire for a future in the casino industry. Also, the petitioner no longer associates with persons who use marijuana.

In order to resolve the issues in dispute, it is necessary to assess the credibility of each of the witnesses.

Agent Clark was not a party to the case and did not have a specific interest in the outcome, although it must be noted that he is an employee of the Division, which is a party. However, the agent's recollection of the telephone interview was sparse and he referred frequently to his report and to standard operating procedure for such interviews.

The petitioner's position in this matter must be recognized. As the applicant, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the circumstances underlying the incidents was consistent with the police reports and court records as well as the explanations he provided to the agent. Of greatest significance was the petitioner's testimony concerning the attachment from the Atlantic City Police Department to his PHDF-2A. More specifically, on the first date of hearing, the petitioner described how he obtained information from the Atlantic City Police Department and that he had attached the information to his application form. The Division and Agent Clark were unaware of the attachment (J-1). Frankly, the petitioner's testimony on this point appeared to be doubtful. However, the Deputy Attorney General properly requested that the record remain open in order to examine the Commission's records. The petitioner joined in this request. The examination of the Commission's records revealed the attachment to which the petitioner had referred (J-2). The discovery of this attachment corroborated the petitioner's testimony on an extremely sensitive point and enhanced his credibility immeasurably. In fact, his credibility on all issues was enhanced substantially. The petitioner's precise recollection of the telephone interview and his contention that he would not have denied that which he already disclosed became plausible, reasonable and persuasive, especially in comparison to the agent's vague recollection of the interview and the inherent risks of such communications. Accordingly, it became clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between the entirety of his testimony and the documentary evidence and the absence of any persuasive evidence to the contrary, that the petitioner testified truthfully. The petitioner's testimony was candid, straightforward, consistent, believable and completely persuasive. In the final analysis, I am persuaded to accept his testimony in all respects.

I am again compelled to cite the difficulties in the resolution of disputes concerning what transpires during telephonic interviews. The absence of a face-to-face confrontation inevitably creates an overwhelming opportunity for miscommunication. The risk is compounded by the infinite number of variables which can affect the ability of two persons to communicate. Where there is a disagreement as to the events which transpired, such as in this matter, and there is no evidence other than the recollection of the two participants, the only means by which to resolve the conflict is to resort to an assessment of credibility based upon evidence related to other issues of fact in dispute.

This is frequently unsatisfactory. In addition, these issues have become increasingly difficult problems. It would appear that the problems could easily be eliminated because the Division should have at its disposal simple and inexpensive means by which to record and verify the substance of telephonic interviews. If such steps were taken, virtually all disputes concerning these interviews would be eliminated.

The petitioner also offered letters from James Green, Secretary-Treasurer of Local 415, who has known the petitioner for approximately eight years (P-1), and Jerry Fox, General Superintendent of Massett Building Company, and the petitioner's supervisor (P-2). Both were of the opinion that the petitioner is a reliable, honest and well-regarded person.

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

1. The petitioner's testimony concerning the circumstances underlying each of the incidents in which he was arrested and charged, as well as the completion and filing of his PHDF-2A, were corroborated in full by the documentary evidence.
2. The petitioner's testimony was candid, corroborated by the documentary evidence, straightforward, consistent and believable in all respects.
3. When the petitioner completed his PHDF-2A, to which he attached a copy of his criminal record history obtained from the Atlantic City Police Department, he disclosed his criminal record history to the best of his ability.
4. The petitioner had no intent to hide or otherwise fail to disclose any aspect of his criminal record history during the application process.
5. The petitioner's explanation of the events which occurred during the telephonic interview was persuasive and believable in all respects and is adopted fully as a finding of fact.

6. The petitioner's explanations of the circumstances underlying the incidents during which he was arrested and charged with criminal misconduct were believable and persuasive in all respects and are adopted fully as a finding of fact.
7. A union official and an employment supervisor of the petitioner are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a) and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

On his PHDF-2A, Mr. Dabney disclosed that portion of his criminal record history which occurred in Atlantic City. The issue is whether that disclosure is sufficient. The events disclosed consisted of three of the five incidents which had occurred as of the date of filing, and represent generally the overall nature of his misconduct, the relevant time frame during which the misconduct occurred, and the outcome of the charges. Although the petitioner knew that matters were not disclosed, he did not recall the specific details thereof. Essentially, the petitioner made a good faith effort to disclose what he believed was the majority of his criminal record. Clearly, he had no intent to hide his prior misconduct or otherwise deceive the Commission and Division. Although he could well have made a better effort to disclose, his actions constitute an honest and a sincere attempt to comply.

The telephonic interview presents a totally different situation. Initially, it is apparent that the petitioner erroneously believed the agent had the benefit of the information attached to the application. Also, it is not possible to accurately determine what transpired during the interview. Last, it is readily apparent that the petitioner acknowledged fully and explained accurately to the best of his ability the circumstances underlying each incident. Accordingly, the petitioner's actions during the telephonic interview were reasonable.

I CONCLUDE that the Division has failed to establish, by a preponderance of the credible evidence, that the petitioner violated section 86b.

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

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

Absent a violation of section 86b, the Division objects to licensure by reason of the petitioner's criminal record history. More specifically, the petitioner was arrested on six occasions, five of which alleged violations of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams. The petitioner was convicted on four occasions. The fact that

the nature of these offenses is identical and involves illegal drug activity raises serious concerns. Further, the petitioner acknowledged that he used marijuana on occasion.

The petitioner presented substantial and compelling evidence to overcome the negative aspects of his criminal record history. He never used any illegal drugs other than marijuana. It appears that he was a recreational user at worst. He was not involved in the unlawful distribution of illegal drugs. Also, the petitioner acknowledged fully the scope of his prior misconduct and satisfied all sentences imposed. Otherwise, the petitioner is a law-abiding citizen. In addition, there is every reason to believe that the petitioner is no longer a user of marijuana. This is based upon his maturity and recognition that illegal drug activity is inconsistent with employment in the casino industry. The petitioner well knows that a repetition of his prior misconduct will have a substantial negative impact upon licensure. Also, the exemplary manner in which the petitioner participated in this hearing process must be noted. Accordingly, the petitioner's prior misconduct does not reflect negatively upon his qualifications for licensure.

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

#### DISPOSITION

It is **ORDERED** that the application of Lionel R. Dabney for licensure as a casino employee be **GRANTED**.

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

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

July 30, 1986  
DATE

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

Receipt Acknowledged:

July 31, 1986  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 1 1986  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission - Personal History Disclosure Form-2A, Lionel Robert Dabney, filed on April 13, 1984 (24 pages)
- J-2 Affidavit of Anthony Forchione, dated April 30, 1986, together with attachment (28 pages)
- P-1 Letter from James Green, dated April 17, 1986
- P-2 Letter from Jerry Fox, dated April 17, 1986
- R-1 City of Bridgeton Police Department - Arrest Report, Lionel Robert Dabney, dated September 9, 1978 (2 pages)
- R-2 Letter from Louise M. Williams, Deputy Court Clerk, Bridgeton Municipal Court, dated July 23, 1985
- R-3 Atlantic City Police Department - Investigation Report, dated April 17, 1980; Arrest Report, dated April 17, 1980 (2 pages)
- R-4 State of New Jersey v. Lionel R. Dabney, Atlantic City Municipal Court, docket no. C-2121, Complaint and Disposition, dated June 4, 1980
- R-5 Atlantic City Police Department - Investigation Report, dated March 9, 1981 (2 pages)
- R-6 State of New Jersey v. Lionel R. Dabney, Atlantic City Municipal Court, docket no. C-1627, Complaint and Disposition, dated March 10, 1981
- R-7 State of New Jersey v. Lionel R. Dabney, Atlantic City Municipal Court, docket no. C-1628, Complaint and Disposition, dated March 10, 1981

- R-8 Township of Hamilton Police Department - Investigation Report, dated November 28, 1981; State of New Jersey, Department of Law and Public Safety, Division of State Police - Request for Examination of Evidence; Laboratory Report, dated May 25, 1982; Township of Hamilton Police Department - Arrest Report (6 pages)
- R-9 State of New Jersey v. Lionel R. Dabney, Township of Hamilton Municipal Court, docket no. C-1803-81, Complaint and Disposition, dated January 19, 1982
- R-10 Atlantic City Police Department - Investigation Report, dated October 9, 1982
- R-11 State of New Jersey v. Lionel R. Dabney, Atlantic City Municipal Court, docket no. C-10011, Complaint and Disposition, dated October 25, 1982
- R-12 New Jersey State Police - Investigation Report, dated December 30, 1984; Supplementary Investigation Report, dated January 2, 1985; Laboratory Report, dated March 1985; Request for Examination of Evidence; Supplementary Investigation Report, dated April 2, 1985; Arrest Report, dated December 30, 1984 (8 pages)
- R-13 State of New Jersey v. Lionel Robert Dabney, Hamilton Township Municipal Court, docket no. C-930-84, Complaint and Disposition, dated January 8, 1985

WITNESS LIST

For the petitioner:

Lionel R. Dabney

For the respondent:

Richard A. Clark

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-118  
OAL DOCKET NOS. CCC 0576-86; CCC 2882-8  
LICENSE NO. 13602-21 (ON REMAND)

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
ALBERT A. DISTEFANO, JR., :  
Respondent. :

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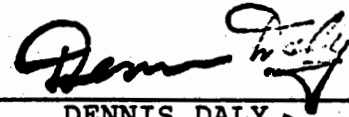
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of August 13, 1986,

IT IS on this *17th* day of September 1986, ORDERED that the initial decision of the Office of Administrative Law is modified as follows: The initial decision is modified to include N.J.S.A. 5:12-90(b) as the statutory requirement for good character for casino employees; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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



DENNIS DALY -  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0576-86

(ON REMAND CCC 2882-85)

AGENCY DKT. NO. 85-118

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

Petitioner,

v.

**ALBERT A. DI STEFANO, JR.,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Andrew Kusnirik, Law Clerk, appeared at the prehearing conference, pursuant to R. 1:21-3c)

**Albert A. DeStefano, Jr.,** respondent, pro se

Record Closed: May 15, 1986

Decided: June 30, 1986

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

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Albert A. DiStefano, Jr., respondent and the holder of casino employee license no. 13602-21, with the commission of criminal misconduct, which disqualifies the respondent from continued licensure under section 86c(1) of the Casino Control Act (Act) and, with the failure to continue to possess the requisite good

character, honesty and integrity under section 89b(2). The respondent denied the charge and, in the alternative, contended that he was rehabilitated from his misconduct under section 90h.

### PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 1, 1985. By letter dated April 2, 1985, the Commission notified the respondent of the complaint and advised him of his right to a hearing. On May 7, 1985, the respondent filed his answer with the Commission and requested a hearing. On May 14, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on July 9, 1985. By reason of the respondent's failure to appear at the scheduled hearing, an initial decision (OAL DKT. CCC 2882-85), was issued on December 9, 1985, in which it was determined that the respondent had abandoned his request for a hearing. However, by order dated January 23, 1986, the Commission, based upon the respondent's appearance, ordered that the matter be retransmitted to the Office of Administrative Law for a hearing. The matter was retransmitted on January 27, 1986. A second prehearing conference was conducted by telephone on March 25, 1986, and the matter was scheduled for hearing.

### FINDINGS OF FACT

#### (A) UNDISPUTED FACTS

Mr. DiStefano is 24 years of age. He left home at age 14. He continued to attend school for a time and was self-sufficient. He obtained his casino employee license from the Commission during 1980.

The respondent was first employed in the casino industry as a food and beverage cashier by Resorts International Hotel, Inc. (Resorts). The respondent earned a good record.

The respondent was next employed as a bus boy and waiter by Bally's Park Place Casino Hotel (Park Place). Again, he earned a good record.

The respondent was next employed as a waiter by the Flying Dutchman Restaurant.

Thereafter, the respondent returned to Resorts where he was employed as a cage cashier. This employment was terminated as a result of an incident where the respondent's holdings were short \$2,000. Nevertheless, the respondent maintained that he did nothing wrong and that the error was due to management problems.

The applicant was next employed by a travel agency for which he did bookkeeping services.

The applicant was again employed as a pit clerk by Park Place. The respondent's employment was positive in all respects.

Next, the applicant was employed by the Tropicana Hotel and Casino (Tropicana) on a temporary basis in the soft count room. Again, the respondent's employment was positive.

The applicant was also employed as a coin cashier by the Claridge Hotel and Casino (Claridge). This employment was positive.

Next, the applicant was employed as a change attendant by Golden Nugget Hotel and Casino (Golden Nugget). He was later promoted to cashier. This employment was also positive (R-2).

Also, the respondent attended CSI, where he took a course in dealing craps. He did not complete this course because of a medical condition.

On May 28, 1982, the respondent was injured in an automobile accident. The respondent was hospitalized for 90 days for a leg injury and, thereafter, he recuperated at home. Accordingly, he could not continue to work at the Golden Nugget and was unable to complete his course of studies at CSI.

During the respondent's period of recuperation, he met Carl Dury, with whom the respondent has shared a house for the past four years.

In 1983 and at age 21, the respondent completed the requirements and earned a high school diploma from Parsippany Troy Hills High School. The respondent then began to take courses at the College of St. Elizabeth in Morris County.

The respondent relocated to the Poconos in Pennsylvania. He worked for employment agencies on a part-time basis at various locations. He performed standard bookkeeping work. His employment was positive in all respects.

In 1983, the respondent worked on a temporary basis through an employment agency for Eaton Corporation in Hanover Township. Eaton offered the respondent a full-time position, which he commenced in late November 1983. The respondent was employed as inventory control supervisor for plant II, which was responsible for high-carbon steel. Plant I was the main plant, where deliveries of valuable metals, including silver and gold, were made. The respondent was offered the opportunity to assume responsibility for the inventory of plant I; however, he declined the offer because there was no safe in plant I and because of inadequate security.

The applicant was involved in an incident which occurred during early March 1984 and which is the primary subject of inquiry during this proceeding. Eaton was then undergoing a conversion of its method of maintaining inventory. Also, a Cleveland plant was being closed and its inventory was being redistributed to the Hanover Township plants. These factors created a disruptive situation and often new orders were placed temporarily in the aisles of the warehouses. On February 28, 1984, two small unmarked boxes which contained 997.6 Troy ounces (68 pounds) of silver coils, similar in form to steel bands, were incorrectly delivered to plant II instead of plant I. The value of the silver was \$13,400.61. Although many of the succeeding events are in dispute, it is apparent that the boxes remained in the general incoming inventory in the warehouse for approximately one week. Therefore, and upon receipt of a bill demanding payment for the silver, it was discovered that the boxes were missing. On March 19, 1984, Eaton contacted the Hanover Township Police Department which conducted an investigation of the matter. During the preliminary investigation, the respondent disclaimed any knowledge of the whereabouts of the boxes or silver. However, and although circumstances underlying the events were in dispute, the respondent conceded that he

removed one box from the warehouse, which contained 455.8 Troy ounces of silver. On March 15, 1984, the respondent sold the silver for \$2,962.70 to G. & S. Creations in West Orange. The respondent received a check payable to ADS Enterprises. The respondent signed his name to a receipt for the silver. The respondent deposited the check in his personal bank account. The respondent acknowledged that he was ADS Enterprises, which was a name he used on this one occasion in an effort to obscure his identity.

On April 24, 1984, the respondent spoke with Robert Holton, plant manager, and Charles Kneipher, supervisor of traffic and warehouse manager, and admitted that he had taken a portion of the silver. The respondent's employment was immediately terminated.

On April 30, 1984, and at the request of Detective Stanley Potts from the Hanover Township Police Department, the respondent and his counsel appeared and the respondent made a voluntary statement through counsel. Essentially, the respondent admitted that he took approximately one-half of the silver, which he sold as previously described. Further investigation by the police department verified the events described by the respondent. The remainder of the silver was never found nor accounted for. Upon the respondent's admission, the police closed that investigation.

On July 5, 1984, the respondent was indicted by a Morris County Grand Jury for a violation of N.J.S.A. 2C:20-3, theft over \$500 (P-2). On July 27, 1984, the respondent pled not guilty (P-3). On November 28, 1984, the respondent retracted his plea and pled guilty to a violation of N.J.S.A. 2C:20-3, theft, third degree. On January 11, 1985, the respondent was sentenced to two years' probation, two days in the Morris County Jail to be served as an observor in court, was fined \$2,000, \$25 payable to the Violent Crimes Compensation Board and restitution. In its statement of reasons for sentence, the Court stated:

Defendant is an otherwise decent young man who got caught up in a unique situation whereby he demonstrated that "there is a little larceny in all of our hearts." Probation with a few days in jail should get defendant back on a law-abiding track. A substantial fine and restitution should convince defendant that financial crimes carry with them substantial financial penalties.

The respondent paid his fines on the date of sentencing. Although the respondent had his counsel contact Eaton concerning restitution, restitution has not been made because it was not requested by Eaton (R-9).

Subsequent to his arrest, the respondent was employed as a food server for approximately three months. Thereafter, he was employed by Shawnee Village in the Poconos in real estate time-share sales. This employment was terminated in December 1984 upon the respondent's conviction.

The respondent also attended the Pocono Real Estate Academy in order to qualify for employment in real estate sales. He successfully completed this program in February 1985.

In March 1985, the respondent relocated to Philadelphia. In May 1985, he successfully completed the Pennsylvania real estate examination.

From May 13 until late August 1985, the respondent was employed as a real estate associate by Fox and Lazo Realtors in Philadelphia (R-11). The managing broker was aware of the respondent's criminal record. However, because of delays by the Pennsylvania Real Estate Commission in the licensing process the respondent was forced to leave this employment because of insufficient income.

Ultimately, the Pennsylvania Real Estate Commission denied the respondent's application for licensure. The respondent indicated an intent to reapply, but he has not pursued the matter because he has directed his efforts toward retention of his casino employee license.

The respondent is currently employed on a part-time basis as a cook and waiter at a restaurant in Philadelphia.

During the past year, the respondent applied for employment at Park Place. He was offered a position as a valet, which was rejected because he believed that he possesses greater talent and experience than is required for such a position.

Because of employment difficulties directly associated with his prior misconduct, the respondent has suffered extreme financial hardship. Accordingly, he has made an application to be declared bankrupt, which application is currently pending.

The respondent has otherwise committed no violations of the criminal laws.

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

**(B) DISPUTED FACTS**

In dispute were some of the circumstances underlying the incident, the respondent's rehabilitative efforts and his character, honesty and integrity.

The respondent described the circumstances underlying the incident. When the silver was delivered, new inventory was not a priority and such orders were placed routinely in the aisles of the warehouse. The respondent claimed he was unaware of the contents of the two boxes. During a continuing search by Eaton employees for the boxes, the respondent discovered the smaller of the two boxes in a location different from where it was originally placed. The box had been opened, but the silver was inside. The respondent could not locate the other box. Under the circumstances, the respondent feared the loss of his job. He was very satisfied with his position, which paid well, offered him an opportunity to continue his education and he had been given notice of a pay raise. The respondent panicked and decided to get rid of the one box so that neither would be discovered. He theorized that the discovery of no boxes would raise questions concerning delivery as opposed to questions about loss during inventory. Accordingly, the respondent sold the silver. Nevertheless, the respondent testified that he did not take the silver for profit motives. Subsequent to the sale, the respondent became increasingly distraught by his misconduct. Ultimately, he could conceal his misconduct no longer and confessed. He also discussed the matter with Mr. Dury, who advised the respondent to seek advice of counsel. The respondent obtained counsel prior to making his voluntary statement to the police department.

Mr. Dury testified on the respondent's behalf. The witness related that the respondent had been depressed prior to his confession. Further, the respondent's explanation during the hearing was consistent with the explanation he provided to

Mr. Dury at the time of the incident. The witness was of the opinion that the respondent's conduct was a direct result of his panic.

The respondent also offered his statement made during the pre-sentence investigation (R-10). The explanation in this statement is entirely consistent with his testimony in this matter. It should also be noted that the version of the incident provided by the respondent was consistent with the statement he made to the police department on April 24, 1984 (P-1), i.e., that he did not take the remaining missing silver.

The Division contested only that portion of the respondent's testimony in which he disclaimed knowledge at the time of delivery that the boxes contained silver. To refute this version, the Division offered third-degree hearsay attributable to a co-employee to indicate that the respondent had knowledge of the contents of the boxes (P-1).

The outcome of this dispute depends entirely upon a resolution of the respondent's credibility. Initially, Mr. DiStefano's position in this matter must be recognized. He is the holder of a casino employee license and the respondent and, as such, has a direct interest in the outcome and bias in these proceedings. His testimony in this matter was entirely consistent with his original inculpatory statement as well as the statement he provided during the pre-sentence investigation. Further, the respondent's explanation was consistent with that which he gave to Mr. Dury, a close and trusted friend. In addition, the explanation made by the respondent to the investigating officers was verified following further investigation. From my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with his prior statements and corroborated by the investigation and the testimony of Mr. Dury, I am persuaded to believe that the respondent testified truthfully. His testimony was extremely candid, straightforward, consistent and believable. In the final analysis, I am persuaded to accept his explanation of the circumstances underlying the incident. In addition, although Mr. Dury may have had an interest in the outcome of the proceedings, his testimony was fully consistent with his own previously recorded statements (R-5 and R-6). It must also be noted that the evidence offered by the Division was so far removed from direct evidence that it was not worthy of belief.

The respondent also described the impact the incident has had upon his personal life. He acknowledged that his problems were self-imposed. The respondent

stated that his experiences with the criminal justice system were both humiliating and degrading and that he would not wish to undergo the experience again, nor would he wish such an experience upon his worst enemy. Further, his misconduct has caused an enormous economic cost, the loss of his employability and he has suffered extreme mental anguish. Also, the necessity to discuss the matter openly and honestly is a very painful but necessary requirement. He expressed a very strong belief that he would not repeat his prior misconduct.

Mr. Dury also testified that the impact of the incident and ensuing proceedings upon the respondent has been devastating in both a financial and personal context. The respondent has stated that he will not repeat his misconduct.

The respondent's description of his current attitude toward his misconduct and his intent not to repeat his misconduct, which was corroborated by Mr. Dury, was entirely credible, believable and very persuasive. There is every reason to believe that the respondent will not commit any further violations of the criminal laws.

In addition to the testimony of Mr. Dury, the respondent offered letters concerning his good character, honesty and integrity. Letters were received from Reverend James R. Ryan, of St. Margaret's Church, Woodbury Heights, New Jersey, who has known respondent for the past nine years (R-1); Joanne McKensie, Coin Manager for the Golden Nugget, who was the respondent's employment supervisor for a four-month period (R-2); Father Neil J. Healy, of Saint Cecilia's Parish, who has known the respondent since 1974 (R-3); F. Frederick Perone, Esq., who is a close friend of the respondent's family (R-4); Alice M. Drake, purchasing agent for Wagner Cooper Industries in Parsippany, who was a co-employee of the respondent during 1982 (R-7); and Francis A. Mahoney, Jr., managing broker for Fox & Lazo Realtors in Philadelphia, who has known the respondent since 1985 (R-11). Each of these persons was aware of the respondent's misconduct, characterized the misconduct as aberrational, indicated that the respondent has accepted fully his responsibility for his acts and stated that the respondent is a hard-working, honest, sincere and responsible person.

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

1. The respondent's testimony of the circumstances underlying the incident was credible, believable, persuasive, corroborated by several sources and

essentially unrefuted by the Division. Accordingly, it is adopted in full as a finding of fact.

2. Because of his misconduct, the respondent suffered a total financial loss, a significant loss of employability and endured substantial mental anguish.
3. There is every reason to believe that the respondent will not repeat his misconduct.
4. The respondent is held in high regard by friends, business associates and members of the religious community.

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. DiStefano's conviction for a violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c(1) and, accordingly, establishes that his license should be revoked.

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application of violation of any of the provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. The respondent's conviction for a violation of N.J.S.A. 2C:20-3 is a disqualifying offense under section 86c(1). I so **CONCLUDE**.

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

A licensee faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirma-

tively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. DiStefano holds a casino employee license, which would permit him to work on the casino floor. As such, he would have direct responsibilities for actual gaming activities and would have substantial contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft of property, third degree. Because the offense is a listed disqualifier under section 86c(1), it is serious. In addition, the misconduct occurred during the course of employment and constituted a breach of employment responsibilities, which enhances the seriousness thereof.

Third, the respondent knowingly committed the theft. Although he may have committed the offense as a direct result of panic and the offense was not originally committed for profit motives, these factors provide little mitigation.

Fourth, the offense occurred during March 1984, approximately two years ago.

Fifth, the respondent was 22 years of age at the time of the incident. The manner in which he reacted to the circumstances underlying the incident indicate that immaturity may have played a contributing role.

Sixth, this incident was isolated in nature and the respondent has not committed any other violations of the criminal laws.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the respondent has made substantial rehabilitative efforts. Soon after the incident occurred, the respondent, who suffered severe emotional distress as a result of the incident, voluntarily admitted his misconduct. In addition, he acknowledged full responsibility for his actions and pled guilty to the charges. He completed successfully his entire sentence and was released early from probation. He made a sincere attempt to make restitution, but the victim apparently did not want restitution. Accordingly, the absence of restitution should not reflect negatively upon the respondent. There has been no repetition of misconduct and there is every reason to believe that the respondent will be a law abiding citizen in the future. In addition, the respondent has made numerous attempts to further qualify himself for employment. Nevertheless and despite ensuing difficulties, the respondent has continued to pursue opportunities for viable employment. The respondent has earned the respect of past and present employers. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation.

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

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

Under section 89b(2) of the Act, Mr. DiStefano was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

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

The burden carried by respondent was substantial because of the seriousness and recent date of his misconduct. However, he affirmatively demonstrated his rehabilitation and established that there is little likelihood, if any, that he would commit any unlawful acts in the future. The respondent presents no risk to the public nor to the integrity of the gaming industry in this state. The respondent deserves to retain his license.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2).

(D) Penalty

Sections 129 and 130 provide various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of the respondent's casino employee license.

Although the respondent's conduct at or about the time of the offense constituted a disqualifying violation, he established his rehabilitation and established that he currently possesses the requisite qualifications for continued licensure. Accordingly, no penalty is now warranted.

I **CONCLUDE** that no penalty should be imposed against the respondent, pursuant to sections 129 and 130.

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino employee license of Albert A. DiStefano, Jr., be **DENIED** and **DISMISSED WITH PREJUDICE**.

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

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

June 30, 1986  
DATE

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

Receipt Acknowledged:

June 30, 1986  
DATE

Bernadette P. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 3 1986  
DATE

Donald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Police Department, Township of Hanover - Statement of Charles Kneipher, April 24, 1984 (9 pages)
- P-2 State of New Jersey v. Albert DiStefano, Superior Court of New Jersey, Law Division (Criminal), Morris County, No 84-07-0427-I, Indictment, July 5, 1984 (2 pages)
- P-3 The State of New Jersey v. Albert DiStefano, No. 84-07-0427, Judgment of Conviction, January 11, 1984 (2 pages)
- R-1 Letter to Administrative Law Judge from Reverend James R. Ryan, December 6, 1984
- R-2 Letter from Joanne McKensie, December 21, 1984
- R-3 Letter from Father Neil J. Healy, December 10, 1984
- R-4 Letter from F. Frederick Perone, Esq., August 23, 1984 (2 pages)
- R-5 Letter to Jeffrey Advokat, Esq., from Carl G. Dury, December 3, 1984 (2 pages)
- R-6 Letter to Administrative Law Judge from Carl G. Dury, April 9, 1986, with attachment (3 pages)
- R-7 Letter to Administrative Law Judge from Alice M. Drake, April 2, 1986
- R-8 Letter from Reverend James R. Ryan, April 8, 1986
- R-9 Morris County Probation Department - Order Granting Termination of Probation, Albert A. DiStefano, Jr., Case No. 84-07-0427-I, November 7, 1985
- R-10 Statement by Albert A. DiStefano, Jr., December 22, 1984 (4 pages)
- R-11 Letter to Administrative Law Judge from Francis A. Mahoney, Jr., April 10, 1986

WITNESS LIST

For the petitioner:

John H. Hickey, Jr.

Stanley H. Potts

For the respondent:

Albert A. DiStefano, Jr.

Carl G. Dury

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 82-182  
OAL DOCKET NO. CCC 7371-85  
REGISTRATION NO. 25103-40

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

Complainant,

FINAL ORDER

v.

LORRAINE DREDDEN,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 10, 1986,

IT IS on this 15<sup>th</sup> day of September 1986, ORDERED that the initial decision is modified to correct the statutory reference to N.J.S.A. 5:12-96g at page four to N.J.S.A. 5:12-86(g); and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Lorraine Dredde is dismissed substantially for the reasons stated in

the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7371-85

AGENCY DKT. NO. 82-182

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

Petitioner,

v.

**LORRAINE DREDDEN,**

Respondent.

---

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

**Anthony F. DiMento, Esq., for the respondent (Elkind & Cohen, attorneys)**

Record Closed: June 19, 1986

Decided: July 31, 1986

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

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission on November 19, 1982, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent, Lorraine Dredden, requested a hearing and on November 19, 1985, the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

The prehearing conference was scheduled for January 7, 1986, and after an adjustment the conference was held before Administrative Law Judge Joseph F. Fidler on March 21, 1986, at which time the parties agreed that the issues in this matter are:

- (a) Whether the respondent, with specific reference to an indictment entered against her on August 12, 1982, for Welfare fraud and theft by deception, has committed an offense which would constitute an automatic disqualifier from registration, pursuant to Sections 86b(1) and (2) of the Casino Control Act, or which would indicate that her continued registration would be inimical to the policy of the Casino Control Act, pursuant to Section 86c(4), even if such conduct had not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of Section 86g of the Act, thereby requiring revocation of registration or some other sanction, pursuant to Sections 91b and 129 of the Act.
- (b) Whether the respondent, notwithstanding her commission of an otherwise automatically disqualifying offense, has affirmatively established her rehabilitation, by clear and convincing evidence, within the meaning of Section 91d of the Act.

The originally scheduled hearing date of May 2, 1986, was adjourned and the hearing took place on June 19, 1986, before the undersigned at the Woodlynne Borough Municipal Building in Woodlynne, New Jersey. The record closed on that date.

Based on the testimony and exhibits presented at the hearing, I **FIND** that the facts in this matter are not in dispute.

On August 12, 1982, Ms. Dredde was indicted and charged with one count of welfare fraud, a violation of N.J.S.A. 2A:111-2 and one count of theft by deception, a violation of N.J.S.A. 2C:20-4 (P-4). This indictment resulted from a welfare investigation conducted by the Camden County Board of Social Services (Board) (P-1). According to the records of the Board, Ms. Dredde received an overpayment of Aid to Families with Dependent Children (AFDC) benefits and Food Stamp benefits between October 1, 1976 and November 30, 1978, and between January 1, 1980 and February 29, 1980, because of her failure to report her earned income during said periods of time (P-1, P-2). Also,

according to the Board's records the total amount of the overpayment was \$4,304. After the Miranda Warning was read to her, Ms. Dredden admitted that she had not reported her earned income during said periods of time (P-2) and agreed to repay the \$4,304 in monthly installment payments. As of May 1986, the Board's records indicate an outstanding balance of \$3,200.26 (P-3). Ms. Dredden's last payment to the Board was in October 1985, and was for the amount of her State income tax refund.

As to the August 12, 1982 indictment, Ms. Dredden was admitted into the Pretrial Intervention Program. After she successfully completed the program, the indictment against her was dismissed on July 25, 1983 (P-5, R-1).

At the time of the hearing, Ms. Dredden was 35 years old and was supporting her three children, ages 12, 8 and 6, as well as her mother, age 56. Ms. Dredden stated that during the periods of overpayment she was only working part-time and was not receiving any medical benefits, and that she needed the welfare benefits in order to support herself, her children and her mother.

Since November 1981, Ms. Dredden has been employed as a restaurant cashier by the Golden Nugget Hotel and Casino (Golden Nugget) and she is currently on a medical leave of absence. Ms. Dredden is scheduled to return to work on June 25, 1986. According to Ms. Dredden, she had several extended leaves of absence for surgery as well as her current leave of absence because of injuries sustained in an accident. Except for the periods of time she has been on a leave of absence, Ms. Dredden has made payments to the Board, and she will resume making her payments when she goes back to work. Ms. Dredden has contacted the Board when she was ill and unable to make payments, and has received extensions from the Board. No legal proceedings have been initiated by the Board in order to recoup the balance owned by Ms. Dredden. The respondent expects to receive a settlement for the injuries sustained during the accident and will use that money to pay the taxes due on her home; the remainder will be given to the Board to reduce the amount of the debt. Except for the welfare indictment, Ms. Dredden has not been involved in any other criminal activities.

Ms. Dredden stated that it is difficult for her to make the payments to the Board since she has a substantial number of expenses, including traveling daily from Berlin to Atlantic City to work at the Golden Nugget.

According to Ms. Dredden, the loss of her job with the Golden Nugget will mean going back on welfare.

On her behalf, two of Ms. Dredden's supervisors at the Golden Nugget, Ramona Johnson and Kim Whittington, submitted letters stating that during her five-year employment Ms. Dredden has been a good and reliable employee (R-3, R-4). In addition, a friend, Karen Mason, submitted a letter stating that she helped Ms. Dredden get the job with the Golden Nugget and, that as a coworker, she considers Ms. Dredden to be a responsible employee (R-2).

#### CONCLUSIONS OF LAW

In closing, Deputy Attorney General William E. Mountford argued that the Division has shown a statutory disqualifier, namely that Ms. Dredden was guilty of welfare fraud, a violation of N.J.S.A. 2A:111-2.

In response, Anthony F. DiMento, Esq., argued that Ms. Dredden has shown her rehabilitation. Mr. DiMento argued that even though Ms. Dredden committed the welfare fraud, it was a single incident, that she has made a bona fide attempt to repay the Board the amount of the overpayment, and that she will continue to make payments once she resumes working and also after she receives a settlement for her accident.

Based on the facts, I **CONCLUDE** that the Division has shown that Ms. Dredden committed welfare fraud in the amount of \$4,304, which is a third-degree offense, pursuant to N.J.S.A. 2C:20-2b(2), and which is a statutory disqualifier pursuant to N.J.S.A. 5:12-96g and N.J.S.A. 5:12-86c(1).

Since the Division has established the statutory disqualifier, it is not necessary to determine whether or not the respondent's criminal activity is an inimical offense, pursuant to N.J.S.A. 5:12-86c(4).

Therefore, the only issue in this matter is whether or not the respondent has shown her rehabilitation by clear and convincing evidence. N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining or retaining a casino hotel employee registration:

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

Based on the facts, I **CONCLUDE** that the respondent has shown by clear and convincing evidence that she has been rehabilitated, pursuant to N.J.S.A. 5:12-91d. Although Ms. Dredden's criminal activity was an intentional deception of her financial resources over an extended period of time, a considerable time has passed during which Ms. Dredden has made a conscientious effort to repay the amount of overpayment and has had a good employment record as a cashier with considerable monetary responsibility at the Golden Nugget.

#### DISPOSITION

Therefore, I **ORDER** that the registration of Lorraine Dredden as a casino hotel employee **NOT BE REVOKED**.

Further, I **ORDER** that the Division is not precluded from filing another complaint based on the 1976-1980 welfare fraud if it is brought to the Division's attention in the future that the respondent has failed, without justification, to continue to make repayments to the Board.

Lastly, I **ORDER** that a copy of this Initial Decision be sent to the Board for its information.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 31, 1986  
DATE

Beatrice S. Tybut  
BEATRICE S. TYLUTKI, ALJ

8-1-86  
DATE

Receipt Acknowledged:

Below Hayes  
CASINO CONTROL COMMISSION

AUG 5 1986  
DATE

Mailed to Parties:

Ronald J. Parker / s  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Report Of Criminal Investigation sent to the Camden County prosecutor relating to Lorraine Dredden
- P-2 Camden County Welfare Board of Social Services report regarding overpayments made to Lorraine Dredden
- P-3 Status of payments made by Lorraine Dredden to the Camden County Board of Social Services as of May 1986
- P-4 Criminal indictment filed against Lorraine Dredden
- P-5 Dismissal of criminal indictment filed against Lorraine Dredden

**FOR THE RESPONDENT:**

- R-1 Letter from the Pretrial Services Coordinator to Lorraine Dredden
- R-2 Letter from Karen Mason, dated June 19, 1986
- R-3 Letter from Kim Whittington, dated April 22, 1986
- R-4 Letter from Ramona Johnson, dated April 18, 1986

**WITNESSES**

**FOR THE PETITIONER:**

None

**FOR THE RESPONDENT:**

Lorraine Dredden

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-54  
OAL DOCKET NO. CCC 4355-84  
LICENSE NOS. 1969-11, 25876-22  
(EILENBERG)  
REGISTRATION NO. 46486-40  
(KLARICH)

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

Complainant, :

v. :

ORDER

GARY EILENBERG, HAROLD KLARICH . :  
AND SHERMAN GOLDBERG, :

Respondents. :

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A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the Division of Gaming Enforcement (Division) and replies to the exceptions having been filed by respondents Eilenberg and Klarich; and the Commission having considered the entire record of these proceedings at its public meeting of March 5, 1986,

IT IS on this 20<sup>th</sup> day of August 1986, ORDERED that this matter, insofar as it pertains to respondents Eilenberg and Klarich, is remanded to the OAL for the following reasons:

The Commission returns this matter to the OAL for appropriate findings as to the specific prejudice suffered by the respondents as a result of the Division's failure to comply with orders of discovery and for consideration of whether a lesser sanction than dismissal would suffice to cure such prejudice. Alternatives which may be explored include, but are not limited to, the following. Betty Jarrett, the Division's chief witness, can be recalled for cross-examination on any or all of the discovery materials provided to the respondents. If the witness is recalled, respondents' counsel may confront her with any inconsistent statements or attempt to demonstrate her bias or otherwise attack her credibility. If the witness cannot be recalled, the ALJ may be guided by Evid. R. 22(b) and Evid. R. 63(1), which provide that inconsistent statements may be introduced into evidence to impeach an adverse witness or to prove the truth of the prior statement. Further, in consideration of the prior failure of the Division to comply with discovery orders or if the witness is unavailable for further examination, the ALJ could draw all inferences against the Division in evaluating Ms. Jarrett's testimony. Finally, if these methods are deemed inadequate, the ALJ could order that Ms. Jarrett's testimony be stricken from the record.

IT IS FURTHER ORDERED that upon remand, the record should be supplemented to include the allegedly contradictory prior statements and should take appropriate steps to complete the hearing in a manner designed to cure harm caused by the Division's noncompliance with the discovery orders; and

IT IS FURTHER ORDERED that the complaint is dismissed  
as to respondent Sherman Goldberg.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 4355-84

AGENCY DKT. NO. 84-54

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**GARY EILENBERG, HAROLD KLARICH**

**AND SHERMAN GOLDBERG,**

Respondents.

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**Lee D. Gottesman, Deputy Attorney General, for petitioner (Irwin L. Kimmelman, Attorney General of New Jersey, attorney)**

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

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

**Sherman Goldberg, pro se**

Record Closed: October 18, 1985

Decided: December 27, 1985

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

**STATEMENT OF THE CASE**

This matter concerns a complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on February 21, 1984, and subsequently amended on March 20, 1984. The Division alleges that the respondents have engaged in business with unlicensed junket representatives in exchange for the payment of money, which conduct constitutes commercial bribery, in violation of N.J.S.A. 2C:21-10, and also in violation of the conflict of interest policy of the Tropicana Hotel and Casino.

The Division seeks judgment revoking the casino key employee and casino employee licenses of respondent Eilenberg, revoking the casino hotel employee registrations of respondents Klarich and Goldberg, and denying the casino key employee license applications of Klarich and Goldberg.

The disposition of this matter specifically concerns the respondents' motion to dismiss the Division's complaint. The respondents contend that obstructive conduct by the Division has thwarted the respondents' efforts to obtain relevant information necessary for a fair hearing. For the reasons which follow, the respondents' motion to dismiss is granted.

#### PROCEDURAL HISTORY

Following service of the Division's complaint, the Casino Control Commission considered the application of the Division for orders suspending the casino hotel employee registrations of respondents Klarich and Goldberg and suspending the casino key employee and casino employee licenses of respondent Eilenberg. On March 30, 1984, the Commission ordered the requested suspensions, pending the final disposition of the Division's complaint, or until further order of the Commission.

On June 14, 1984, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Prehearing conferences were held on July 16, 1984 and February 13, 1985. The hearing in this matter was originally scheduled to commence on July 8, 1985, but an adjournment was granted at the request of the Division of Gaming Enforcement. The rescheduled hearing commenced on September 3, 1985. At that time, the Division's request to dismiss counts two through five of the complaint was granted and, since these were the only counts which concerned him, respondent Goldberg was excused. The count remaining to be litigated was count one, which concerned respondents Eilenberg and Klarich.

#### FINDINGS OF FACT

At the first prehearing conference held in this matter on July 16, 1984 (at which time two related complaints were also preheard), it was agreed that the parties would be entitled to obtain discovery by notice, pursuant to N.J.A.C. 1:1-11.2. In

addition, it was specifically ordered that all sworn and unsworn interviews and any writings memorializing discoverable conversations be provided by the Division of Gaming Enforcement to all parties. The Division provided substantial discovery to counsel for respondent Eilenberg with a cover letter dated August 10, 1984. By letter dated August 24, 1984, counsel for Eilenberg acknowledged receipt of the discovery and also made the following requests:

Additionally, I presume that the transcripts receive (sic) constitute all of the statements taken from all witnesses during the course of the Division's investigation. If there are any further statements within the possession, custody or control of the Division, whether inculpatory or exculpatory, I would request that I be provided with a copy of them at this time.

By letter dated September 21, 1984, counsel for the Division responded to the request for any further statements within the possession, custody or control of the Division, whether inculpatory or exculpatory, as follows:

Please be advised that the transcripts transmitted by way of discovery constitute all sworn statements taken from all witnesses during the course of Division investigation.

A second prehearing conference was held in this matter on February 13, 1985. At that time, counsel for respondent Eilenberg renewed his request that he be provided with the statements of all witnesses, including any unsworn statements. Counsel for the Division replied as follows:

I just want to respond to Mr. Faia's request regarding the unsworn statements. Mr. Faia did make a request in his letter to me that those statements be turned over and I responded in a letter to him that there were no such statements, that all statements taken were the sworn statements; all copies of those documents were given to Mr. Faia. There were no unsworn statements taken in this matter.

At the prehearing conference on February 13, 1985, it was determined that this matter and the two related complaints would not be consolidated for hearing. Because the deputy attorney general was committed to other matters for a considerable period, the hearing in the first of the three matters was scheduled to commence on June 10, 1985, and the hearing in this matter was scheduled to begin on July 8, 1985. However, during the third week of June, counsel for the Division sought an adjournment of

the hearing in this matter. The deputy attorney general made his application orally, by means of a conference call which also included counsel for respondent Klarich.

It was represented by the deputy attorney general that the adjournment was necessary because the Division had been unable to locate several essential witnesses who resided outside the State of New Jersey. At the request of counsel for Klarich, the deputy attorney general was asked to identify the missing witnesses. He replied that Betty Jarrett, who was a respondent in one of the related complaints, was an essential witness and that the Division was not able to locate her. The adjournment was granted, with the direction that the matter be rescheduled to commence peremptorily on September 3, 1985, and that as soon as the missing witnesses were located, their addresses and phone numbers were to be supplied to counsel for the respondents.

The truth of the deputy attorney general's representation that Ms. Jarrett could not be located was later placed in doubt by his compliance with the direction that he provide counsel for the respondents with the address and phone number of Ms. Jarrett as soon as this information was available. During the week preceding commencement of this hearing on September 3, 1985, the deputy attorney general informed counsel for the respondents of Ms. Jarrett's address and phone number: it was the same address and phone number previously provided during discovery. Further doubt was created by Ms. Jarrett's testimony at the hearing on September 9, 1985. During her cross-examination by counsel for respondent Klarich, Ms. Jarrett confirmed that she learned from a telephone conversation with the deputy attorney general in June 1985 that the hearing in this matter was to be set for a date in July 1985. According to Ms. Jarrett, she told the deputy attorney general that she would make herself available whenever a date was set, if it was at all possible. Ms. Jarrett further stated that she had a subsequent conversation with the deputy attorney general during which he informed her that the hearing would not be held in July 1985.

On August 5, 1985, counsel for respondent Eilenberg propounded interrogatories upon the Division of Gaming Enforcement, and sought answers to the interrogatories within 20 days. The Division raised no objection concerning the timeliness of the interrogatories and the Division's answers were submitted to respondent's counsel on August 29, 1985. The deputy attorney general certified that all of the interrogatory answers were true. Interrogatory no. 1 asked that the Division of Gaming Enforcement identify each and every person with knowledge of any relevant facts pertaining to this

contested administrative action, and interrogatory no. 2 asked the Division to identify each and every person acting on behalf of the Division who had any dealings or communications of any kind with respondent Eilenberg concerning matters which have given rise to this contested administrative action. In response to question no. 2, the Division answered, "None." In response to question no. 1, the Division listed a number of individuals, including Betty Jarrett, but the list did not contain the names of Gerald Rogers, Luanne DeMarzo, or Richard Barsony, who were three agents of the Division who participated in the investigation of the respondent.

Interrogatory no. 4 sought the names and addresses of all witnesses whom the Division intended to call at the hearing, and as to each such witness from whom a written statement had been taken, a copy of the statement was to be attached. In its answer to interrogatory no. 4, the Division referred to the list of individuals set forth in question no. 1, which included the name Betty Jarrett, and stated that all written statements obtained by the Division had been previously disseminated to counsel through preliminary discovery. Interrogatory no. 8 asked the Division to state whether it had possession of any documentary evidence, transcripts, or other relevant writings or evidence as to the issues which are the subject matter of the licensing of Gary Eilenberg. In response to this interrogatory, the Division stated, "Vague question."

Interrogatory no. 12 requested that the Division identify the names and addresses of Division employees who performed any investigation relating to the key employee license of Gary Eilenberg, as well as the names and addresses of all persons interviewed by the Division in connection with Gary Eilenberg, the date of the interview, and a copy of all statements made by the persons interviewed, if written, or a detailed summary of all statements made by the persons interviewed, if an oral statement was made. The Division's response to this interrogatory was, "Names and addresses supplied in answer to interrogatory no. 1 above." As noted previously, the answer to interrogatory no. 1 did not provide the names of Division employees Rogers, DeMarzo or Barsony, who participated in the investigation of the respondents. The names of other people who had been interviewed were not provided, nor were copies of any statements or summaries of statements provided with the answer to interrogatory no. 12. Subsequent interrogatory questions also sought the names and addresses of all individuals having relevant knowledge concerning the complaint against respondent Eilenberg, as well as written statements and the substance of any oral statements relating to the matters set forth in the complaint. In its answers to these subsequent interrogatory questions, the Division referred to its

answer to interrogatory no. 1 and the Division also stated that the statements sought were previously disseminated to counsel through preliminary discovery.

On August 29, 1985, counsel for respondent Eilenberg received and reviewed the Division's answers to interrogatories. By letter of the same date to the deputy attorney general, counsel for respondent Eilenberg identified those interrogatory questions which he believed were not answered in a responsive manner. It was specifically noted that the names and addresses of Division investigators were not supplied, nor were the names of those person who had been interviewed and the substance of their statements supplied. As an example, it was noted that the respondents were aware that Agent DeMarzo had interviewed Betty Jarrett at length, but no copy of Jarrett's statement or a summary of her statement to Agent DeMarzo had been provided. Counsel expressly asked that the substance of all oral statements be provided, particularly those of Betty Jarrett and Elizabeth Yoachum.

Along with the letter to the deputy attorney general seeking more responsive answers to interrogatories, counsel for respondent Eilenberg also sent a notice to produce in lieu of subpoena, requiring the production of Agent Luanne DeMarzo at the hearing, as well as statements of Betty Jarrett, Elizabeth Yoachum, Evelyn Barbanel and others, given to agents of the Division of Gaming Enforcement. On August 30, 1985, the Division of Gaming Enforcement received the notices to produce and the letter from counsel for respondent Eilenberg concerning the Division's answers to interrogatories. According to the affidavit of Carmen R. Faia, Esq., a partner in the law firm representing respondent Eilenberg, he discussed these matters in a telephone conversation that day with the deputy attorney general. Among other statements sought, Mr. Faia specifically requested the statement of Betty Jarrett which was given to agent DeMarzo in May 1983. In his affidavit, Mr. Faia states that the deputy attorney general advised him that there was no such statement, nor was there a summary of any oral statement, nor were there any notes of the interview. The deputy attorney general also advised Mr. Faia that there was no report prepared by Agent DeMarzo concerning her interview with Betty Jarrett in May 1983.

The hearing in this matter commenced on September 3, 1985, with consideration of preliminary matters. At that time, counsel for the respondents sought enforcement of the Notice to Produce which had been served upon the Division. The Deputy Attorney General confirmed that he had received the Notice to Produce on Friday,

August 30, 1985. It was his representation that he immediately attempted to contact Agent DeMarzo, but that she had not been present in the office on Friday. The Deputy Attorney General further advised that she was not available on the first hearing day because she was not physically able to be present due to illness.

With respect to the Notice to Produce documents, the Deputy Attorney General stated, "As for his request for all conversations with Betty Jarrett, he had everything that has every been memorialized. There is nothing else." Later, the Deputy Attorney General stated, "I am not aware of any contents of the conversation between Agent DeMarzo and the witness, Your Honor. I never received a report on that." He further asserted, "I don't have a copy of what she said. There is no report."

Counsel for Respondent Eilenberg moved to bar the testimony of Betty Jarrett in the absence of full disclosure by the Division of the requested statements or summaries of statements. The Deputy Attorney General responded as follows:

I have no knowledge of the contents of oral statements taken by other individuals. In short, Judge, they have everything that we can possibly offer them.

When asked what inquiry he had made of any individuals concerning the existence of any other notes, the Deputy Attorney General:

I went through the file, myself, and went through the file, personally, Your Honor. The nature of this matter was such I did not trust other individuals with attempting to chase down the information, since I was going to be handling the matter, personally.

The representation of the Deputy Attorney General that he had provided everything that existed in the file was accepted and the motion of respondent's counsel to bar the testimony of Ms. Jarrett was denied. However, the Division was ordered to provide any relevant statement in its possession and to produce Agent DeMarzo pursuant to the Notice to Produce. The Deputy Attorney General stated that the Division would produce the agent as soon as, "We are able to get a hold of her and get her out of the sick bed."

The motion of counsel for respondent seeking permission to take the deposition of Betty Jarrett was denied. However, they were given permission to interview her prior to her testimony on behalf of the Division. The request of the Deputy Attorney General to be present during the interview was denied. Shortly after the interview had commenced, counsel for the respondents were interrupted by the Deputy Attorney General who stated that he had been instructed by his supervisor to be present. The Deputy Attorney General was again denied permission to be present and his request for a stay of proceedings so that he could take an interlocutory appeal to the Casino Control Commission was granted.

On Wednesday, September 4, 1985, the hearing reconvened following the Commission's consideration of the interlocutory appeal. Counsel for the respondents continued and completed their interview of Ms. Jarrett without the Deputy Attorney General being present. On the same afternoon, the Deputy Attorney General stated that he would not produce Agent DeMarzo pursuant to the Notice to Produce, on the grounds that she was no longer under his control, as she was now an employee of the Division of Criminal Justice and not an employee of the Division of Gaming Enforcement. After it was conceded by the Deputy Attorney General that the agent remained an employee of the Department of Law and Public Safety, he was ordered to produce Agent DeMarzo pursuant to the Notice to Produce. The Deputy Attorney General was directed to produce the agent at the earliest convenient time and was informed that the agent should be present the next day if she were well enough.

When the hearing reconvened on the morning of Thursday, September 5, 1985, the Deputy Attorney General stated that he had finally contacted Agent DeMarzo, for the first time, on the prior evening. He represented that he was unable to produce her at the hearing because she had departed on a vacation for Maine, which vacation was scheduled to last about a week and a half. Therefore, he was unable to comply with the Notice to Produce because of her prior commitment. The Deputy Attorney General also stated his understanding that Agent DeMarzo's investigation notes were shredded upon her leaving the Division of Gaming Enforcement. In addition, he acknowledged that he had not yet specifically requested that the Division's file concerning Ms. Jarrett be produced at the hearing, despite his earlier agreement that all relevant portions of the file would be made available to counsel for the respondents.

In light of the foregoing developments, counsel for the respondents jointly requested that the testimony of Ms. Jarrett be barred, arguing that it would be fundamentally unfair to permit her testimony when she could not be effectively cross-examined without the information which could be provided by Agent DeMarzo. The application to bar the testimony of Ms. Jarrett was denied. However, it was ordered that her testimony would not be considered if the agent were not produced for counsel to interview. If the agent were produced and the interview revealed a need for further cross-examination of Ms. Jarrett, her testimony would not be considered unless she returned to the hearing and submitted to the further cross-examination.

The Division of Gaming Enforcement completed its direct examination of Betty Jarrett on September 5, 1985. That same day, counsel for Respondent Eilenberg began his cross-examination of Ms. Jarrett. His cross-examination of Ms. Jarrett continued and was completed on Friday, September 6, 1985. On Monday, September 9, 1985, counsel for Respondent Klarich began and completed his cross-examination of Ms. Jarrett. That same day, the Deputy Attorney General began his redirect examination of Ms. Jarrett. Because she was not available on Tuesday, September 10, 1985, the Division continued its case-in-chief with other witnesses on that day and the next, and Ms. Jarrett was scheduled to resume her redirect examination on September 12, 1985. When the direct and cross-examination of the Division's available witnesses was completed on Wednesday, September 11, 1985, the first two witnesses on the case-in-chief of Respondent Klarich underwent direct and cross-examination.

The first of the two witnesses for Respondent Klarich was Evelyn Barbanel, who had been an employee of Tropicana's New York City office for approximately three years. She recalled having been interviewed on the telephone by Agent DeMarzo in July 1983. The second witness called by Respondent Klarich was Agent Albert Kormondy of the Division of Gaming Enforcement. Agent Kormondy had interviewed Betty Jarrett pursuant to his investigation of her application for licensure and his report was admitted into evidence as Exhibit RE-3. This report indicated that the Deputy Attorney General had informed the agent that Ms. Jarrett's license was not in jeopardy because of the minor complaint which had been filed against her. Agent Kormondy also testified that it was the standard procedure of the Division investigators to prepare reports to memorialize investigation interviews. Notes would be made of the interviews and then the notes

would be used to prepare reports as soon as possible after the interviews. After a report was prepared, the notes would be shredded. The report would then be filed and would not be destroyed.

The redirect examination of Betty Jarrett by the Deputy Attorney General was to resume on September 12, 1985, which was the eighth day of hearing. However, on that morning, the Deputy Attorney General reported that Ms. Jarrett was ill and would not be available until the next day. Also that morning, the Deputy Attorney General produced for the first time Agent DeMarzo's report of her interview with Betty Jarrett in May 1983. This was the same report which the Deputy Attorney General had contended, both before and during the hearing, did not exist. The Deputy Attorney General then reported that Agent DeMarzo had been located in New Jersey and was instructed to appear that day with all relevant documents. A recess was then taken to await the agent's arrival.

When Agent DeMarzo arrived at the hearing on the afternoon of September 12, 1985, she brought with her 12 investigative reports which had not been provided to counsel for the respondents prior to that time. These reports had not been provided earlier, despite the specific order dating from the first prehearing conference in July 1984, that all sworn and unsworn interviews and any writings memorializing discoverable conversations be provided by the Division of Gaming Enforcement to all parties. Since it had become apparent that the respondents had been placed in a position of remarkable disadvantage as a result of the Division's longstanding denial of the existence of these documents and as a result of the Division's failure to earlier produce Agent DeMarzo, she was immediately placed under oath and questioned concerning her whereabouts since the commencement of the hearing and concerning how she had obtained the previously undisclosed reports. Agent DeMarzo was also directed to give her deposition the following day, at which time she was also questioned at length concerning these matters.

According to Agent DeMarzo, she had been at work on Friday, August 30, 1985, and could have been contacted by the Deputy Attorney General after he had been served with the Notice to Produce. On Tuesday, September 3, 1985, Agent DeMarzo had taken a sick day. However, she was not bedridden and it was her testimony that she certainly would have come to the hearing on that day if she had been so instructed. She was at work on Wednesday, September 4, 1985, which was the day the Deputy Attorney General argued for the first time that he was not obligated to produce Agent DeMarzo

pursuant to the Notice to Produce. It was the agent's testimony that she was not directly contacted by the Deputy Attorney General until that evening. She acknowledged that she told the Deputy Attorney General that she had plans to leave for Maine the following morning, but that following this conversation, her plans to leave for Maine had changed. She was never left with the impression that she was under an order to appear at the hearing to be interviewed by counsel for the respondents, and she stated that if she had been told by the Deputy Attorney General on that evening that she was required to appear the following morning, she would have been there.

Agent DeMarzo took vacation days on Thursday and Friday, September 5 and 6, 1985, but she did not leave her local area and she could have been contacted. She took an administrative leave day on Monday, September 9, 1985, and paid a visit to the doctor. On Tuesday, September 10, 1985, Agent DeMarzo was at work. On Wednesday, September 11, 1985, she took another vacation day, but did not leave her local area. It was her testimony that even on those days when she took vacation time or sick time, she was reachable by her superiors. Nevertheless, she had no further contact with any representative of the Division of Gaming Enforcement until September 12, 1985, when Deputy Attorney General Mitchell Schwefel contacted her and informed her that she was needed at the hearing.

After being contacted by Deputy Attorney General Schwefel, Agent DeMarzo proceeded to the Division of Gaming Enforcement offices. She was then accompanied by Mr. Schwefel and Supervising Agent Gerald Rogers to a file cabinet within the Travel Unit of the Division. In a process which took only a few minutes, the investigative reports which had not previously been disclosed to the respondents and whose existence had been denied, were taken from the Division's file on Betty Jarrett and handed to Agent DeMarzo by Mr. Schwefel. According to the testimony of Agent DeMarzo, she did not know whether the 12 previously undisclosed investigative reports constituted all of the relevant reports in the file. However, she was able to recall that there were two other reports which she had made which were not among the documents. One was the report of a summary of an interview of Respondent Eilenberg which had taken between one and one-half and two hours. The second report was a summary of a telephone interview which she had conducted with Evelyn Barbanel of the Tropicana office in New York City. Agent DeMarzo also testified concerning the manner in which the investigative reports were prepared. After a report was hand-written from the agent's notes, it was forwarded to the agent's supervisor for corrections or additions. It was then typed, initialed by the

agent and copied. Significantly, it was Agent DeMarzo's testimony that it was the office procedure in the Division of Gaming Enforcement that all written reports prepared by investigators would be given to the attorney handling the matter, prior to sworn statements being given by any witnesses. Agent DeMarzo recalled that her report of her interview with Betty Jarrett, dated May 5, 1985, was utilized during the sworn interview of Ms. Jarrett conducted by the Deputy Attorney General. In addition, all reports would have been discussed with the attorney handling the matter on several occasions before the sworn testimony of any of the witnesses.

Following Agent DeMarzo's testimony at the hearing on September 12, 1985, counsel for the respondents renewed motions to dismiss the Division's complaint, or in the alternative, to bar the testimony of Betty Jarrett. Counsel for Respondent Klarich represented that there were numerous inconsistencies between the information which Agent DeMarzo reported was given to her by Betty Jarrett in May 1983, and the testimony of Ms. Jarrett at the hearing in September 1985. This inconsistent information had not been available during the cross-examination of Ms. Jarrett because the existence of Agent DeMarzo's report had been denied and Agent DeMarzo had not been produced until the eighth day of hearing. Counsel for the respondents argued that it would be fundamentally unfair to proceed with the hearing on the complaint against the respondents. Decision was reserved on the respondents' motion and the matter was adjourned pending receipt of the written arguments of the parties.

As noted previously, serious conflicts exist between the testimony of Ms. Jarrett and Agent DeMarzo and the representations of the Deputy Attorney General. The Deputy Attorney General was not placed under oath in this proceeding and this decision does not resolve these conflicts. However, with the exception of the conflicts between the representations of the Deputy Attorney General and the testimony of Ms. Jarrett and Agent DeMarzo, the foregoing evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

#### DISCUSSION AND CONCLUSIONS OF LAW

It is the contention of the respondents that obstructive conduct by the Division of Gaming Enforcement has thwarted the respondents' efforts to obtain relevant information necessary for a fair hearing. There can be no doubt that the information which was not produced until the eighth day of hearing, after its existence was repeatedly denied by

the Deputy Attorney General, was information to which the respondents were entitled and which was vital to their preparation for the hearing. The failure of the Division to produce this information in a timely manner is extremely prejudicial to the respondents.

At the first prehearing conference in this matter on July 16, 1984, it was specifically ordered that all sworn and unsworn interviews and any writing memorializing discoverable conversations be provided by the Division of Gaming Enforcement to all parties. The respondents made several requests for this information prior to the hearing and at the commencement of the hearing, but the Deputy Attorney General persisted in his assertion that there were no unsworn interviews or writings memorializing unsworn interviews. N.J.A.C. 1:1-3.5(b) states as follows:

For unreasonable failure to comply with any order of a judge or with any requirements of this chapter including but not limited to the rules requiring filing of proposed orders, affidavits, prehearing memoranda or briefs, the judge may:

1. dismiss or grant the motion or application;
2. suppress a defense or claim;
3. exclude evidence;
4. continue the proceeding and consider sanctions under (a) above; or
5. take other appropriate action.

In State v. Carter, 69 N.J. 420 (1976), the court found that "The withholding of material evidence favorable to a defendant is a denial of due process and the right to a fair trial irrespective of the good faith or the bad faith of the prosecution." It further found that when the credibility of a State's witness may well be determinative of guilt or innocence, the trier of fact is entitled to know, and the State has the obligation to disclose, material evidence affecting such credibility. Giglio v. United States, 405 U.S. 150, 92 Sup. Ct. 763 (1972). In Carter, the New Jersey Supreme Court specifically stated at p. 433:

The State's obligation to disclose to defense counsel information it possesses or material in its file is not limited to evidence that affirmatively tends to establish a defendant's innocence but would include any information material or favorable to a defendant's cause even where the evidence concerns only the credibility of a State's witness.

The Division of Gaming Enforcement contends that the ruling entered early in the proceeding that Betty Jarrett's testimony would be disregarded if she were not made available for further necessary cross-examination is a sufficient cure for the problems caused the respondents by the Division's failure to produce the investigative reports and Agent DeMarzo until the eighth day of hearing. I do not accept this argument. That ruling was the best approach available at the time to salvage a fair hearing which had already become unduly problematic. It was a ruling entered at a time when the Deputy Attorney General's representations concerning the non-existence of crucial documents and the unavailability of a vital witness were not yet in doubt. In fact, the critical documents had been in the Division's files all along, despite the Deputy Attorney General's denials. In addition, Agent DeMarzo was available, but was not informed that her appearance was necessary until the eighth day of hearing. By that time, the respondents' cross-examination of the Division's key witness had been completed. In light of the extreme prejudice which this caused the respondents, the previously devised cure was no longer adequate.

The facts set forth above would permit the inference that the obstructive conduct of the Division resulted from a design to mislead. However, it is not necessary that such an inference be drawn. If the conduct of the Division in this matter has been simply negligent, the cumulative effect of such negligent conduct is such an egregious deprivation that it denies the respondents a fundamentally fair hearing. While there can be no question that there is a substantially strong public interest in a hearing on the merits of the Division's complaint, the obstructive conduct of the Division in this matter is so serious as to outweigh that significant interest.

For the foregoing reasons, I **CONCLUDE** that the obstructive conduct of the Division of Gaming Enforcement has thwarted the respondents' efforts to obtain relevant information necessary for a fair hearing, and I further **CONCLUDE** that the Division's complaint against the respondents should be dismissed, pursuant to N.J.A.C. 1:1-3.5(b).

**ORDER OF DISPOSITION**

Accordingly, it is **ORDERED** that the complaint of the Division of Gaming Enforcement against Respondents Eilenberg and Klarich be and is hereby **DISMISSED**. In accordance with the Division's request, Counts 2 through 5 of the Complain against Respondent Goldberg are also **DISMISSED**.

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

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

December 27, 1985  
DATE

Joseph F Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/30/85  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 2 1986  
DATE

Ronald J. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Patron manifest
- P-6 Conflict of interest statement for Respondent Klarich
- P-7 Conflict of interest statement for Respondent Eilenberg
- P-8 Affidavit of Richard Franz

FOR RESPONDENT KLARICH:

- RK-9 Preprinted manifest, dated February 17, 1983
- RK-17 Reservation list, dated February 17, 1983

FOR RESPONDENT EILENBERG:

- RE-3 Report of Agent Kormondy

WITNESSES

FOR THE PETITIONER:

- Betty Jarrett
- Richard Brinkmann
- Elizabeth Yoachum

FOR RESPONDENT KLARICH:

- Evelyn Barbanel
- Albert Kormondy

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-385  
OAL DOCKET NO. CCC 727-86  
LICENSE NO. 14068-21

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

Complainant, :

v. :

JACOB FEIGENBAUM, :

Respondent. :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire records of these proceedings at its public meeting of July 30, 1986,

IT IS on this 18<sup>th</sup> day of August 1986, ORDERED that the initial decision is modified as follows:

The Commission affirms the findings of facts and conclusion that the respondent engaged in conduct which would constitute possession of methamphetamine with intent to distribute, comparable to a violation of N.J.S.A. 24:21-19(a)(1). Such conduct disqualifies him pursuant to N.J.S.A. 5:12-86(c)(3) and (g). The Commission also finds that based on the evidence presented in the record and considered in the analysis of the disqualification under N.J.S.A. 5:12-86(c)(4), the respondent has failed

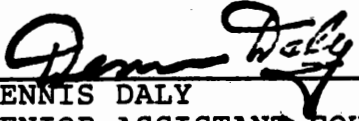
to demonstrate his rehabilitation from his disqualification by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h). The Commission rejects the finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) as unnecessary in light of his statutory disqualification under N.J.S.A. 86(c)(3).

IT IS FURTHER ORDERED that the casino employee license held by Jacob Feigenbaum is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0727-86

AGENCY DKT. NO. 85-385

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

Petitioner,

v.

**JACOB FEIGENBAUM,**

Respondent.

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

**Mark E. Roddy, Esq.,** for the respondent (Goldenberg, Mackler and Sayegh, P.C., attorneys)

Record Closed: April 29, 1986

Decided: June 11, 1986

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

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Jacob Feigenbaum, respondent and the holder of casino employee license no. 14068-21, had committed a criminal offense which disqualified him from continued licensure under N.J.A.C. 5:12-86c(4) and/or 5:12-89b(2) of the Casino Control Act (Act), for which the Division seeks revocation of his casino license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 12, 1985. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed with the Commission on January 28, 1986, the respondent requested a hearing. On January 31, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 18, 1986. The matter was heard on April 29, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Feigenbaum has resided at 4 Charles Drive, McKee City, New Jersey, with his wife and minor child, at least since 1985. The respondent is the holder of casino hotel employee license no. 14068-21. Until his termination on April 4, 1985, the respondent was employed as a security officer by the Tropicana Hotel/Casino.

During early 1985, the Egg Harbor Township Police Department assisted the United States Drug Enforcement Administration (DEA) in an investigation of illegal narcotics activities. The respondent and Sondra Feigenbaum, the respondent's wife, were identified as suspects during the investigation based upon information provided by a confidential informant.

On April 3, 1985, Detective Mike Chern of the Township applied for and received a search warrant for the respondent's residence (P-6). The purpose of the warrant was to obtain controlled dangerous substances, i.e., methamphetamine, and related paraphernalia used in the distribution of controlled dangerous substances. The search was conducted on April 3, 1985, by Det. Chern; Sergeant John Burke, of the Township; Patrolman Watts, of the Township; Special Agent Gary O'Brien, of the DEA; and an investigator from the Atlantic County Prosecutor's Office. Items seized from the house included:

1. triple beam scale, found in the master bedroom;

2. one switchblade knife, found in the master bedroom;
3. a sifter/colander, found in the master bedroom;
4. brown wooden case and weights for the scale, found in the master bedroom;
5. glass pyramid-like jar, which contained a substance believed to be marijuana, found on top of the headboard in the master bedroom;
6. a Bradlee's bag, which contained a substance believed to be marijuana, found on top of the headboard in the master bedroom;
7. brown case which contained seeds, found on top of the headboard in the master bedroom;
8. maroon-colored bag with seeds, found on top of the headboard in the master bedroom;
9. glass jar, which contained a brown rock-like substance believed to be methamphetamine, found on top of the headboard in the master bedroom;
10. brown cut-kit, found on top of the headboard in the master bedroom;
11. bag with rice, found on top of the headboard in the master bedroom;
12. blue case with a Llama 380-caliber handgun, found on top of the headboard in the master bedroom;
13. one shoulder holster, found on top of the headboard in the master bedroom;
14. two clear plastic bags, which contained a substance believed to be methamphetamine, found in a garment bag in the master bedroom closet;

15. \$4,000 in U.S. currency (40 One Hundred-Dollar Bills), found in a wall safe in the master bedroom closet;
16. two containers of Herbalife, a diet substance, found in a carrying bag in the master bedroom;
17. small yellow pads, which contained what appeared to be accounting records, found on top of the headboard in the master bedroom;
18. two containers of various pills, believed to be Percodan, a prescription drug, found on top of the headboard in the master bedroom;
19. two black address books, found in a pocket of men's blue jeans in the master bedroom;
20. \$1,169 U.S. currency, found in the pocket of men's blue jeans hanging on the master bedroom closet door;
21. black case, which contained a substance believed to be methamphetamine, found inside blue jeans described in item #20;
22. \$1,300 in U.S. currency, found inside a wallet, found inside blue jeans described in item #20;
23. film canister with yellow tablets, marked Endo 135, found in the headboard dresser in the master bedroom;
24. plastic bag, which contained yellow tablets of Endo 135, found in the headboard dresser in the master bedroom;
25. red tin can, which contained small plastic bags and razor blades, found in the headboard dresser in the master bedroom;
26. yellow plastic container, which contained a small plastic bag of a white rock-like substance believed to be methamphetamine, found in the headboard dresser in the master bedroom;

27. black wallet pouch, which contained a substance believed to marijuana, and pipes, found in a 1984 Lincoln Continental;
28. one set of car keys for the 1984 Lincoln;
29. brown glass bottle, which contained a substance believed to be marijuana, found in a compartment behind the bed in the master bedroom;
30. two address books from a gray down vest, found on the couch in the master bedroom;
31. blue glass board, found on the headboard in the master bedroom;
32. two pocket scales, found on the headboard in the master bedroom;
33. brown glass board, found on the headboard in the master bedroom;
34. 1984 Lincoln Continental.

The 1984 Lincoln Continental was registered to the respondent, who, in response to a request to search the vehicle, which was not included in the search warrant, advised the officers that marijuana was in the car. The automobile was confiscated by the DEA. The uses and significance of the items seized was in dispute and will be discussed, infra.

The officers took the items seized to the Egg Harbor Police Department. The suspected methamphetamine was placed into plastic bags and was weighed on a triple beam scale as follows:

<u>ITEM NO.</u>	<u>GROSS WEIGHT (INCLUDING PLASTIC BAG)</u>
14	134.0 grams
26	48.1 grams
21	44.6 grams
9	37.2 grams
	TOTAL WEIGHT 263.9 grams

The total weight of the suspected methamphetamine was 263.9 grams, which is approximately 9 ounces. However, the substances were never tested, nor were they analyzed.

On April 3, 1985, the respondent and his wife were arrested (P-2). A complaint was filed in the Township of Egg Harbor Municipal Court, which charged both the respondent and his wife, individually, with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine; N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, methamphetamine; and N.J.S.A. 24:21-20a(4), possession of marijuana over 25 grams (P-3).

On June 26, 1985, an accusation was filed in the Atlantic County Superior Court, Law Division - Criminal, in which the respondent was charged with a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine (P-8). On the same date, the respondent waived indictment and trial by a jury and pleaded guilty to the accusation. On July 29, 1985, the respondent was sentenced to a fine of \$500, payable within 60 days; probation for a period of one year; forfeiture of \$1,500 in U.S. currency, forfeiture of the 1984 Lincoln Continental, and a fine of \$25 payable to the Violent Crimes Compensation Board. In addition, the complaints filed in municipal court were dismissed. The respondent entered into the plea agreement with advice of counsel.

A laboratory facility and chemical substances, including P2P, are necessary for the manufacture of methamphetamine. Neither were present in the respondent's residence. In addition to the items seized, the officers observed a substantial quantity of both men's and women's gold jewelry in a case in the master bedroom.

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

**(B) DISPUTED FACTS**

In dispute were whether the respondent was in possession of methamphetamine with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), and the respondent's good character, honesty and integrity.

The officers described each of the items seized and the uses for such items in the distribution of methamphetamine. Of greatest significance were: item #1—the scale; item #3—the sifter; item #4—the weights for the scale; item #9—purported methamphetamine; item #10—cut-kit; item #11—bag of rice, which is a drying agent for methamphetamine; item #14—purported methamphetamine; item #15—\$4000 in U.S. currency; item #16—Herbalife, which in addition to being a powdered diet substance is also used as a cutting agent for methamphetamine; item #20—U.S. currency; item #21—methamphetamine; item #22—\$1300 in U.S. currency; item #25—plastic bags and razor blades; item #26—purported methamphetamine; item #31—glass board, on which methamphetamine is cut; item #32—pocket scales used in the distribution of a controlled dangerous substance, and item #33—glass board, on which methamphetamine is cut. Also significant to the officers was that all of these items were found in the master bedroom, which is not consistent with the lawful uses of such items.

Further, the officers both testified that they have undergone training by the New Jersey State Police and the DEA for the identification of controlled dangerous substances and for narcotics investigations. In addition, both officers have been involved in numerous narcotics investigations. Both officers testified to their opinion that the amount of purported methamphetamine found in the respondent's residence exceeded by far that which would be for a person's own use. More specifically, an addict with a large habit would consume a couple of grams per day. Further, their experience indicates that the great majority of addicts do not purchase methamphetamine in its raw form. The officers were also of the opinion that, based upon the quantity of methamphetamine, the large amount of U.S. currency and the collective illegal uses to which the other items seized could be put, the respondent was in possession of the purported methamphetamine with intent to distribute.

During cross-examination, potential doubts were raised concerning the significance of the items seized concerning the allegation of intent to distribute.

In the determination of the significance of and weight to be accorded to the officers' opinion testimonies, it is appropriate to consider the fact that the respondent did not testify on his own behalf. Nevertheless, it must be noted that the respondent did not testify by reason of his fear and/or concern that his testimony would constitute a waiver of his Fifth Amendment right to silence, together with the potential for the initiation of additional criminal charges concerning his conduct as alleged in this matter.

It is well settled that some significance may be attached to the failure of a party in a civil proceeding to take the state to refute a presumptive case. In re Degina, 94 N.J. Super. 267, 274 (App. Div. 1967). The drawing of an adverse inference is "not mandatory, but at the discretion of the fact-finder." Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 533 (App. Div. 1967); certif. den. 50 N.J. 404 (1967). However, there are three conditions precedent to drawing an adverse inference, namely: (1) it was within the power of the party to produce the witness and it would be natural to produce him, Wild v. Roman, 91 N.J. Super. 410, 414 (App. Div. 1966); (2) it appears probable that the witness could have testified to specifically identifiable facts, ibid.; and (3) the testimony would not have been comparatively unimportant, or cumulative, or inferior to what was already utilized, O'Neil v. Bilotta, 18 N.J. Super. 82, 86 (App. Div. 1952). Another possible justification for drawing an adverse inference, though not a condition precedent, is that the party failed to explain why he did not testify. Hickman v. Pace, 82 N.J. Super. 483, 490 (App. Div. 1964).

By way of example, in Gray v. Brunetti Construction Corp., 161 F.Supp. 151 (D.N.J. 1958), an attorney sued his client for additional money due under a contingent fee contract. The client failed to testify and explain why he thought the fee was excessive. In drawing an adverse inference, the court commented:

It is hornbook-law that where a party fails to testify or produce evidence within his control, which it would be to his interest to produce, a court, sitting as the trier of the facts, may infer from such failure that such testimony or evidence if given or produced would have been unfavorable to the party in whose behalf it was offered.

Similarly, in Amerada Hess Corp. v. Quinr, 143 N.J. Super. 237 (Law Div. 1976), an oil company sued for possession of a gas station on the grounds that the dealer overcharged his customers in violation of a statute. The dealer did not testify, leading the court "to the inevitable conclusion and inference that were he to testify he could not deny that he knowingly and willfully overcharged. . ." Id. at 249.

In the present action, the respondent chose not to testify and his attorney explained that the respondent wished to preserve his Fifth Amendment privileges because of the potential for further prosecution. In a civil proceeding, however, an adverse

inference may be drawn without offending a party's Fifth Amendment right against self-incrimination even where no criminal action is pending. Bastas v. Bd. of Review in Dept. of Labor and Industry, 155 N.J. Super. 312, 315 (App. Div. 1978); Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527 (App. Div. 1967). It is important to note that an adverse inference may be drawn in a civil action where a party validly asserts his privilege in response to interrogatories, Mahne v. Mahne, 66 N.J. 53, 60 (1974); while giving a deposition under oath, American Cyanamid Co. v. Eharff, 309 F.2d 790 (3d Cir. 1962); or informally at trial by failing to take the stand, Baxter v. Palmigiano, 425 U.S. 308, 320 (1976).

As a general rule, an adverse inference does not arise when the witness failing to testify is "equally available to both parties." Hickman v. Pace, 82 N.J. Super. 483, 490 (App. Div. 1964). In Hickman, the defendant was accused of striking a child with her automobile and was acquitted. The defendant did not testify at trial and the jury was not directed to draw an adverse inference from her failure to testify. In affirming the decision below, the Appellate Division noted that the defendant's testimony would have been duplicative of the testimony of two witnesses called by the plaintiff, and defense counsel conceded that the defendant had nothing to add or subtract. But in cautioning that its decision was limited to the facts of the case, where the defendant conceded that the plaintiffs' evidence was accurate, the Appellate Division commented on the availability of a party:

To hold that an adverse inference may never be drawn from a party's failure to testify, so long as he was physically present in court and could have been called as a witness by the adverse party, would, for all practical purposes, prevent the adverse inference from ever arising. Almost invariably, the party who chooses not to testify is present at the trial. When we speak of the witness "equally available to both parties," we contemplate the ordinary witness would be as likely to be favorable to one party as the other. The equal availability is not to be determined from mere physical presence at trial. The fact that Mrs. Pace was in court and could have been called as a witness by plaintiffs does not ipso facto prevent an adverse inference arising from her failure to testify. The "availability" of a witness may well depend upon the "relationship (of the witness) to one or the other of the parties, and the nature of the testimony that he might be expected to give in the light of his previous statements or declarations about the facts of the case." Deaver v. St. Louis Pub. Service Co., 199 S.W.2d 83, 85 (Mo. Ct. App. 1947). See, too, United States v. Beekman, 155 F. 2d 580 (2 Cir. 1946); McCormick on Evidence (1954), §294, p. 534. [Hickman at 492].

Accordingly, an adverse inference may be drawn where a party is present in the court and could have been called as a hostile witness by his opponent.

Here, the respondent is faced with substantial damaging evidence presented by the Division. Further, and in regard to the specific charge of possession with intent to distribute, the respondent had no evidence to offer other than his own potential testimony to explain the doubts raised during cross-examination of the police officers and to otherwise refute the allegations. Nevertheless, the respondent chose not to testify.

It was also apparent that the respondent was not equally available to the Division, particularly with the anticipation that his testimony would be inconsistent with the Division's position. Further, the Division had no need to call the respondent because of his prior guilty plea and by reason of the fact that the Division's evidence established a prima facie case. Therefore, adverse inferences will be drawn against the respondent and in favor of the Division concerning the entire scope of the testimonies of the two police officers. (It should be noted that there was no reason to question the credibility of either officer.)

Accordingly, it is apparent that the respondent possessed all the necessary paraphernalia and more than sufficient methamphetamine to find that he possessed the methamphetamine with intent to distribute.

The respondent offered letters from five persons to establish that he is a person of good character, honesty and integrity. Letters were submitted from Joseph P. McMahon, president of La Chic, a boutique in Rio Grande, New Jersey, who has known the respondent for seven years, during which period the respondent had assisted Mr. McMahon in business (R-1); David Hofeld of Casino Male, Inc., of Atlantic City, who has known the respondent for the past seven years on a personal business level (R-2); Richard A. Rasner of Atlantic Kirby of Pleasantville, who has known the respondent since 1973, during which time the respondent was employed by Mr. Rasner (R-3); Warren Meikle of Warren's Custom Auto Center, Inc., Pleasantville, who has known the respondent since 1976 and was a co-employee (R-4); and Steven Sternberger, of South Jersey Monogram Company,

Woodbine, who has known the respondent for the past 12 years, during the past 10 years of which time the respondent was employed by Mr. Sternberger (R-5). Each letter reflected the respondent to be an honest, responsible, reliable and trustworthy person in all of his business dealings.

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

1. The testimonies of Det. Chern and Sgt. Burke were believable, credible and persuasive in all respects.
2. The items seized from the respondent's residence had individual as well as cumulative uses in the distribution of methamphetamine.
3. The quantity of methamphetamine found at the respondent's residence exceeded by far the amount that would have been possessed for personal use.
4. The respondent did not testify on his own behalf.
5. The respondent's potential testimony was the only evidence the respondent had to offer to explain away or otherwise refute the Division's evidence of serious misconduct.
6. An adverse inference is drawn by reason of the respondent's silence as to the total scope of the testimonies of the two officers.
7. The respondent was in possession of methamphetamine with the intent to distribute.
8. The respondent is held in high esteem by persons with whom and for whom he has worked during the past 12 years.

DISCUSSIONS OF LAW AND CONCLUSION

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the

individual licensee." Section 129(1) provides for the revocation or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Feigenbaum's violation of N.J.S.A. 24:21-20a(1), possession of methamphetamine, and alleged violation of N.J.S.A. 24:21-19a(1), possession of methamphetamine with intent to distribute, constitute a violation of section 86c(4), and, accordingly, establishes that his license should be revoked.

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

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

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

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div., July 11, 1985, A-993-82T5; A-317-84T5; A-525-84T5; A-880-84T5) (Slip Opinion at 17 and 18), the Appellate Division held that inimical means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The circumstances underlying the incident are clear. A casino employee license holder and a security officer, while off-duty, was found to be in possession of a substantial amount of methamphetamine, marijuana and the paraphernalia necessary for distribution of methamphetamine. This incident occurred barely more than one year ago. Criminal proceedings were concluded approximately one year ago. It is unknown whether the respondent has completed probation at this time. The fact that the respondent may not have been convicted of possession with intent to distribute does not serve to mitigate the seriousness of his misconduct. Although the respondent's misconduct has not affected the operations of any casino, it would, particularly in his licensed capacity, unquestionably undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact on the public perception of the integrity of the casino industry.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that continued licensure of the respondent would be inimical to policies of the Act, pursuant to section 86c(4).

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

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

Given the conclusion that the continued licensure would be inimical to the policies of the Act, and in consideration of the extremely serious nature of the offense and recent date thereof, it is clear that the respondent does not now possess the requisite good character, honesty and integrity for licensure.

I **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, that he continues to possess good character, honesty and integrity, under section 89b(2).

(C) PENALTY

Sections 129 and 130 of the Act provide various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of the respondent's casino employee license.

Based upon the conclusions that the respondent's conduct is inimical to the policies of the Act and that he no longer possesses the requisite degree of good character, honesty and integrity for licensure, it is imperative that his license be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino employee license of Jacob Feigenbaum be **GRANTED** and that license no. 14068-21 be **REVOKED.**

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

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

June 11, 1986  
DATE

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

Receipt Acknowledged:

June 11, 1986  
DATE

M. Benzoyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 13 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks/e

LIST OF EXHIBITS  
EXHIBITS ADMITTED INTO EVIDENCE

- P-2 Egg Harbor Township Police Department - Arrest Report, Jacob Feigenbaum, prepared by Detective Mike Chern, April 3, 1985; Arrest Report, Jacob Feigenbaum, prepared by Detective Mike Chern, April 4, 1985 (2 pages)
- P-3 The State of New Jersey v. Jacob Feigenbaum, Township of Egg Harbor Municipal Court, No. S 261591, Complaint, April 3, 1985; The State of New Jersey v. Sondra Feigenbaum, Township of Egg Harbor Municipal Court, No. S 261592, Complaint, April 3, 1985 (2 pages)
- P-4 Egg Harbor Township Police Department - Property Report, Jacob Feigenbaum, Prepared by Detective Mike Chern, April 3, 1985; Property Report, Jacob Feigenbaum, Prepared by Detective Mike Chern, April 9, 1985 (7 pages)
- P-6 Search Warrant, issued by Marvin N. Rimm, J.T.C., T/A April 3, 1985 (2 pages)
- P-7 Inventory of Items Seized During Search, April 3, 1985
- P-8 State of New Jersey v. Jacob Feigenbaum, Superior Court of New Jersey, Law Division - Criminal, Atlantic County Docket No. 85-001268, Accusation, June 26, 1985; Waiver of Indictment and Trial by Jury, June 26, 1985; Judgement of Conviction, July 29, 1985; Plea Agreement, June 26, 1985; Order of Forfeiture, June 26, 1985; Order of Forfeiture, June 26, 1985 (11 pages)
- R-1 Letter from Joseph P. McMahon
- R-2 Letter from David Hofeld, April 21, 1986
- R-3 Letter from Richard A. Rasner, May 15, 1986
- R-4 Letter from Warren Meikle, April 24, 1986
- R-5 Letter from Steven Sternberger

**EXHIBITS NOT ADMITTED INTO EVIDENCE**

- P-1 Id. Egg Harbor Police Department - Investigation Report, Prepared by Detective Mike Chern, April 4, 1985 (2 pages) (exhibit withdrawn)
- P-5 Id. Application for search warrant, prepared by Detective Mike Chern and Special Agent Gary O'Brien, April 3, 1985, (4 pages) (exhibit not admitted)
- P-9 Id. United States Drug Enforcement Agency - Laboratory Report, April 8, 1985 (7 pages) (exhibit not admitted)

**WITNESS LIST**

**For the petitioner:**

**John Burke  
Mike Chern**

**For the respondent:**

**None**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-165  
OAL DOCKET NO. CCC 7400-85  
APPLICATION NO. 54855-21  
REGISTRATION NO. 21093-40

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APPLICATION OF JOHN J. FLANAGAN :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 16, 1986,


IT IS on this 24<sup>th</sup> day of July 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of John J. Flanagan for a casino employee license is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that this action shall not prevent John J. Flanagan from retaining his casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



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

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

7/2

INITIAL DECISION

OAL DKT. NO. CCC 7400-85

AGENCY DKT. NO. 85-EA-165

**JOHN J. FLANAGAN,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW AND PUBLIC SAFETY,**

Respondent.

---

**John J. Flanagan, petitioner, pro se**

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

Record Closed: March 20, 1985

Decided: May 5, 1986

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

STATEMENT OF THE CASE

John J. Flanagan, petitioner, applied to the Casino Control Commission (Commission), for licensure as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose information material to licensure and lacked the requisite good character, honesty and integrity. N.J.S.A. 5:12-86b and 89b(2).

PROCEDURAL HISTORY

Mr. Flanagan filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on June 19, 1984 (J-1). By letter, the Commission advised the applicant that, based upon information received in a report from the Division dated August 26, 1985 (C-1), there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter dated October 26, 1985, Mr. Flanagan requested a hearing. On November 21, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 13, 1986, before Administrative Law Judge Solomon A. Metzger. The matter was heard on March 20, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Flanagan is 34 years of age (J-1). He currently resides in Philadelphia, Pennsylvania, with friends. Previously, he resided in Northfield, New Jersey, for a period of five years. The applicant is a June 1969 high school graduate.

From 1979 to 1983, the applicant worked as a carpenter, florist, baker, mason and substitute teacher for a variety of employers (J-1). Also, he was employed in the construction phase on all of the casinos in Atlantic City.

In 1981, the Commission issued a registration to the applicant, which is currently inactive.

On September 9, 1968, the applicant was arrested by the Mineola, New York Police Department, and was charged with shoplifting, analogous to N.J.S.A. 2C:20-11. The applicant received a conditional discharge (C-1).

On September 25, 1971, the applicant was arrested by the Rockville Center, New York Police Department, and was charged with possession of a hypodermic needle, analogous to N.J.S.A. 2A:170-77.5. The applicant plead guilty and was fined \$25.

On October 31, 1972, the applicant was arrested by the Tucson, Arizona Police Department, and was charged with aggravated assault, analogous to N.J.S.A. 2C:12-1b. The charges were dismissed because the complainant failed to pursue the matter.

On January 31, 1973, the applicant was arrested by the Miami, Florida Police Department, and was charged with possession of narcotics, analogous to N.J.S.A. 24:21-20. The charges were dismissed.

On April 3, 1975, the applicant was arrested by the Decatur, Georgia Police Department, and was charged with the sale of a controlled dangerous substance (marijuana), analogous to N.J.S.A. 24:21-19. The applicant was placed on probation and was fined \$1,000.

On January 1, 1978, the applicant was arrested by the Atlanta, Georgia Police Department, and was charged with drunk and disorderly behavior and abusive language, analogous to N.J.S.A. 2C:33-2a and N.J.S.A. 2C:33-2b, respectively. No record of the disposition was produced.

On April 4, 1980, the applicant was arrested and was charged with drunk and disorderly and simple battery upon a police officer, analogous to N.J.S.A. 2C:33-2a and N.J.S.A. 2C:12-1b(5), respectively. The applicant was found guilty and was sentenced to a fine of \$100 or 30 days in jail.

On August 22, 1981, the applicant was arrested by the Philadelphia Police Department, and was charged with driving while intoxicated, analogous to N.J.S.A. 39:4-50. The applicant was found guilty and was ordered to attend driving school.

On January 6, 1982, the applicant was arrested by the Philadelphia Police Department, and was charged with indecent exposure, analogous to N.J.S.A. 2C:14-4. The charges were dismissed because the witness failed to appear in court.

In 1984, the applicant received a CETA grant to attend dealer school. From May through August 1984, the applicant took a craps dealer course at CSI, which he completed successfully.

On June 19, 1984, the applicant completed and filed his PHDF-2A with the Commission (J-1). The applicant received the application form from CETA. The applicant responded in the negative to question number 16 and, did not disclose any portion of his criminal record history on his PHDF-2A.

Mr. Flanagan testified that he alone completed his application form. At that time the applicant was not serious about employment in the casino industry and did not make a wholehearted effort to complete the form. However, upon completion of his program of studies at CSI, the applicant became serious about a career in the casino industry. This change in attitude was due to greater exposure to persons employed within the industry.

On January 18, 1985, the applicant participated in a telephonic interview with Division Agent Martin H. Mogensen. Details of the interview were in dispute and will be discussed, infra. The applicant and Agent Mogensen also had telephonic discussions on May 3, 1985 and June 4, 1985.

On May 10, 1985, the applicant was arrested by the Philadelphia Police Department, and was charged with simple assault and recklessly endangering another person, analogous to N.J.S.A. 2C:12-1a and N.J.S.A. 2C:12-2, respectively.

The applicant is currently taking a course in restaurant and hotel management at Philadelphia Community College. He has completed almost one semester.

Most recently, the applicant has been employed by various restaurants. He is currently unemployed, as a result of an injury.

The applicant regularly attends church. Also, he is active in community services, which provide meals to the poor.

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

(B) DISPUTED FACTS

In dispute were whether the applicant failed to disclose his criminal record history on either his PHDF-2A and/or during telephonic interviews with the agent and, if so, the reasons therefore, and the circumstances underlying the ten separate incidents when the applicant was arrested and charged with misconduct.

Mr. Flanagan testified to the circumstances surrounding his purported nondisclosures. Concerning his PHDF-2A, the applicant first stated that at the time he completed the form he understood the question, but did not recall the specifics of the occasions on which he was arrested and, therefore, he responded in the negative. He assumed that the Division or Commission would discover his criminal record history and make an inquiry. Next, the applicant testified that he was not sure he understood the question, and thought that "arrest" meant "convictions," and since he had none, no disclosure was required. The applicant also testified that he knew he had been arrested, but responded in the negative because he did not have anything to tell the Division or the Commission. In addition, the applicant testified that he wanted a reader of the application to believe that all responses were true, but for the response to question number 16. Nevertheless, the applicant testified that he wanted the Commission to believe that he had no convictions.

The applicant also described his telephonic interview with Agent Mogensen. On his own initiative and not in response to messages received, the applicant contacted Agent Mogensen. In response to the agent reading question number 16, the applicant responded that he had a criminal record history, but could not recall the specifics. However, the applicant verified the specifics of the incidents as related by the agent. The applicant also testified that he explained to the agent that the nondisclosures were because there were no convictions. The applicant also testified that at the point he became serious about employment in the casino industry, he contacted the agent and attempted to cure the nondisclosure.

Agent Mogensen also testified concerning the telephonic interviews. The agent has been employed by the Division for approximately one and one-half years and is currently assigned to the Form 2 Unit Section. The agent made many attempts to contact the applicant by telephone and left messages with the applicant's mother. On January 28, 1985, the applicant contacted the agent. In response to question number 16, the applicant

denied that he had been arrested. Thereafter, the agent recounted, incident by incident, the applicant's arrests between September 9, 1968 and April 4, 1980. The applicant then admitted the incidents and explained that he had not disclosed them because he had forgotten about the incidents. On May 3, 1985, the agent again spoke with the applicant by telephone. During this conversation the applicant voluntarily disclosed the incidents of August 22, 1981 and January 6, 1982. On June 4, 1985, the agent and applicant had another telephonic discussion, during which the applicant voluntarily disclosed his arrest on May 10, 1985.

There is a clear and substantial disparity between the testimonies of the agent and the applicant. Accordingly, it is necessary to make an assessment of the credibility of each witness.

In order to evaluate the the applicant's testimony, his position in this matter must be recognized. As the applicant, he seeks to gain licensure and, as such, he has a direct interest in the outcome and a bias in these proceedings. Concerning the application form, the applicant gave several varying and inconsistent explanations for his nondisclosures. Most significant was the applicant's explanation that he did not disclose because he had no convictions, when in fact there were several. Also significant was the applicant's testimony that he wanted the Commission to believe that he did not have a criminal record history and that he became concerned about the nondisclosures at the time when he became serious about a career within the industry. The applicant's explanations of the telephonic interviews were also mutually inconsistent. Accordingly, it was abundantly evident that the applicant was less than candid in his testimony concerning the the explanations for his nondisclosures. Therefore, his explanations are neither believable nor persuasive.

It is also appropriate to evaluate Agent Mogensen's testimony. Although employed by the Division the agent has no interest in the outcome nor a bias in these proceedings. Further, the agent's testimony was consistent and detailed, and his recollection was precise. Also, the agent acknowledged candidly the voluntary disclosures made by the applicant. Accordingly, I am persuaded to accept the agent's testimony in all respects.

At this point it is necessary to note the problems presented by telephonic interviews. Telephonic communications are inherently difficult and risky. Also, the only

means offered to verify the events which transpired during a telephonic interview are the testimonies of the two persons involved. Almost without exception, the recollection of the conversation is effected by the different circumstances under which a party participates in the conversation and the personal perceptions of each participant. Such disputes lead inevitably and unnecessarily to a resolution based primarily upon an assessment of credibility, which assessments are often based upon far less than the best evidence. Although the dispute in this matter was resolved without substantial difficulty, the problem presented by telephonic interviews requires that a more reliable means to establish the events of such interviews be pursued.

The applicant also described the circumstances underlying the various events in which he was involved. Concerning the incident of September 9, 1968, the applicant testified that he was 17 years of age. Concerning the incident of September 25, 1971, the applicant testified that he was drinking with friends and had a needle in his possession. Nevertheless, the applicant could not recall why he had a needle and stated that he did not use drugs.

Concerning the incident of October 31, 1972, the applicant testified that he was drinking in a bar with friends when a fight broke out, and he was arrested as he left the bar. Concerning the incident on January 31, 1973, the applicant testified that he was in a park with other individuals and, as he left, was questioned regarding another individual. However, he was not arrested.

Concerning the incident of April 3, 1975, the applicant stated that he was with friends when a sale of marijuana occurred; however, he did not participate in the transaction. Nevertheless and with the knowledge that a sale of drugs was about to occur, the applicant accompanied the person involved in the sale, and the applicant pled guilty to the charges. The applicant also testified that despite his plea, he did not want the judge to believe his admission. Concerning the incident of January 1, 1978, the applicant testified that his refusal to leave a bar precipitated the incident. Again he plead guilty, but did not want the court to believe his admissions. The applicant testified that he was intoxicated during the incidents of April 4, 1980 and August 22, 1981. Concerning the incident of January 6, 1982, the applicant denied any misconduct. Concerning the incident of May 10, 1985, the applicant testified that he was intoxicated, and upon leaving a party was accosted and beaten by two police officers. Nevertheless, he was willing to participate in a pretrial intervention-type program.

The applicant further testified that he believed the police action in all incidents was unjustified. More specifically, he stated that if a person works hard, he should be able to play hard. The Division did not offer any evidence concerning the circumstances underlying the various incidents.

The nature of the various charges against the applicant, together with his explanations, establish a pattern of behavior attributable to the consumption of alcohol. Although his explanations of the events were not refuted and are generally persuasive, it is apparent that the applicant has difficulty controlling his behavior after the consumption of alcoholic beverages.

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

1. The applicant's testimony concerning the nondisclosures of his criminal record history on his PHDF-2A and during a telephonic interview with a Division agent was not credible, believable or persuasive.
2. The testimony of Agent Mogensen concerning the telephonic interviews conducted with the applicant was credible, believable and persuasive.
3. Agent Mogensen's version of the telephonic interviews of the applicant are adopted as a finding of fact.
4. The applicant's explanation of the circumstances underlying the various occasions when he was arrested and charged with misconduct are believable.
5. The applicant's criminal record history, together with his explanation of the circumstances underlying the incidents, establish that the applicant has a behavioral problem related to his consumption of alcoholic beverages.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at pages 15-16 of its Final Decision:

So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification. Here, the Division contends that Mr. Flanagan's failures to disclose fully his criminal record history on his PHDF-2A and during telephonic interviews with the agent establish a violation of Section 86b of the Act.

Question number 16 on the PHDF-2A calls for a full and complete disclosure of an applicant's criminal record history. Given the applicant's lack of credibility, together with his statement that he wanted the Commission to believe that he had no criminal record history, it is clear that the applicant breached his obligation to disclose. Even accepting, arguendo, the possibility that the applicant misconstrued "arrest" to mean "conviction," it was abundantly clear that he did not disclose those incidents when he was convicted. Accordingly, there is no reason to believe that the applicant's failure to disclose was due to ignorance, inadvertence or was a good faith error. Therefore, the failure to disclose must serve to disqualify the applicant from licensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, regarding his failures to disclose completely his criminal record history on his PHDF-2A and during a telephonic interview.

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

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

The Commission has held that the disqualification criterion found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzalez, at 8. Therefore, the conclusion that Mr. Flanagan failed to disclose fully his criminal record history in violation of section 86b automatically precludes the applicant from meeting his burden under section 89b(2). Further, an applicant's willingness to disclose fully his criminal record history is the most direct and reliable means of testing his or her good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he or she does, in fact, possess good character, honesty and integrity.

I CONCLUDE that the applicant has failed to establish by clear, and convincing evidence, his good character, honesty and integrity, under section 89b(2).

DISPOSITION

It is **ORDERED** that the application of John J. Flanagan for licensure as a casino employee (craps dealer) be **DENIED**.

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

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

May 5, 1986  
DATE

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

Receipt Acknowledged:

May 8, 1986  
DATE

K. Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 12 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2A, John Joseph Flanagan, filed with the Casino Control Commission on June 19, 1984 (24 pages)

C-1 Letter to Chairman Walter N. Read, Casino Control Commission, from Deputy Attorney General Ralph L. Fusco, August 26, 1985 (4 pages)

WITNESSES

For the applicant:

John J. Flanagan

For the respondent:

Martin H. Mogensen

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-93  
OAL DOCKET NO. CCC 7376-85  
LICENSE NO. 16483-21

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

Complainant, :

FINAL ORDER

v. :

MIRANDA K. STRICKLAND (FOGGIE), :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 6, 1986,

IT IS on this <sup>18<sup>th</sup></sup> day of August 1986, ORDERED that the initial decision be modified as follows:

In addition to the respondent's disqualification pursuant N.J.S.A. 5:12-86(c)(4) and (g), the Commission finds, based on that same evidence, that the respondent does not possess the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license held by Miranda K. Strickland is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7376-85

AGENCY DKT. NO. 84-93

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

Petitioner,

v.

MIRANDA E. FOGGIE (NEE STRICKLAND),

Respondent.

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

Miranda E. Foggie, respondent, pro se

Record Closed: April 1, 1986

Decided: May 14, 1986

BEFORE RALPH J. TOLOMEO, ALJ:

PROCEDURAL HISTORY

Petitioner, Division of Gaming Enforcement, filed a complaint with the Casino Control Commission on March 28, 1984, seeking the revocation of respondent's casino employee license No. 16483-21 issued by the Commission on February 27, 1981. Respondent requested a hearing with respect to Division's action and, on November 14, 1985, the matter was determined to be a contested case and was transmitted to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq and N.J.S.A. 52:14F-1 et seq. The case was received by the Office of Administrative Law on November 19, 1985, and scheduled for a prehearing conference which, at the request of respondent, was

conducted via the telephone on January 7, 1986. Thereafter, the matter was scheduled for hearing on April 1, 1986, at the Quakerbridge office of the Office of Administrative Law, Mercerville, New Jersey, at which time the hearing was conducted and, on that date, the record closed.

STATEMENT OF FACTS

The relevant and material facts in this matter were presented by three witnesses, Agent John Herbert, an investigator for the Division of Gaming Enforcement, and Joseph Bonmer, an employee of the Golden Nugget Casino, as well as documents presented by petitioner. Respondent testified on her own behalf and also offered documents.

On January 15, 1984, respondent, Miranda K. Foggie, was employed by the Golden Nugget Casino Hotel as a dealer. On that date, she received what is described in the industry as a toke check in the amount of \$227.98, payable to her and representing her share of pooled and equally shared tips and gratuities received by all the dealers employed by the casino. This toke account was maintained by the Golden Nugget and administered by Joseph Bonmer who was elected by the dealers in the position of toke chairman. Joseph Bonmer testified Miranda Foggie called him the following day after the check was issued and advised him that this check was either lost or stolen. She requested him to place a stop payment at the issuing bank. Mr. Bonmer notified the bank and, according to their procedures, obtained an affidavit of forgery which he presented to respondent and which she signed. Mr. Bonmer then reissued a check in a similar amount, replacing the one she had previously reported lost and/or stolen.

Mr. Bonmer was later notified that the original check for which she requested a stop payment was cashed at the Island Check Cashing Service on Tuesday, January 17, 1984. He was further advised that a photograph of the individual cashing the check was available. This photograph depicted respondent in the background and a male individual cashing the check on January 17, 1984, at the Island Check Cashing facility. Additionally, Mr. Bonmer received information that the second check issued to replace the original was cashed at a liquor store in the area on January 23, 1984. When all this information was brought to his attention, he reported it to the appropriate security unit of the Golden Nugget Hotel. Mr. Bonmer's recollection is that this occurred in the latter part of February 1984.

The security unit of the Golden Nugget Casino Hotel contacted the Division of Gaming Enforcement with this information and Agent John Herbert, who was responsible for investigating criminal activity within the casinos, was assigned to investigate this matter.

His investigation developed the information provided by Mr. Bonmer and on February 28, 1984, he met with Mr. Bonmer and respondent, at which time respondent was given her Miranda warnings. At that time she related that her husband, from whom she was separated, came to her apartment in Pleasantville in the early morning hours. She stated that he was drunk and wanted some food and to see the children who were asleep. She also indicated that after he left she discovered that the token check issued to her the day before was missing and that she believed that he took it. It was at that time that she reported it missing and a stop payment order followed. A day later she was contacted by her husband who asked her to meet him at his motel, which she did. He indicated that he had the check and that she owed him money regarding child support and demanded that they cash the check so that he would retain \$200 which represented the indebtedness owed him by her. She complied with his request and, since the banks were closed at that hour, the check was cashed at the Island Check Cashing Service on January 17, 1984. She told Agent Herbert that she cashed the check out of fear and intimidation and that her husband kept the entire proceeds of \$227.98. She did not report this to anyone and, upon the issuance of the replacement check, she cashed that check, stating that she needed the money to provide for her children.

Agent Herbert signed a criminal complaint in the Atlantic City Municipal Court on February 28, 1984, charging the respondent with an act of theft by obtaining \$227.98 by deception, a violation of N.J.S.A. 2C:20-4 (P-1 Evidence). Additionally, during the course of his investigation, Agent Herbert received a photocopy of a note respondent indicated her husband had prepared and left in her purse when he visited her apartment in the early morning hours of January 16, 1984 (P-2 Evidence).

Respondent testified on her own behalf and corroborated the facts presented by petitioner. She indicated that on January 16, 1984, in the early morning hours, Gregory Strickland, her common-law husband, came to her apartment in Pleasantville. He came to get something to eat and to see the children but he was drunk and she told him to leave and she went back to sleep. Upon awakening, she was unable to locate the token check but

saw a note from Gregory Strickland (P-2 Evidence). When she determined the check was missing, she called the Golden Nugget payroll department and ordered a stop payment on that check. Thereafter, she confronted Gregory Strickland and demanded the return of the money; however, he demanded that she repay a \$200 loan out of its proceeds, to which she agreed, and accompanied him to the Island Check Cashing Service where he cashed the check. She acknowledged that she was shown a photograph of this transaction which pictured her in the background. Respondent did not notify anyone of this occurrence and, upon its receipt, cashed the replacement check. Respondent further testified that she was terminated from her employment at the Golden Nugget on March 2, 1984, as a result of this activity; however, she made restitution to the Island Check Cashing Service and documented the same with a receipt, dated March 5, 1984 (R-1 Evidence).

During cross-examination, respondent testified that she had worked at the Golden Nugget as a blackjack dealer since March 1981 and averaged \$25,000 a year income. Further, her common-law husband, Gregory Strickland, began working at the Golden Nugget in the summer of 1982 and earned an equivalent salary. She, Gregory Strickland and their two children all lived together until October 1983 when she and Mr. Strickland separated.

When she found her token check missing on January 16, 1984, she thought that Gregory Strickland had taken it and reported it stolen but did not advise anyone that she believed Gregory Strickland had taken it. She acknowledged going to the casino office and "signing something" and going, at Gregory Strickland's request, to the Casino Beach Hotel where he lived.

She acknowledged receipt of the replacement check, which she recalls receiving on January 20, 1984, and cashing it at King's Liquor store on January 23, 1984. She further acknowledged being confronted by Agent Herbert of the Division of Gaming Enforcement on February 27, 1984, at which time she told him "what happened." Respondent further testified that she moved to North Carolina in June 1984 and was never aware of any pending criminal charges. At the present time, she lives in Raleigh, North Carolina and has her children, three and five years old, with her.

She further related that at the time these incidents regarding the checks occurred, she was in the process of buying a car and moving and that she had no choice,

based on her husband's threats and demands, and her children's needs. She believes that she was a victim of circumstances and had no choice but to do what she did at the time.

Respondent offered a copy of an affidavit from Gregory Strickland, which she acknowledged having prepared, although testifying that it was information he provided (R-2 Evidence).

Additionally, respondent offered letters from her present employment with the Department of Social Services of Wake County, North Carolina, and Circuit City SuperStore, located in Raleigh, North Carolina (R-3, R-4 Evidence).

All of the above was offered through the witnesses, including respondent, and documents. Having observed the demeanor of the witnesses and their ability to recall, as well as assessing their credibility, I FIND all of the above as fact.

#### ISSUES

Petitioner argues that, under the facts, it has established a violation of N.J.S.A. 2C:20-4, by a preponderance of the credible evidence pursuant to Section 86g of the Act and this conduct is inimical to the policies of the Act pursuant to Section 86c4. Further, petitioner argued that under the facts as found respondent does not possess the requisite reputation for good character, honesty and integrity required under the provisions of Sections 89b2 and 90b of the Casino Control Act.

Respondent argued that the circumstances of the cashing of both checks was due to duress and intimidation by her former common-law husband, her need for monies to provide for her children at the time and that this conduct is not inimical to the policy of the Casino Control Act and to casino operations. Respondent further argued that she has by clear and convincing evidence established that she has the good character, honesty and integrity necessary to maintain her licensure.

#### DISCUSSION AND ANALYSIS

In this matter petitioner has submitted evidence of a violation of N.J.S.A. 2C:20-4. Respondent has acknowledged her conduct as alleged and offers reasons for her actions of her common-law husband's threats and her children's needs by way of

mitigation. Based on the foregoing, I **FIND** that petitioner has established respondent's conduct constitutes the offense of theft by deception in the amount of \$227.98 in violation of N.J.S.A. 2C:20-4, as alleged in the complaint filed by Agent Herbert in the Atlantic City Municipal Court.

This finding acknowledges respondent's testimony and affidavit from Gregory Strickland which suggests that respondent was under some type of threat, coercion or duress at the time she allowed Gregory Strickland to cash the check which he had taken from her. However, even accepting those facts, when respondent initially determined that this check was missing and suspected Gregory Strickland of taking it, and before subsequent contact with him, she requested that a stop payment be placed. At the time of the stop payment request she did not advise either Golden Nugget personnel or the bank or any law enforcement agency that Gregory Strickland might have taken the check. Upon fulfilling her stop payment request, she signed an affidavit of forgery, which is standard procedure required by the bank in order to prevent the check from being honored. Afterward she was approached by Mr. Strickland and cooperated with him, rather than advising her employer, the Division of Gaming Enforcement or local police authorities of the situation. She complied with all of his requests and, when she received the replacement check approximately seven days later, took that check and cashed it, stating that this money was required for her children's needs, although she acknowledged she was earning approximately \$25,000 salary that year. Her checks, issued through the Golden Nugget Hotel which maintained the toke account, were related to her employment within the casino industry.

From the time of determining the check to be missing on January 16, 1984 to the end of February 1984, when Mr. Bonmer received information that both checks were cashed, respondent did not come forward, until confronted by the casino security and a representative of the Division of Gaming Enforcement, to relate the circumstances of her husband's involvement and the cashing of both checks.

Anytime during the latter part of January and most of February 1984, respondent could have explained the circumstances surrounding the incident. As a casino employee licensee and a dealer, she was entitled to share in the monies that employees received as tips and gratuities from patrons. A check representing her share was reported stolen by her with no mention of her husband being a suspect even though she

acknowledged suspecting at the time that he had taken it. After reporting the check as lost and/or stolen and later learning that her husband had taken it, she cooperated with him to cash it, stating that he had threatened her and forced her to do so. Assuming all these facts to be true, she acknowledged that she was aware the replacement check constituted a double payment, saying that she needed the money for her children although she further acknowledged that she was at the time in the process of moving and purchasing a car.

Although there is no indication of any misconduct either before or after this incident and this appears to be an isolated matter, I **FIND** the conduct to be inimical to the policy of the Casino Control Act and to casino operations. This finding is reached after a consideration of the nature and duties of her position as a dealer, the nature and seriousness of the offense, the circumstances under which the offense occurred, the time the offense occurred and the considerations of her return to North Carolina and present employment. Further consideration has been given to what is provided by her present employers regarding her integrity and positions she holds with these employers. However, there is still a criminal charge pending and respondent has made no effort to resolve the same.

Under all the circumstances, I **CONCLUDE** that petitioner has demonstrated by a preponderance of the credible evidence that respondent has committed an offense which is inimical to the policies of the Casino Control Act and the casino industry. I **CONCLUDE** that respondent's casino employee license should be **REVOKED**.

Therefore, I **ORDER** that the casino employee license of respondent be and is hereby **REVOKED**.

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

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

May 14, 1986  
DATE

Ralph J. Tolombo  
RALPH J. TOLOMBO, ALJ

Receipt Acknowledged:

May 15, 1986  
DATE

A. Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 19 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Complaint: State of New Jersey v. Miranda Strickland, prepared by Agent John Herbert, Division of Gaming Enforcement
- P-2 Copy of the back of child care receipt

FOR THE RESPONDENT:

- R-1 Purchaser's receipt of Travelers Express Company, Inc. to Island Check Cashing Service, dated March 5, 1984
- R-2 Typed statement of Gregory Strickland notarized on March 24, 1986
- R-3 Letter from Mary S. Lineberger, Assistant Director, County of Wake, Department of Social Services to the Division of Gaming Enforcement, dated March 6, 1986
- R-4 Letter from Circuit City Superstore to Division of Gaming Enforcement, dated March 27, 1985

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 85-EA-176 &  
85-CSI-14  
APPLICATION NOS. 45399-21; 989-70  
REGISTRATION NO. 57338-40  
OAL DOCKET NO. CCC-8274-85

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APPLICATION OF VICTOR M. FRIEDMAN :  
FOR A CASINO EMPLOYEE LICENSE :  
(JUNKET REPRESENTATIVE) AND A : FINAL ORDER  
JUNKET ENTERPRISE LICENSE :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions and the applicant having filed a reply thereto; and the Commission having considered the entire record of these proceedings at its public meeting of November 19, 1986,

IT IS on this 31<sup>st</sup> day of December 1986, ORDERED that the findings of facts are adopted; and

IT IS FURTHER ORDERED that the following conclusion of law is rejected:

The conclusion that the applicant had demonstrated by clear and convincing evidence his financial stability, integrity and responsibility required by sections 89(b)(1) and 90(b), 102(b) and (c) is rejected. The Commission finds in light of the applicant's substantial outstanding indebtedness totalling \$475,000 and his failure to take any actions to satisfy or otherwise discharge the obligation, he has failed to demonstrate to the requisite standard his financial stability.

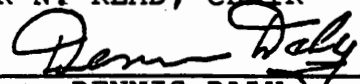
IT IS FURTHER ORDERED that the casino employee license and junket enterprise license applications of Victor M. Friedman

are denied based on his failure to demonstrate his financial stability under sections 89(b)(1), 90(b), 102(b) and (c); and

IT IS FURTHER ORDERED that Victor M. Friedman is prohibited from applying for any license, registration, qualification or approval except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

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



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 8274-85

AGENCY DKT. NO. 85-EA-176

**VICTOR M. FRIEDMAN,**

Petitioner,

v.

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

Respondent.

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Melvin J. Radin, Esq., a member of the bar of the State of Virginia, admitted pro hac vice, for petitioner (William J. Farley, Jr., Esq., local counsel)

Anthony V. D'Elia, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: September 9, 1986

Decided: October 6, 1986

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

Victor M. Friedman applied to the Casino Control Commission (Commission) for licensure as a junket representative and as a junket enterprise in accordance with section 102 of the Casino Control Act, N.J.S.A. 5:12-102. Mr. Friedman was granted temporary licensure in these positions on May 18, 1983.

On August 1, 1985, the Division of Gaming Enforcement (Division) filed a letter with the Chairman of the Commission in which it reported on the findings of its investigation into Mr. Friedman's application and disclosed its recommendation that the applications be denied.

Mr. Friedman requested a hearing on the proposed denial of licensure and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on February 11, 1986 and a prehearing order was issued on February 21, 1986. Thereafter, on April 8, 1986, the Division moved to amend the prehearing order to incorporate additional facts which it believed were relevant to issues listed in the prehearing order.

A hearing was held before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Trenton on September 5, 1986.

### ISSUES

The prehearing order notes the issues raised by the Division in reference to Mr. Friedman's application. These include:

- A. Does the petitioner have the requisite financial stability required for licensure, pursuant to N.J.S.A. 5:12-102(b), 90(b) and 89(b)?
- B. Does the respondent have the requisite good character, honesty, and integrity required for licensure, pursuant to sections 102(b), 90(b) and 89(b)2?
- C. Does the respondent have the requisite business ability required for licensure, pursuant to subsection 89(b)3?
- D. Does the respondent meet the licensing requirements for a junket enterprise, pursuant to section 102(c)?

The Division's allegations concerning Mr. Friedman are set forth more thoroughly in its August 1, 1985 letter to the Chairman of the Commission. Essentially, the Division questions Mr. Friedman's business ability and financial stability because of the series of judgments obtained against Mr. Friedman, which judgments have largely been unpaid. In addition, the Division questions whether Friedman has made satisfactory attempts to repay his creditors.

With respect to the allegations concerning good character, honesty and integrity, the Division's allegations arise from his purported contacts and business associations with a number of individuals listed in the letter who had been the subject of investigations and/or indictments arising out of investigations into the junket industry.

The Division's amendment of April 8, 1986 merely added to the list of purported associates or contacts two other individuals, Al Corbo and Al Skloff, who were not named in the August 1 letter.

FINANCIAL AND BUSINESS ABILITY

The parties stipulated that Mr. Friedman had been an owner of a company known as Aacon Interiors Ltd. which went out of business in 1979. Largely as a result of this business operation, approximately \$475,000 worth of outstanding Federal and State tax liens and civil judgments had been entered against Friedman. The judgments include, but may not be limited to, the following:

- (1) Bank of Virginia Beach - \$3,995.00
- (2) First and Merchants National Bank - \$91,101.00
- (3) Central Fidelity Bank of Norfolk - \$2,107.00
- (4) Central Fidelity Bank of Norfolk - \$2,000.00
- (5) Design Carpets, Inc. - \$11,442.00
- (6) Bank of Virginia - \$88,641.00
- (7) Investors Loan Corporation - \$2,927.00
- (8) United Virginia Bank - \$3,600.00
- (9) United States Department of the Treasury - Tax Liens - \$177,444.00

In addition to the stipulation concerning the judgments, the parties also stipulated that Mr. Friedman's 1981 gross pre-tax-pre-deduction income was \$42,000 and his 1982 gross pre-tax, pre-deduction income was \$48,000. His 1983 net taxable income was \$9,214. His 1984 net taxable income was \$10,815 and his 1985 net taxable income was \$5,316. With respect to the income, this was joint income with his wife and the sole income which the Friedman's had come from Friedman's operation of his junket business, other than the social security which he and his wife received.

Mr. Friedman testified that he is 69 years of age and has lived in Virginia Beach, Virginia, for 30 years and in the State of Virginia all his life. He has been in the junket business for approximately 20 years and has been licensed by the State of Nevada

during that time. He ran junkets to Las Vegas and now deals with the Landmark Hotel. In addition to his junket business, he also had for a while engaged in a decorating business known as Aacon Interiors Ltd. in which he was a stockholder along with his wife and son and another individual. The company failed in 1979. Friedman had personally guaranteed debts and obtained loans with his wife. As a result of the financial difficulties which the company had, Friedman and his wife, from whom he is now divorced, sold their personal furniture. He now rents a house and owns no real estate. He has a 1982 Plymouth Valiant. He is responsible for the support of his 12 year old son, who lives with him and of whom he has custody. He was divorced in July 1986.

According to Mr. Friedman, he has not declared bankruptcy despite his inability to pay his substantial debts. His wife did declare bankruptcy and obtained a discharge in August 1983. According to the petitioner, he has been urged by his counsel, Mr. Radin, to declare bankruptcy ever since the time that it became apparent that he was in no position to pay his debts. However, Mr. Friedman, who said that he is well known in the Virginia Beach area, chose not to declare bankruptcy and although he has made no payments on the debts he continues to hope that he might "get lucky," "make a deal pay off" and be able to pay off his debts. When questioned by the deputy attorney general as to whether he had had contact with his creditors concerning the debts, Friedman stated that no one was pressuring him and that he had talked with all of the creditors at one time or another.

The witness was questioned as to his financial situation and the fact that he had gross income of \$42,000 in 1981 and \$48,000 in 1982 and yet had been unable to make any payments on his debts. The witness described his situation following the 1979 failure of his interior decorating business as a very serious financial crisis in which he was forced to borrow money from relatives and friends in order to survive. During the 1980-81 period, Friedman was living in a rented house with only a bed and a chair and table and an old Buick which "broke down regularly." Once he received some income, he paid back the money which he had borrowed from relatives and friends and finished doing so in 1982. He had no money left over to pay his other debts after he paid the friends and relatives and his essential expenses of living.

GOOD CHARACTER, HONESTY AND INTEGRITY

The Division's allegations concerning Mr. Friedman's business ability and good character, honesty and integrity all revolve around his dealings or purported involvements, with a number of individuals who have apparently been the subject of investigations and/or indictments because of their purportedly illegal activities in connection with the junket business to Atlantic City. The Division's August 1, 1985 letter referenced Friedman's junket activities and contacts with these individuals and concluded that, "Clearly, Mr. Friedman's extensive and continuing relationships with the above-named individuals adversely affects on his reputation for good character, honesty and integrity. Therefore, the Division is unable to recommend Mr. Friedman be licensed in light of the above information."

Friedman was asked to detail his initial involvement in the Atlantic City junket business. According to the witness, he first came to Atlantic City at the invitation of Brian McSwain, a vice president of Cruise International, described by Friedman as the biggest travel agency in Virginia. While in Atlantic City, he had contact with Gayle Moneghan. Following contact with Moneghan, the respondent ran one or two junket trips to Bally's Casino/Hotel. At the time, Friedman charged a per-head service fee which he retained as his sole compensation.<sup>1</sup>

Following his initial junket trips to Bally's, Mr. Friedman was contacted by one Tom Stanley of the Sands and as a result of his contact an application for a junket license was apparently sent in along with checks drawn through Mr. Radin's trust account. Friedman ran two trips to the Sands. He then had contact with a Jeff Sands at Caesars Boardwalk Regency Casino/Hotel. Friedman was unable to specify when he first met Sands, who arranged for Friedman to bring trips into Caesars. He was introduced to Sands by a pit boss at Caesars who Friedman knew from Las Vegas. He had never seen Sands before. Friedman also ran five or six junkets to the Tropicana Casino during this period through the auspices of Terry Weiner and Chip Reed, gentlemen who he met through Jeff Sands. Friedman had never met Weiner or Reed before being introduced to them by Sands and he first met them at Caesars.

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<sup>1</sup>It should be noted at this point that the parties stipulated that portions of the fourth page of August 1, 1985 letter, specifically paragraph 2, beginning with the second sentence which starts, "On those first few trips, . . ." should be excluded from the letter. 251

On the junkets which Friedman ran under the auspices of Sands, Weiner and Reed, he had to pay a head count fee of \$10 per person for each one day trip and \$20 per person for each overnight trip. He had no knowledge that any of the named individuals were doing anything wrong nor that the payments which he was making were wrong.

The witness also ran trips to the Tropicana through one Joseph Millman. He had never met Millman until he was introduced to him by Reed.

In the fall of 1984, Mr. Friedman stopped running junkets to Atlantic City. He testified that he was told by a Sergeant Kisby of the New Jersey State Police that he should "get away from these people."

Mr. Friedman denied that he had ever personally met Irv Nowak whose company, Casino Caravans, a Florida operation, ran junkets to various Caribbean islands. Friedman did run five or six trips through Casino Caravans to the Caribbean.

The applicant did acknowledge that he had met Al Corbo and Al Skloff at Caesars. He denied having ever had any business dealings with either of these men. In addition, he specifically denied that any business was referred to him by them.

As part of its case, the Division, in support of its contentions that Friedman had had a business relationship with Corbo and Skloff, presented an affidavit from Levy Heath, of Pine Hill, North Carolina. In the affidavit, Heath contended that in 1982, while gambling at Caesars, he had asked a pit boss about the possibility of running junkets to Caesars. He was then introduced to Corbo and Skloff and explained to them that he was not licensed, but wanted to run junkets to Atlantic City. According to Heath, Corbo and Skloff advised him to contact Friedman, which he did. He told Friedman that Corbo had suggested that he, Heath, call Friedman about running junkets under Friedman's license. According to Heath, Friedman advised Heath to speak to Carl Allegood and said "anything Carl and you can work out would be fine with me (Mr. Friedman)." Heath then called Allegood who demanded "100 percent of my head fees in return for the use of his license." This offer was refused by Heath and "Mr. Friedman never again returned my phone calls."

Mr. Heath was not produced as a witness at the hearing nor did the Division seek to depose him. In response to Heath's affidavit, Mr. Friedman stated that he never did any business with Heath and did not believe that he had ever met him. No business was ever referred to him by Corbo or Skloff.

According to Friedman, his conversations with Corbo consisted of "hello, how are you." Friedman had heard that Corbo and Skloff had buses going to Caesars. He was unaware that they had been indicted in September 1984.

In a sworn interview held on June 18, 1985, Mr. Friedman, in response to questions from Deputy Attorney General D'Elia, testified that he might have seen Levy Heath in Atlantic City and indicated the following at page 54:

A. I may see him in Atlantic City, twice he came to me. Is he from Atlanta?

Mr. D'Elia responded "yes" and Friedman then stated "yes I met him before. I don't know nothing about him." At that point, a recess was taken and Friedman, in his testimony at the hearing, described himself at that point as having been "tired and worn out."

Deputy Attorney General D'Elia returned to the question of relationships with Corbo and Skloff later in the sworn interview. At page 61, Friedman was asked if he had ever met them and he said that he met them at Caesars and was introduced to them by Terry Weiner, approximately three to four years ago. A conversation occurred in which:

They asked me people I knew down in Virginia Beach in Norfolk and all that, if I knew different people. Some I knew, some I didn't, you know, North Carolina, I said I don't live in North Carolina.

D'Elia asked if there had been "any other conversations with Mr. Corbo?" and Friedman said, "No." He then denied any other business dealings with Corbo and Skloff and said that the last time he had spoken to them was "a long time." He denied that they had ever referred any unlicensed junket representatives to him and stated that they "didn't even talk to me like that or nothing." He denied ever referring any business to Corbo and Skloff.

At page 64 and 65 of the sworn interview, Mr. Friedman was questioned about Carl Allegood. He knew Allegood to be involved with junkets and said that he met him at Caesars, although he said "I could be wrong, sir, he might have called me up, but I'm pretty sure, he mentioned another name, Heath or something." The witness denied that Allegood had been told by Corbo or Skloff to call him.

At page 71 of the sworn interview, Mr. D'Elia asked whether Heath had ever called Friedman on the phone and Friedman replied that "it is very possible. I had so many people call, you know." Friedman was asked if Heath "ever said if Al Corbo and Al Skloff told me to call you?" He denied that he had, saying that "I don't think it happened." The witness was then asked:

Did Mr. Heath ever call you and ask you to run into Atlantic City on your license?

He replied:

He wanted to come through, work with me, you know, like share so many people, you know, that is the way he put it to me. I would like to work with you he told me.

At the hearing, Mr. Friedman testified that to the best of his knowledge Mr. Heath never called him and that he never spoke to Mr. Heath to his knowledge or met him, although he then said that it was possible that he could have been one of three people who came to him in Caesars and he referred to Allegood in Kingston, North Carolina. He denied ever receiving any phone calls from Mr. Heath. He also denied that he knew where Heath was from.

The applicant was questioned as to whether he ever attempted to run junkets into the Atlantic City hotels without going through such men as Sands, Weiner or Reed. He stated that he did not call Caesars directly, although he was getting ready to make a "move" a few months before he lost his license. He was never told that he couldn't run to Caesars without going through Sands, but he later testified that he didn't think that he could run through Caesars or the Tropicana without going through Weiner, Sands or Reed. He did know that Mr. Weiner always treated him "nice" and arranged for airplanes, something which Caesars would not do. He was, of course, paying for Weiner's services.

DISCUSSION

Financial Stability

In considering whether Mr. Friedman has the requisite financial stability for licensure it is necessary to recognize the fact that he has substantial unpaid debts and that there appears no likely prospect of significant payment of these obligations in the near future. The debts, which were accumulated as a result of the failure of a business, are likely to exist for sometime unless Mr. Friedman takes the advice of his counsel and seeks the protection of a bankruptcy discharge. He shows no inclination to accept this advice at this time and is satisfied to leave the obligations as they are with the hope he can repay the debts at some future date.

During the hearing, the administrative law judge questioned the deputy attorney general as to whether the Division would be objecting to Mr. Friedman's licensure on financial stability grounds had he obtained a bankruptcy discharge as his wife did. The deputy candidly admitted that it was unlikely that such opposition would have been raised if the various judgments were no longer outstanding because of a bankruptcy discharge.

The question which must first be asked is whether Mr. Friedman should be penalized because he has not obtained a discharge. I am quite reluctant to determine that one who has obtained a discharge and therefore is free of previous obligations can be found to have financial stability whereas one having the obligations but not having obtained a discharge should not. There is something wrong with allowing a previously encumbered individual to magically obtain financial stability through bankruptcy discharge and thus clear the records as to a claim of a lack of financial stability while penalizing one who has, for whatever reason, chosen to allow the obligations to remain in existence in the good faith hope that someday, somehow, he will be able to repay his creditors.

There is no evidence in this case that Mr. Friedman has been a spendthrift or that he has lived extravagantly or that his ability to manage his money is of a questionable nature. It appears that the obligations were legitimately run up in the course of business and that he unfortunately has been the victim of a business failure. If this is so, to penalize him because he has chosen not to have his debts discharged seems unfair.

This judge well understands that there is a concern on the part of the Division, and perhaps on the part of the Commission, that one with substantial debts may be open to the influence of those able to provide money or other assets through illegal ventures. One can understand the concern that a junket operator could be open to illicit influences if he had substantial financial obligations. However, nothing has been presented (see the discussion below) which would indicate that Mr. Friedman is likely to be involved in such illegalities. In addition, no evidence has been presented that he has ever had any financial problems in connection with his 20 odd years in the junket business. There is no evidence that he has not fulfilled his obligations as a junket operator, that anyone has suffered financially or otherwise because of the way in which he has operated his business. In making the determination as to whether he has the requisite financial stability under N.J.S.A. 5:12-102(b), 90(b) and 89(b), I am convinced that in the absence of such evidence the mere existence of a deficit in his balance sheet, so to speak, in and of itself should not be the basis for a finding that he cannot be licensed because of a lack of financial stability. If it is the Division's position that Mr. Friedman can cure the supposed lack of financial stability by merely obtaining a discharge of bankruptcy, then I cannot agree that he should be driven to such a step against his will only as a means of satisfying the Division's concerns.

For the reasons expressed, and in the absence of any evidence that Mr. Friedman has not conducted his junket business or other activities in a financially unstable manner, I **FIND** that he has the requisite financial stability required for licensure.

GOOD CHARACTER, HONESTY AND INTEGRITY

Perhaps the most serious allegation against Mr. Friedman on the part of the Division is the claim that his contacts with various individuals in Atlantic City show that he lacks the good character, honesty and integrity required for licensure. The Division, in its letter opposing licensure, listed a series of contacts with certain questionable individuals in the Atlantic City junket scene, contacts which Mr. Friedman by and large agrees occurred. The Division also notes in its letter, and in its argument before this judge, that these individuals have been the subject of investigations and indictments. It is noteworthy that Mr. Friedman has never been indicted nor is there any evidence that, other than as part of this application, that he has been the subject of an investigation concerning alleged illicit activities on his part. While Mr. Friedman's conduct in

connection with the Atlantic City junket business may not have always been exactly the way the Division would have preferred and while it is perhaps unfortunate that he did not push directly to the casinos themselves for the purpose of obtaining junket business, there is no allegation made that Friedman's involvements with the now indicted individuals involved illegal activity. It is distressing that the Division, in attempting to deny Friedman a license, has done nothing more than to question him as to whether he met certain individuals and ran junkets under their auspices and nothing else. For instance, in connection with Skloff and Corbo, it is alleged by the Division, based on the affidavit of an individual who was not produced for the hearing nor subject to a deposition, that Friedman spoke with Heath, who was referred to him by Corbo and Skloff. Without even touching on the fact that the evidence in this case presents nothing as to what Mr. Corbo and Mr. Skloff may have done wrong in and of themselves, there is nothing presented to establish that Friedman did anything wrong in connection with Heath or Corbo and Skloff. Even if those men had referred Heath to Friedman with the suggestion that he attempt to get Friedman to let him run junkets under Friedman's license, there is no evidence that Friedman did so. Thus, the Division, merely because there is some indication that Corbo and Skloff might have had some contact with Friedman, chooses to oppose his licensure. There is a note of "guilt by association" here which is disturbing.

In all the testimony presented, there is no evidence that the fact that Friedman had contact with Sands, Reed, Weiner, Millman, Skloff, Corbo or others of their ilk has tainted Mr. Friedman. While he did admit having paid certain fees to these individuals for their "services," it has not been pointed out in the record where anything about this activity demonstrated that Friedman did anything illegal or in violation of cited regulations of the Casino Control Commission. If in fact he did so, the assertion has not been made. The assertion that is made is that Friedman's character is in question because of his "association" with these individuals. Based on the record before me, I cannot FIND that Mr. Friedman's good character, honesty and integrity has been impugned merely because he spoke with these people who had an active role in the Atlantic City scene and because on occasion he did some business with them.

With respect to the allegations that Mr. Friedman's testimony differed in his sworn interview from the information which Mr. Heath provided to the Division and that therefore his good character, honesty and integrity is questionable because of alleged inconsistencies, having examined the entire record of his statements with respect to Heath, Corbo and Skloff during the sworn interview, the hearsay affidavit of Heath, and

Friedman's testimony at the hearing, I cannot find that Mr. Friedman's testimony is sufficiently inconsistent as to indicate that he was lying or that he was attempting to cover-up any involvement with Heath, Corbo or Skloff. He readily acknowledged that he had some contact with the latter gentlemen and seemed not entirely clear about who Heath was, but acknowledged that he may have had some type of contact with him. He categorically denied ever having any information that Heath was referred to him by Corbo or Skloff or that he ever did any business with those men. He categorically denied that Heath had called him, although he did indicate the possibility that Heath had contacted him in person in Atlantic City. It appeared from his testimony that he was not entirely certain exactly who Mr. Heath was or where he came from. In fact, during his interview when he was first asked about Heath, he asked whether that gentleman was from Atlanta and Mr. D'Elia, no doubt in error, confirmed by his answer that indeed Heath was from Atlanta, when in fact he was from North Carolina. Given the total record, and having made an assessment of the demeanor and character of Mr. Friedman and the credibility of his testimony, I **FIND** that he had minimal contacts with Al Corbo and Al Skloff, that he had minimal contact with Levy Heath, that he did no business with Heath, and he was never made aware by Heath that Corbo and Skloff had referred Heath to him. Further, I **FIND** no credible evidence of the type which reasonable men would rely on which would support a conclusion that Heath ever suggested to Friedman that Corbo and Skloff had referred him to Friedman.

With respect to Mr. Friedman's contacts with Weiner, Sands, Reed, and the others mentioned in the Division's letter, I **FIND** that Mr. Friedman's contacts were insufficient in nature or kind to sufficiently detract from his overall good character, honesty and integrity. I **FIND** that he has established by clear and convincing evidence that he has such characteristics and further I **FIND** that nothing about his business operations, or his debts, detract from that finding. Finally, I **FIND** no evidence which would indicate that he has not established that he has the requisite business ability to conduct junket operations, an activity which he has conducted for many years and still continues to conduct in the Las Vegas area. On the contrary, I **FIND** that he does have the required business ability.

#### CONCLUSION

Having carefully considered the evidence in this case, and having considered the context in which it arises, that is a junket industry which apparently has been riddled

with problems and subject to illegal activities, I CONCLUDE that Victor M. Friedman has established the requisite financial stability, business ability and good character, honesty and integrity which would permit him to receive licensure as a junket representative and a junket enterprise in accordance with section 102 of the Casino Control Act. While it may be that Friedman has, at least to some extent, been victimized by the system which has operated in Atlantic City, and while he may have taken advantage of the entree which he felt he was obtaining through the services of some of the "disreputable" characters mentioned in this case, there has been an insufficient showing by the Division of facts which would be sufficient to detract from the proofs presented by Friedman.

I CONCLUDE that the licenses 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.

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

October 6, 1986  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

October 7, 1986  
DATE

Bernadette P. Ficus  
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 9 1986  
DATE

Ronald D. Parker, Esq.  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Discharge In Bankruptcy
- P-2 Application and cover letters

On behalf of respondent:

- R-1 Affidavit of Levy Heath
- R-2 Sworn statement of Victor M. Friedman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-182  
APPLICATION NO. 61963-21  
OAL DOCKET NO. CCC 0006-86

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APPLICATION OF ZELENE J. FUTCH :  
FOR A CASINO EMPLOYEE LICENSE. :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 8, 1986,

IT IS on this <sup>12<sup>th</sup></sup> day of November 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Zelene J. Futch for a casino employee license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0006-86

AGENCY DKT. NO. 85-EA-182

**ZELENE J. FUTCH,**

Petitioner,

v.

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

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**Zelene J. Futch, petitioner, pro se**

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

Record Closed: August 1, 1986

Decided: August 21, 1986

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

This matter arises out of petitioner's application to be licensed as a casino employee, pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent interposed an objection, 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 question presented is whether petitioner can establish by clear and convincing evidence that she is a person of good character, honesty, and integrity, N.J.S.A. 5:12-90, in light of a prior conviction in Pennsylvania for welfare fraud, which is analogous in this state to theft by deception, N.J.S.A. 2C:20-4.

The basic facts are undisputed. Petitioner was receiving welfare benefits to which she was not entitled in Pennsylvania between January 1977 and April 1982. During this period, she was employed by the Southern Home for Children, a residential treatment center for juveniles. On January 5, 1984, she pled guilty to the crime of welfare fraud, was sentenced to 10 years' probation and was required to make restitution. The total amount of restitution is \$11,467, which she was ordered to pay at the rate of \$50 per month.

Petitioner is 33 years old and has a 13-year-old daughter. She testified that she has lived in Philadelphia most of her life. Her family has been receiving public assistance as long as she can remember. In 1974, petitioner married and moved to North Carolina where her husband was stationed in the service. She testified that he was dishonorably discharged and in late 1975, the family returned to Philadelphia. At that point, she found a job as a child care worker with the Southern Home for Children. Her starting salary was about \$11,000 a year. She testified that it was becoming clear that her marriage would break up; her husband was physically abusive and refused to work. She needed a source of additional income in order to save money for herself and her child because she expected that her husband would leave them. In January 1977, she decided to reapply for welfare benefits without disclosing that she was employed.

Petitioner testified that she knew at the time that her behavior was improper but that she was in difficult circumstances. She has paid the price of these choices and continues to do so. Petitioner testified that she has attempted to move beyond her broken marriage and prior conviction and that she sees a license to work in the casinos as part of that effort. She has made every monthly payment required by the court's order of restitution, and she sees a counselor from time to time to help her make the changes that will improve life for her and her daughter.

Petitioner submitted a series of character letters as well. Among them is a letter from her probation officer, as follows:

I began supervising Ms. Zelene Futch on January 5, 1984. Her response towards probation has been magnanimous.

She has maintained a motivating perfervid attitude at Southern Homes, as a child care worker. Ms. Futch has displayed a trustful impeccable judgment in setting her goals. Her progress has earned her best wishes and endorsement from this officer.

Due to the Probation Department's reorganization, it is impossible for me to attend today's hearing. However, I am available to testify on any other date. Mr. Robert L. Williams, Chief Probation Officer, is willing so to testify. The Chief Probation Officer considers Ms. Futch to be an outstanding and productive citizen.

The Chief Probation Officer and myself highly recommend Ms. Futch for the position.

There was an additional area of testimony developed on cross-examination around the private school which petitioner's daughter attends. Petitioner testified that I.Q. testing that had taken place at her daughter's public school revealed that she was gifted. As a result, petitioner made application for a scholarship to the Friend's School in Philadelphia so that her daughter could have the benefit of a more challenging education. Her daughter received the scholarship; it provides \$5,400 towards her tuition at the school, which is approximately \$5,800 a year. Petitioner testified that she received a telephone call at work from an investigator representing respondent who wanted to discuss her license application. She informed him that she was straightening out her life, and as one evidence of it she told him that her daughter attended the Friend's School and that tuition was \$5,800. She testified that the Southern Home for Children can be a noisy place and that during the phone conversation, kids were running all around. It was not a thoughtful conversation on her part. Counsel's questions sought to examine whether she had told the investigator that she had committed the welfare fraud in order to pay for private school education, and also whether she sought to mislead him about who was paying the cost of the school. Petitioner denied any wrongdoing on her part during the conversation. She was simply telling the investigator about her daughter's attendance at the Friend's School and mentioned the tuition to show that she was trying to turn her life around. She did not imply that she committed welfare fraud to accomplish this, nor did she try to hide the fact that most of the tuition was paid by scholarship. As to the former, if that is what the investigator thought, he misunderstood, and as to the latter, during the conversation, they never got into any detail about how the tuition was paid.

Respondent presented no witnesses.

This is the substance of the record. Petitioner's crime is a serious one for our purposes, because it extended over a period of years. To establish rehabilitation in light of this ongoing deception is a difficult burden. Nevertheless, I believe the petitioner has done so. She was an articulate and credible witness. She explained the mitigating

circumstances surrounding the welfare fraud, without seeking to absolve herself from guilt. She has been continuously employed for many years and has had no other involvement with law enforcement. Importantly, she has faithfully made restitution over the last two and one-half years. Finally, her probation officer believes that she shows great promise.


Respondent presented no evidence concerning any attempt by petitioner to mislead it. Petitioner's explanation that the investigator who spoke to her over the phone may have misunderstood her reasons for mentioning her daughter's attendance at private school and the school's tuition are accepted.

Based on the foregoing, it is my **CONCLUSION** that petitioner has established her rehabilitation and that she is a person of good character, honesty, and integrity. It is **ORDERED** that she be awarded a casino employee license.

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


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

DATE 8/21/86

  
SOLOMON A. METZGER, ALJ

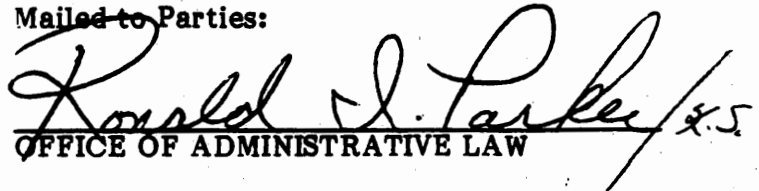
Receipt Acknowledged:

DATE 8/25/86

  
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE AUG 26 1986

  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Zelene J. Futch

EXHIBITS

For petitioner:

- P-1 Letter from Herk Jones to McDonald's Family Restaurant, dated July 29, 1986
- P-2 Letter from Earl Carter, undated
- P-3 Letter from Watt Young, dated July 28, 1986
- P-4 Letter from Jimmie Mitchell, Block Captain, dated July 30, 1986
- P-5 Letter from Leonard Ford to the Casino Control Commission, dated July 31, 1986
- P-6 Letter from Gwendolyn D. Benjamin, dated July 24, 1986
- P-7 Letter from Howard Myers, dated July 20, 1986
- P-8 Letter from Steven P. Rook to Ralph L. Fusco, dated July 30, 1986
- P-9 Letter from Stuart M. Burgh
- P-10 Letter from Denise E. Hailey
- P-11 Letter from Rev. L. Wayne Mitchell, dated July 19, 1986
- P-12 Letter from Leonard Ford to the Casino Control Commission, dated February 19, 1986

For respondent:

- R-1 Report of Investigation

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-207  
OAL DOCKET NO. CCC 263-86  
APPLICATION NO. 57946-22

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APPLICATION OF ROBERT E. GILLIS :  
FOR A CASINO EMPLOYEE LICENSE :

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FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 9, 1986,

IT IS on this 18<sup>th</sup> day of July 1986, ORDERED that the initial decision is modified as follows:

The Commission finds that there is insufficient evidence in the record to conclude that the applicant had engaged in conduct comparable to the offense of possession of a controlled dangerous substance with intent to distribute (Initial Decision at 10) and therefore the finding is rejected. Notwithstanding the above, the finding that the applicant had been convicted of an offense, comparable to distribution of controlled dangerous substances pursuant to N.J.S.A. 24:21-19a(1) is affirmed.

IT IS FURTHER ORDERED that the application of Robert E. Gillis for a casino employee license is granted for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Robert E. Gillis, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0263-86

AGENCY DKT. NO. 85-EA-207

**ROBERT E. GILLIS,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW**

**AND PUBLIC SAFETY,**

Respondent.

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**Robert E. Gillis, petitioner, pro se**

**Joanne Cocchiola, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: April 10, 1986

Decided: May 27, 1986

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

**STATEMENT OF THE CASE**

Robert E. Gillis, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the applicant had committed a disqualifying criminal offense, under section 86 of the Casino Control Act (Act), and by reason that the applicant lacked the requisite good character, honesty and integrity, under section 89b(2). Although the petitioner conceded his criminal record, he contended that he satisfied the rehabilitation criteria of section 90h.

PROCEDURAL HISTORY

Mr. Gillis filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on November 14, 1984 (P-7). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated November 25, 1985, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on January 3, 1986, the petitioner requested a hearing. On January 13, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 28, 1986. The matter was heard and the record closed on April 10, 1986.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Gillis is 28 years of age (P-7). He is a June 1975 graduate of Fort Myers High School in Florida.

In March 1976 the petitioner entered the United States Air Force. In December 1976 he completed technical training school. In January 1977 he was assigned to the Torrejon Air Force Base in Spain. He was 19 years of age. The petitioner was assigned as an air navigational technician and repaired flight monitoring equipment. Approximately one year after his arrival in Spain the petitioner began to use drugs on occasion. He then held the rank of senior airman.

As a result of an investigation conducted by the Air Force, the petitioner was arrested and, on February 2, 1979, he was charged with violations of Article 134 of the Uniform Code of Military Justice (UCMJ), which consisted of seven specifications of the sale of cocaine, use of marijuana in the hashish form and incapacity for duty, on various dates in January, February and March 1979; and of Article 81 of the UCMJ, which consisted of two specifications of conspiracy to sell cocaine (J-1, R-1 and R-2). The petitioner was 22 years of age at the time of the incident. All charges against the petitioner also involved Sergeant John W. Browning, who was 30 years of age and was the petitioner's best friend. In excess of 50 other persons were also arrested and were

charged with related offenses. The petitioner pled guilty to some of the charges but not all of the charges. He was tried before a general court-martial and was found guilty of all charges. On July 3, 1979, the petitioner was sentenced to a bad conduct discharge, confinement at hard labor for one year and reduction to the grade of airman basic. Sgt. Browning was sentenced to two years' confinement at hard labor and a dishonorable discharge. Although the petitioner described his role in the activities which will be discussed further, infra, he did not deny his misconduct, and stated that he was either present or participated in all incidents set forth in the charges.

The petitioner did not dispute that his misconduct constituted a violation of N.J.S.A. 24:21-19a(1), which is a disqualifying offense under section 86c(3).

Immediately following his sentence, the petitioner was incarcerated in Spain for a period of two months. During that time he participated voluntarily in a drug orientation program, which consisted of speaking to new Air Force arrivees regarding the drug culture in Spain and the potential pitfalls that might be encountered.

Thereafter and until April 19, 1980, the petitioner was confined at Fort Leavenworth, Kansas. During this period of confinement, the petitioner voluntarily participated in an eight-week rehabilitation program. More specifically, this program consisted of a repetition of basic training. The purpose of the program was to establish rehabilitation and worthiness for reinstatement into the Air Force. The petitioner completed the program successfully and earned a recommendation for reinstatement.

Upon his release, the petitioner was transferred to Lowry Air Force Base in Colorado (P-6). The petitioner was assigned to the correction and rehabilitation squadron. He was returned to duty in order to await the completion of an appellate review of his application for reinstatement. The petitioner stated that it was his intention to remain in the Air Force. However, because the appellate decision process was not expeditious, the petitioner was released from active duty on October 21, 1980, with a bad conduct discharge.

The petitioner remained in Colorado and was employed at various jobs. He met and began to date Michelle Miller, his current fiancée.

In September 1981, the petitioner returned to Florida (P-7). He worked at various jobs, including a cook and a bartender.

During fall 1981, the petitioner was employed as a bartender by the Key South Lounge in Ft. Myers, Florida. On September 24, 1981, the petitioner was arrested by the Ft. Myers Police Department and was charged with a disorderly persons offense—fighting—comparable to N.J.S.A. 2C:33-2. The circumstances underlying the incident will be discussed, infra. Because the petitioner failed to appear in municipal court, he forfeited his bail of \$43 as a fine.

The petitioner relocated to Atlantic City in September 1983, because of the lack of career employment opportunities in Florida.

In April 1984, the Commission issued the petitioner casino hotel employee registration number 51979-40. The Division has not filed any complaint against this registration.

In April 1984, the petitioner was employed as a transportation dispatcher by the Boardwalk Regency Corporation (BRC). After six months, the petitioner transferred to the housekeeping department, which was an upgrade in position. He was promoted to assistant shift supervisor and was assigned to the casino floor, during which period he held a temporary casino employee license (P-1). The petitioner's performance of his duties and responsibilities was positive in all respects (P-2 and P-3). Thereafter and at the petitioner's request, he was transferred to assistant shift supervisor in the hotel area. The petitioner made this request in anticipation of the Division's objection letter and in order to gain a wider range of experience.

The petitioner is currently employed as an assistant shift supervisor in the housekeeping department of the Claridge Hotel and Casino (Claridge). He is eligible for a promotion to shift supervisor, which position requires a casino employee license, because access to the casino floor is a function of the position.

In January 1986 the petitioner, together with his fiancée, purchased a home in Hamilton Township, Atlantic County. They plan a June 1986 wedding.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the 1979 charges, the circumstances underlying the incident in Ft. Myers in 1981, the petitioner's rehabilitation and the petitioner's good character, honesty and integrity.

The petitioner described the circumstances underlying the charges filed against him by the Air Force in 1979. He stated that he was young and naive at the time and had become involved with the wrong crowd, which had a negative influence on him. He was befriended by Sgt. Browning, for whom he occasionally did favors, such as transport narcotics. The petitioner used drugs on occasion in a purely social context. The petitioner's involvement in illegal drug activity was not in a business manner, i.e., it was not for profit. The petitioner also described the charge of his incapacity for duty. More specifically, every third day the petitioner was on duty for a 24-hour period, which consisted of 8 hours on duty and 16 hours on call. Following his on-duty assignment, and while off-base, the petitioner smoked hashish. Although he was technically available for duty, he was not called that day. The petitioner's explanation of his conduct was identical with the explanation he gave to Division Agent Agustin Garcia during a telephone interview.

The petitioner also described the circumstances underlying the incident of September 24, 1981, in Ft. Myers, Florida. At the time of the incident, the petitioner was not on duty, but he was in the lounge. A fight between patrons erupted, which moved outside of the premises. The petitioner and others followed the incident outside. A daughter of the owner of the lounge attempted to speak to the patrons involved in the fight, and one of the patrons moved to attack her. At that point, the petitioner attempted to protect the woman and to break up the fight. Concurrently, the police arrived and, having observed that the petitioner was involved in the incident, they placed him under arrest and filed charges. The petitioner had not consumed any alcoholic beverages prior to the incident. The other participants in the fight were charged with drunk and disorderly conduct. The petitioner failed to appear for his court hearing because he was unaware of the date. Because his failure to appear resulted only in the forfeiture of his bail (in the amount of \$43) as a fine, the petitioner was not concerned

and did not attempt to reopen the proceedings. The petitioner's explanation is entirely consistent with the explanation he provided to Agent Garcia. In addition, the petitioner offered the affidavit of Arnold F. Fiore, the owner of the lounge (P-5). Mr. Fiore's affidavit contains a description of the incident which is fully consistent with that given by the petitioner.

Although the Division did not offer any evidence to refute the petitioner's explanation of the circumstances underlying the incidents, it is necessary to assess Mr. Gillis' credibility prior to making a finding of fact. Initially, the petitioner's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the incidents was consistent with the statements he made to Agent Garcia during his telephonic interviews, was consistent with the documentary evidence and was, regarding the 1981 incident, corroborated by the affidavit of Mr. Fiore. It was clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and the sincerity with which the petitioner acknowledged the scope and seriousness of his prior misconduct, that the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable, sincere and completely persuasive. The petitioner acknowledged fully the extent of his wrongdoing and accepted full responsibility for his misconduct. In the final analysis, I am persuaded to accept his testimony in all respects.

The petitioner also testified to his rehabilitative efforts. Following his conviction at his court-martial in 1979, the petitioner did not harbor any ill feelings towards the justice system. On the contrary, he accepted his penalty as deserved. Further, he used his incarceration to commence rehabilitation and to begin to rebuild his life. He completed successfully all penalties imposed under his sentence. The petitioner has not suffered any relapse of his prior drug use. The petitioner further contended that the 1981 incident in Florida was minor in nature and was unrelated to his misconduct in 1979. The petitioner has established a positive employment record within the casino industry and has substantial career goals in the industry. He has matured and will not repeat his prior misconduct. Further, he is now cautious and selective of friends and avoids situations which could lead to problems. The petitioner is engaged to be married and has purchased a house in anticipation thereof. He has completely rearranged his priorities.

It was established convincingly that the petitioner has made substantial rehabilitative efforts during the past seven years. Further, he successfully explained that the 1981 incident was minor in nature and should not reflect upon him in a negative manner. There is every reason to believe that the petitioner will not repeat his prior misconduct.

The petitioner produced three witnesses on his behalf. The first witness was Robert Carberry, a shift supervisor in the housekeeping department of BRC since 1979. The witness has known the petitioner since early 1984 and recommended him to BRC for employment in April 1984. The witness directly supervised the petitioner for a period of time. Mr. Carberry observed the petitioner to have a very good ability to take charge. Also the petitioner sought out additional responsibilities. Ultimately, the witness relied fully upon the petitioner in the performance of his duties on the casino floor. The witness also testified that he trusts the petitioner as he would a brother. The witness has a social relationship with the petitioner. Mr. Carberry also testified that the petitioner is well regarded by all supervisors and has an excellent potential for promotion. The witness has not observed any indication of drug use by the petitioner.

The petitioner's second witness was Randy Spencer, an assistant shift supervisor and shift supervisor with BRC. The witness has known the petitioner for approximately one year and has been his immediate supervisor. Mr. Spencer stated that the petitioner's work performance has been excellent and that he has recommended the petitioner for promotion. The witness has not heard any negative comments regarding the petitioner. Mr. Spencer was of the opinion that the petitioner was a person of good character, honesty and integrity, and has not observed any indication of drug use.

Michelle Miller, the petitioner's fiancée, was the last witness on his behalf. The witness has been employed as a cashier and waitress for the past two and one-half years by BRC. She holds a current casino hotel employee registration. Ms. Miller has known the petitioner since his discharge from the Air Force in Colorado. Ms. Miller testified that the petitioner has a very strong personality and has established very high career and personal goals for himself. Further, he is a positive person and an achiever. The witness also stated that a condition of their relationship is the petitioner's promise never to use drugs. The petitioner has met this promise. Also, the petitioner has a very strong anti-drug attitude and does not associate with persons involved in drug activities.

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

1. Mr. Gillis was a credible witness and his testimony was candid, consistent with the documentary evidence and believable in all respects.
2. The petitioner's explanation of the circumstances underlying his misconduct in 1979 was believable and persuasive and is adopted fully as a finding of fact.
3. The petitioner's explanation of the circumstances underlying the incident in Ft. Myers, Florida, in 1981 is believable and persuasive and is adopted fully as a finding of fact.
4. The petitioner's involvement in the 1981 incident in Ft. Myers, Florida, was minor in nature and was unrelated to his prior misconduct. Accordingly, this incident does not reflect negatively upon the petitioner.
5. The petitioner has made substantial rehabilitative efforts during the past seven years.
6. There is little likelihood, if any, that the petitioner will repeat his prior misconduct.
7. The petitioner has not used or otherwise been involved with illegal drug activities since 1979.
8. Close friends and employment supervisors of the petitioner are of the opinion that he is a person of good character, honesty and integrity.

**DISCUSSION OF LAW AND CONCLUSIONS**

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

Section 86g provides that an applicant can be disqualified from licensure because of the commission of any act which would constitute an offense under section

86c, even if there has not been a prosecution for such conduct. Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19, be disqualified from licensure and/or registration. The Division alleged that the respondent's conduct in 1979 constituted a violation of N.J.S.A. 24:21-19a(1), which could disqualify the petitioner from licensure. The petitioner did not dispute that his convictions for violations of Articles 134 and 81 of the UCMJ were comparable to a violation of N.J.S.A. 24:21-19a(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed a violation of N.J.S.A. 24:21-19a(1), which disqualifies him from licensure.

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

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Gillis seeks a license in order to be employed as a shift manager in a maintenance and cleaning capacity, which would permit him to work on the casino floor. As such, he would have no direct responsibilities for actual gaming activities, but he would be employed in a supervisory capacity on the casino floor and would have substantial contact with casino patrons.

Second, the petitioner committed an offense comparable to a violation of N.J.S.A. 24:21-19a(1), possession of controlled dangerous substances with intent to distribute as well as distribution. It is also apparent that the petitioner used controlled dangerous substances on a social basis. Because the offenses are included as disqualifiers under section 86c(3), they are serious. In addition, the misconduct occurred over the course of approximately one year, which enhances the seriousness thereof. The petitioner's conduct in 1981 in Ft. Myers, Florida, was not serious and was successfully explained away.

Third, the misconduct in 1979 was committed knowingly, but was somewhat mitigated because the petitioner was influenced by an older crowd. Further, the petitioner did not participate in the activities for profit.

Fourth, the petitioner's misconduct occurred during late 1978 and early 1979. It ceased with his arrest in February 1979, approximately seven years ago.

Fifth, the petitioner was 22 years of age at the time of the incident in Spain. There was evidence to indicate that his misconduct was due, in part, to immaturity.

Sixth, although the petitioner's misconduct in 1979 occurred over a period of several months and included numerous incidents, it was isolated in nature because it did not occur prior to nor subsequent to that time.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the petitioner has made substantial rehabilitative efforts. At the time he was charged he acknowledged fully his misconduct and accepted responsibility therefor. In addition, he accepted the sentence imposed as deserved and without any negative feelings towards the justice system. During his period of incarceration in Spain

the petitioner participated in a counselling program for Air Force personnel newly assigned to Spain. At Ft. Leavenworth the petitioner voluntarily participated in a repetition of basic training in an effort to be reinstated into the Air Force. This effort required a great deal of courage. In addition and although the sentence imposed on the petitioner was substantial, it revealed that his misconduct was not viewed by the Air Force as the most serious of the participants in the illegal activities. The petitioner completed successfully his entire sentence. He has not been involved subsequently with illegal drugs. Also, the petitioner has established a very positive employment record in the casino industry and has qualified himself for promotion. It was well established that the petitioner is a responsible, reliable, hard-working and trustworthy person. He has earned the respect of his past and present supervisors. The petitioner has also successfully re-entered the community. He has completely rearranged his priorities and has established a solid foundation for his future life. In the final analysis, the petitioner has seized the opportunities available to him during his period of incarceration and subsequent thereto and has distinguished himself in every regard. Although the petitioner cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation.

It is also important to note that this petitioner, although representing himself, made one of the most compelling presentations of rehabilitation that this administrative law judge has witnessed during the past seven years.

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

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

Under section 89b(2) of the Act, Mr. Gillis was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

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

The burden carried by Mr. Gillis was substantial by reason of the seriousness of his earlier misconduct. However, it is apparent that, commencing with the initiation of criminal proceedings and continuing throughout his incarceration and in particular his employment within the casino industry, the petitioner has gained control over his life and has rearranged his priorities in a positive manner. The petitioner has affirmatively demonstrated his rehabilitation. Accordingly, there is little likelihood if any, that the petitioner will commit any unlawful acts in the future. The petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the "whole man" clearly and convincingly establishes that Mr. Gillis is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2).

DISPOSITION

It is **ORDERED** that the application of Robert E. Gillis for licensure as a casino employee be **GRANTED**.

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

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

May 27, 1986  
DATE

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

Receipt Acknowledged:

5-28-86  
DATE

Nilores Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 30 1986  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS INTO EVIDENCE

- J-1 Department of the Air Force, Headquarters United States Air Forces in Europe--General Court-Martial Order Number 53, October 23, 1979 (3 pages)
- J-2 DD Form 214, Certificate of Release or Discharge from Active Duty, Robert Eugene Gillis, October 8, 1980.
- P-1 Letter to Robert Gillis from Peter G. Boynton, President and Chief Operating Officer, December 6, 1984.
- P-2 Boardwalk Regency Hotel Casino - Annual Performance Review Executive (Line) Management Employee Profile, Robert Gillis, February 9, 1985 (8 pages)
- P-3 Boardwalk Regency Hotel Casino - Supervisory Annual Performance Review, Robert E. Gillis, November 21, 1985 (2 pages)
- P-4 Letter from John R. Ceresani, March 21, 1986
- P-5 Affidavit of Arnold F. Fiore, March 15, 1986
- P-6 Department of the Air Force - Duty Status Change, Robert E. Gillis, October 9, 1980 (3 pages)
- P-7 New Jersey Casino Control Commission - Personal History Disclosure Form-2A, Robert Eugene Gillis, Filed on November 14, 1985 (29 pages)
- R-1 Article 134 of the Uniform Code of Military Justice (5 pages)
- R-2 Article 81 of the Uniform Code of Military Justice (6 pages)

WITNESSES

For the petitioner:

Robert Carberry  
Robert E. Gillis  
Michelle Miller  
Randy Spencer

For the respondent:

Agustin Garcia  
Robert E. Gillis

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
PETITION REFERENCE NO. 143605

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IN THE MATTER OF THE APPLICATIONS :  
OF GNOC, CORP. T/A GOLDEN NUGGET, :  
FOR RENEWAL OF A CASINO LICENSE :  
AND OF ATLANDIA DESIGN AND :  
FURNISHINGS, INC. FOR RENEWAL OF :  
A CASINO SERVICE INDUSTRY LICENSE :

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OPINION

Before:

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

Appearances:

For GNOC, CORP. and Atlandia Design and Furnishings,  
Inc.:

Martin L. Greenberg, Esq.  
Marilu Marshall, Esq. (Pro Hac Vice)

For the Division of Gaming Enforcement:

Anthony J. Parrillo, Director  
Thomas N. Auriemma, Deputy Director  
Eugene M. Schwartz, Assistant Director  
Fredric E. Gushin, Assistant Director  
James C. Fogarty, Deputy Attorney General  
Mitchell A. Schwefel, Deputy Attorney General

For the Casino Control Commission:

John R. Zimmerman, Deputy Director  
Margaret A. Holland, Assistant Counsel  
Leonard J. DiGiacomo, Assistant Counsel

I. INTRODUCTION

This matter is before the Commission pursuant to the applications of GNOC, CORP. (GNOC) for a renewal of its casino license and of Atlandia Design and Furnishings, Inc. for a renewal of its casino service industry license. The qualification criteria pertinent to this license renewal proceeding are set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. After the parties were given an opportunity to review and comment on that Instruction, it has been distributed to the Commissioners as a part of the record of this renewal hearing and 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. Pertinent findings with regard to other licensing criteria will be contained in a separate license resolution.

The evidence presented at this hearing relates to three general topics, namely, the Stardust and Fremont obligations, the Castelbuono affair, and the Golden Nugget's hiring and marketing practices.

II. STARDUST AND FREMONT OBLIGATIONS

The first of these topics concerns GNI's purchase and eventual sale of notes originally held by the trustees of the Central States, Southeast and Southwest Areas Teamster

Pension Fund. The notes were secured by a mortgage obligation on the Stardust and Fremont Hotels in Las Vegas.

The colorful and sordid history of the Pension Fund and the two hotels in question need not be described in detail because GNI did not deal with any of these entities. GNI purchased the notes from Victor Palmieri and Company, the federally appointed trustee for the Fund. Subsequently, GNI accepted prepayment of the notes, and thus obtained a sizeable profit, in connection with the purchase of the hotels by the California Hotel and Casino. The evidence indicates that GNI accepted prepayment at the behest of Nevada gaming officials.

The Fund has sued GNI, claiming that it is entitled to share in the profits realized by GNI on the sale of the notes. This Commission should not presume to predict the outcome of that litigation, although GNI's counsel has expressed unguarded optimism that the suit will be resolved favorably to it.

The Division's post-hearing brief indicates that the primary relevance of this issue is to demonstrate the failure of the GNI board to oversee the affairs of the company. While the board might have been more involved, it suffices to say that the entire matter is a very minor part of this case.

### III. ANTHONY CASTELBUONO

The Castelbuono affair cannot be so quickly dismissed. However, the facts are largely undisputed, and can be briefly summarized.

On November 26, 1982, Charles Meyerson, in connection with his duties as a host at the Golden Nugget, received a telephone call from Gus Lauro, whom he knew as a patron. Lauro called from the Tropicana and advised Meyerson that he would be sending a substantial cash player to the Golden Nugget.

In the early morning hours of November 27, Anthony Castelbuono arrived and was immediately shown the Golden Nugget's penthouse suite. Upon finding the accommodations satisfactory, he determined to stay. D. Boone Wayson, who was then serving as casino marketing vice president, had left word for Meyerson to bring Castelbuono to the casino manager's office. As the party approached the office, Castelbuono was introduced to Wayson as "Tony Cakes," the name he told Meyerson he wished to adopt in order to reduce the risk of kidnapping.

Upon entering the casino manager's office, Wayson and the Golden Nugget support staff proceeded to clear off the manager's desk. Ben Valenza, Castelbuono's body guard, then opened the first of several suitcases containing a total of

\$1,187,450 in mostly small bills, and the contents were dumped on the desk.

According to Wayson, he was uncomfortable with the situation primarily because of the number of small bills involved. He determined to segregate the money in order that the same small bills could be returned to the customer in the event suitable gaming play did not occur. Wayson also contacted Sabino Carone, Director of Surveillance, at approximately 8:00 a.m. on November 27, 1982, and instructed him to investigate Castelbuono. By that time, Meyerson, based on a conversation with Lauro, had advised Wayson as to Castelbuono's true identity.

Because of the enormous volume of money involved, the actual counting of the cash in the manager's office took about five hours. By 3:38 a.m. on November 27, 1982, at least \$300,000 had been counted, and a deposit of that amount was made at the cage. Within five minutes, Castelbuono went to a baccarat table, withdrew \$300,000 and began playing at a furious pace. According to the Golden Nugget's records, Castelbuono played for approximately one hour and forty-five minutes and lost \$295,000 on an average bet of \$50,000.

Just about the time that Castelbuono completed his initial play at the tables, another \$600,000 had been counted in the casino manager's office. At 5:30 a.m., that

amount was deposited in the cage. Almost immediately thereafter, Castelbuono made two customer deposit withdrawals totalling \$10,050 in cash which was given in large bills with Wayson's approval.

By 6:06 a.m., the remaining portion of the amount Castelbuono brought with him was counted, and a deposit of \$287,450 was made at the cage. At that point, Castelbuono had lost \$295,000, his balance at the cage was \$877,400, he had been given \$10,050 in cash and he apparently had \$5,000 in chips.

Around 7:00 a.m., Golden Nugget was scheduled to make a regular cash deposit at a local commercial bank. Wayson had been contacted sometime after the end of Castelbuono's play that morning and authorized the deposit of \$300,000 of the segregated money received from Castelbuono to relieve space limitations in the cage. According to Wayson, depositing an amount of Castelbuono's segregated money approximately equal to the amount he had lost would still preserve the Golden Nugget's ability to return small bills to him. However, we have been told that according to Golden Nugget's records, almost \$400,000 was initially deposited from the segregated funds.

By approximately 11:30 a.m. on November 27, 1982, Carone reported to Wayson that Castelbuono was a

Harvard-educated lawyer with a limousine business, and that he had no known ties to organized crime.

At 9:31 p.m. on November 27, 1982, Castelbuono returned to the baccarat table. He immediately withdrew \$850,000 and began playing at the same pace as before. According to the Golden Nugget's records, he lost \$14,000 in 45 minutes, making average bets of \$50,000.

Upon ceasing play, Castelbuono instructed Valenza to go to the cage to make a chip deposit. When he arrived at the cage, Valenza was advised that he could not deposit the chips in Castelbuono's account, and he therefore opened an account and deposited \$800,000 under his own name. At this point, Castelbuono had lost \$309,000, there was a cage deposit balance of \$827,400 between Castelbuono and Valenza, \$41,000 in chips was unaccounted for, and \$10,050 in large bills was already in Castelbuono's possession.

After concluding his play on November 27, 1982, Castelbuono advised Wayson that he was through playing but that he would be staying at the Golden Nugget, possibly through November 29. This information caused Wayson concern, and prompted him to advise Castelbuono that the Golden Nugget would not in the future accept a small bill transaction from him. Castelbuono assured Wayson that such a transaction would not occur in the future.

At 11:00 a.m. on November 29, 1982, Castelbuono and his party left the Golden Nugget, after receiving the \$800,000 in Valenza's account in large bills. Wayson made the decision to give Castelbuono large bills primarily because: (1) Castelbuono had demonstrated he was a gambler; (2) there was no adverse information disclosed in the background check; (3) Castelbuono had promised that he would not return with small bills; and (4) Castelbuono left \$27,400 on deposit with the Golden Nugget.

Castelbuono returned to the Golden Nugget in December 1982 and in January 1983, with large bills which he used to gamble, suffering large losses. There were other contacts between Golden Nugget and Castelbuono subsequent to the initial Thanksgiving weekend involving marker collection procedures, a car purchase, a ski trip, and trips to Atlantic City and Las Vegas, to name a few. However, we must focus on the events of November 26, 27, 28 and 29, 1982.

During those four days Castelbuono arrived at the Golden Nugget with \$1,187,450, primarily in denominations of \$5, \$10 and \$20, lost over \$300,000 and left with \$800,000 in large bills. Subsequent indictments and convictions in federal court have established that the money originated from the importation into this country and sale of heroin, and that, as part of a criminal conspiracy, Castelbuono was

assigned to convert the small bills to large bills at Atlantic City casinos.

Based on the evidence presented, the Golden Nugget made reasonable attempts to investigate Castelbuono's background, and found evidence that he was a legitimate businessman. On November 27 Golden Nugget segregated his money in its cage, and later that evening Wayson told Castelbuono that he would not accept future transactions involving small bills. Clearly, these steps were to the good.

However, one might question whether Golden Nugget acted too quickly to accept Castelbuono's money, with no idea of its origin other than for his obviously false claim that it came from restaurants. One might also question whether Golden Nugget was too willing to return \$800,000 in large bills to Castelbuono and was too quick to deposit some of his money in the bank, particularly since Wayson's explanation for doing so necessarily assumes that Castelbuono either was not going to gamble any more or was going to continue to lose.

Golden Nugget has complained that this affair has exacted a great toll on its resources and on its reputation. If the company had displayed slightly less concern for the bottom line, and a bit more concern for the policies on which the Casino Control Act is founded, it might have saved

itself, and the Commission and the Division, much time and turmoil.

Considering this affair as a whole, Golden Nugget could have proceeded with greater prudence and circumspection. However, the matter does not seriously impugn the good character, honesty and integrity of the licensee, or of Wayson or any other qualifiers. Although not controlling at the time, the later adopted federal rule, requiring currency transaction reports to be filed for cash transactions over \$10,000, should reduce the likelihood that anyone will in the future come to a casino with large amounts of cash for money laundering. More importantly, Golden Nugget has represented that, in the future, any patron who comes to the casino with a large sum of money in small bills will have those same bills returned to him, regardless of the amount or result of his play. It should also be noted that a factor in Golden Nugget's favor is its contemporaneous reporting of this incident to the Division and the Commission. It is expected that, if a patron should appear in the future with funds which, under all of the circumstances, appear to be of illegitimate origin, the agencies will be notified simultaneously with the processing of the transaction.

#### IV. MARKETING AND HIRING PRACTICES

##### Introduction

The most substantial issues in this case are those relating to Golden Nugget's hiring and marketing practices.

There has been much discussion about whether the Golden Nugget is marketed to high rollers. Its industry leadership in win-per-square-foot is a clear indication of such a marketing strategy. However, the testimony demonstrates that Golden Nugget also seeks patrons who gamble at a more moderate rate. More to the point, Golden Nugget has convincingly demonstrated that it does not make a conscious effort to attract that class of high roller comprised of members of the criminal underworld. If such were not the case, Golden Nugget's fitness for licensure would be far different than it currently is.

There has also been much discussion at this hearing concerning Golden Nugget's efforts to carry out the specific mandate of section 71(d), N.J.S.A. 5:12-71(d), that it exclude from its facility persons not on the exclusion list but nonetheless known to it to come within the criteria for placement on that list. It has not been demonstrated that Golden Nugget is a significantly greater offender than the other casinos in this regard, or that this is a matter reflecting negatively on its suitability for relicensure. Accordingly, further comment regarding section 71(d) is unnecessary in the context of this hearing.

Yet another area that has attracted much attention at this hearing involves Golden Nugget's policies regarding the granting of credit and complimentaries. Again, this is not a matter which calls Golden Nugget's fitness for licensure into question, nor it is a problem unique to Golden Nugget. This issue, like the one previously discussed, is best left for more deliberate reflection on another day. But until that day, Golden Nugget and the entire casino industry should strive to initiate voluntary cooperative efforts to reduce or eliminate obvious problems.

Mel Edward Harris

Turning now to issues which require immediate resolution, at this hearing we have heard the names of many allegedly unsavory individuals with whom the Golden Nugget has dealt. It seems clear that the most serious questions are raised by the company's association with Mel Edward Harris.

Mel Harris has been known to Stephen Wynn since the 1960's, and was a high school friend of Elaine Wynn. Wynn testified that he had seen Harris sporadically during the 1970's and early 1980's. In 1984 the two men met at the Golden Nugget, and Harris' accomplishments in the business world became a topic of conversation. Wynn was impressed with Harris' achievements, and with what he perceived to be his leadership ability. Despite Harris' complete lack of

experience in the gaming industry, Wynn broached the subject of his possible employment with the Golden Nugget.

Thereafter, the two men engaged in increasingly serious negotiations. On August 16, 1984, GNOC filed Harris' Personal History Disclosure Form with this Commission. Thereafter, GNOC filed a petition seeking permission for Harris to perform the duties of a director of GNI and GNOC and Vice President of Marketing of GNI, prior to his qualification under the Casino Control Act. The Division consented to the petition, and the Commission granted approval for Harris to exercise the duties of those positions from September 21 to December 20, 1984. On September 21, 1984, Harris was elected a director of GNI and GNOC. He had already been named to the board of GNLV in August 1984.

On November 5, 1984, the employment agreement between Harris and Golden Nugget was formally executed. The contract was for five years, at an annual salary of \$400,000. More significant, at least to Harris, were a stock purchase agreement for 250,000 shares of GNI convertible preferred stock, with the purchase of the stock to be funded by an annual bonus, and a stock option agreement for 500,000 shares of GNI common stock at a price equal to 75% of the stock exchange price on November 5, 1984.

In addition to these positions, Wynn foresaw the possibility of Harris becoming the chief operating officer of GNI, and advised Harris of that possibility.

From the outset of their discussions, Wynn was aware that Harris was the son of Allie Harris, a notorious Miami bookmaker and reputed associate of various organized crime figures, and that Harris had been the son-in-law of Lou Chesler, who had developed a casino hotel in the Bahamas, reputedly on behalf of Meyer Lansky. Wynn was also aware that Harris had met, through his father, a variety of disreputable individuals.

James Powers, GNI's Director of Corporate Security, Sabino Carone, then Director of Surveillance for GNOC, and Alfred Luciani, Vice President of GNAC, quickly became aware of Harris' background, and an internal investigation was commenced. According to Luciani's testimony:

The ultimate issue that was presented for consideration was whether or not the son and son-in-law, respectively, Mr. Mel Harris, if he had no associations of his own, direct associations of his own, was licenseable in the State of New Jersey. [T1681-19 to 23].<sup>1</sup>

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1. "T" refers to the several volumes of transcripts from the license renewal hearing.

It is clear from the testimony of Luciani, Wynn and others that Golden Nugget concluded from its investigation that Harris had no direct associations with organized crime figures, but that he could not be licensed in New Jersey unless this was established at a hearing.

The record indicates that Wynn, Powers and Luciani all had extensive discussions with Mel Harris about his background and his relationships with underworld figures, but that no one inquired specifically into whether these relationships had continued after the death of Harris' father in late 1983.

At its deposition of Harris in December 1984, the Division did engage in this rather obvious line of inquiry. Harris stated that, after his father's death, John Tronolone told him that Anthony Salerno wished to see him. We have evidence before us that Tronolone is an associate of organized crime, and the United States Government has identified Salerno as the boss of organized crime in New York.

Harris told the Division that in March 1984 he travelled from Miami and visited Salerno at a club on the upper east side of New York City. In his Division interview, Harris testified that he visited Salerno alone, and that they merely engaged in small talk concerning Harris' late father.

At a debriefing after the Division deposition, Luciani learned that Harris had revealed the Salerno meeting. Luciani reported this information to Stephen Wynn, and they were both of the view that the Golden Nugget could no longer sponsor Harris' application to this Commission for qualification. The application was withdrawn and, on December 17, 1984, Harris resigned from all positions with GNI and both of its operating subsidiaries.

The record at this hearing establishes that the information Harris gave to the Division at his deposition was inaccurate and incomplete, at least insofar as his relationship with Salerno is concerned. We have viewed videotapes, obtained through FBI surveillance, showing Harris entering a club frequented by Salerno on March 6, 1984, in the company of Sam Spiegel, and on March 20, 1984, in the company of Milton Parness. The tapes demonstrate that the former meeting lasted about 24 minutes and that the latter consumed about 49 minutes. There is evidence before us that Spiegel is alleged to be an associate of organized crime, and that Parness has a series of convictions for racketeering and interstate transportation of stolen securities, has spent time in jail with Salerno, and had been identified by Carone as a member of organized crime.

At this hearing, Harris testified that the first meeting was the one to which he referred during the Division

deposition. He continued to contend that the only purpose for that meeting was an exchange of pleasantries concerning his late father. He claimed to have no recollection of the subjects discussed at the second meeting. He also contended that at the time of the Division deposition he had forgotten the second meeting.

The Division presented testimony of Joseph Coffey, a principal investigator for the New York State Organized Crime Task Force. Coffey's credentials as an expert on organized crime are beyond question, as is his credibility as a witness. He said that the "social clubs" of the kind Harris was seen visiting in the videotapes are "citadels" where organized crime leaders are secure to conduct their business meetings. T2171-2 to 14. He testified that Harris' acquaintance with Salerno through his father would not be sufficient to enable Harris to gain entrance to such a club, and that only a business associate could gain entrance. In his view, it is unlikely that Harris would go to such a club to exchange pleasantries, because the clubs were places where underworld figures conduct their businesses.

The qualifications of Mel Harris for licensure are not at issue in this case. It is nonetheless appropriate to comment that his testimony at the deposition and during the hearing clearly lacks credibility. It is not necessary to

detail all of the reasons for this conclusion, but some of those reasons must be obvious from the foregoing discussion. It should also be unnecessary to describe the seriousness with which this Commission views this matter. However, at the risk of belaboring the obvious, the prospect of a person having uncontested access to Anthony Salerno sitting as an officer and director of a casino enterprise is, to say the least, frightening. Such a situation carries with it the potential to undo all of the past efforts of the Commission, the Division and the industry to foster and protect public trust and confidence in the casino industry.

However, the question before us is not what we should conclude about the qualifications of Mel Harris, but rather what should we conclude about the handling of this matter by the Golden Nugget.

In this respect, it is difficult to understand why no representative of Golden Nugget questioned Harris more closely concerning continuing associations with underworld figures, in view of the fact that the company knew that a hearing involving this very matter would be necessary before he could be licensed, and in view of the further fact that the company clearly considered the existence of any dealings with Salerno to preclude its continuing sponsorship of Harris.

It is equally perplexing that Powers and Luciani, both of whom knew that Harris was acquainted with Salerno, apparently never imparted this knowledge to the GNI board or its Chairman, Stephen Wynn. This information was likewise not included in Powers' written report, and, at any rate, as a matter of corporate practice security reports are not given to board members. In this case, the corporate practice resulted in the board having to discharge its responsibilities based on a rather summary oral report from management, a report which did not include even the specific information which the security department was aware of.

It is simply unacceptable for a company functioning in this most highly regulated of all industries to place a person of Harris' known background in its highest operational and policy-making echelons on the basis of hit-or-miss investigations, and haphazard and conclusory oral reporting to the board and its chairman.

In making these comments, it is not our intention to assign to casino licensees and their holding companies the investigatory job of the Division or the licensing function of the Commission. Obviously, licensees must submit their officials to the licensing process and rely upon the conclusions reached by the regulatory authorities who in turn here reached their conclusions based on the investigatory work of perhaps half a dozen people who were

so good that Mr. Wynn would have us believe that he thought there were 800 of them. Nonetheless, licensees are and must remain the first line of defense against underworld incursion into the casino industry, and against erosion of public trust and confidence in that industry.

This Commission has, in judging applications for initial licensure, always carefully examined the applicant's associations. The Commission must apply the same standard to applications for relicensure. It is not too much to expect that licensees, in admitting persons to their corporate hierarchy and presenting such persons for qualification, will act with caution and will guard against untoward relationships.

Indeed, any corporation interested in preserving its good character and good reputation would be circumspect in choosing a candidate to be a director and a potential chief operating officer. Any such corporation would heighten its circumspection in dealing with a candidate known to have acquaintances, familial or otherwise, in the world of organized crime. For an experienced casino operator to fail to exercise utmost care in this regard cannot be countenanced.

Irving "Ash" Resnick

Before attempting to reach any conclusion as to what remedial action may be appropriate as a result of the Harris

affair, we must consider Golden Nugget's actions with respect to several other individuals, most notably Irving "Ash" Resnick.

In an opinion dated December 12, 1984, this Commission found Ash Resnick to be an "unsavory individual", J-2-119, p. 15,<sup>2</sup> and found Edward Doumani to be lacking in good character due, among other things, to his association with Resnick. However, that opinion was issued after the Golden Nugget had ended its relationship with Resnick. In order to judge Golden Nugget's conduct with respect to Resnick, we must examine what Golden Nugget knew, or should have known, at the time of the relationship.

The relationship began in January 1983, when Stephen Wynn recruited and hired Ash Resnick to develop the Hawaiian market for GNLV. On January 21, Wynn requested James Powers to conduct a background investigation of Resnick. Resnick was hired on January 27, at a salary of \$200,000 a year. He was also given 10,000 stock appreciation rights, which resulted in his receiving \$237,500 in May 1983.

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2. "J" refers to the joint exhibits marked in evidence; "C" refers to Commission exhibits; "D" refers to Division exhibits; and "A" refers to applicant exhibits.

January 27, 1983, the day Wynn hired Resnick, is also the date of a memo from Powers to his file concerning his investigation. The memo, which Powers apparently discussed with Wynn but did not provide to him or anyone else in the company, noted that Resnick had been arrested and convicted of bookmaking on two occasions in 1946. The report also noted an instance in which Resnick received securities as collateral for markers and, instead of holding the securities, cashed them in. It noted another instance in which Resnick had discounted a marker, taken the payment in cash and converted it to his own use, and then written off the marker as uncollectible. Powers described each instance as constituting a "prosecutable case," but noted that in each instance the witnesses did not "hold up." J-1-118, p. 3.

In the January 27 memo, Powers concluded:

The general theme regarding Resnick is that everyone knew he was stealing money both from marker collection and the baccarat pit but no one could ever prove it. [J-1-118, p. 4].

Finally, Powers noted that Resorts in Atlantic City had considered hiring Resnick, but declined to do so because of questions concerning his licenseability, a "very adverse investigative report," and "a very real concern as to the basic honesty and integrity of Resnick based on numerous allegations, although not proven, against Resnick down

through the years." J-1-118, p. 4. We have also been supplied with a handwritten memorandum from Golden Nugget's file on Resnick, which states:

Has a reputation as a low-class type of guy. Associate of Meyer Lansky and was bag man for Fat Tony Salerno. Was a target on two occasions for bad gambling debts, once they tried to dynamite his automobile, the other, they tried to shoot him. [A-5-26].

Wynn testified that had he been aware of this information about Resnick's alleged ties to organized crime, he would have questioned Resnick. However, he was not made aware of the information.

Powers filed a written report of his investigation on February 17, 1983, after Resnick was hired. The report described Resnick as "a prominent and sometimes controversial Nevada gaming figure," who had unquestioned talents, but had to be "strictly controlled." A-5-26. The report further describes Resnick as "arrogant, unscrupulous, and devisive [sic] in a team-concept casino operation." Id. The report also states that Resnick does not enjoy a good reputation in the law enforcement community.

The report reveals that Resnick refused to testify in a civil action brought by the SEC against the Desert Palace, and that he was indicted in 1974 for income tax evasion, found guilty, and acquitted on appeal. The report also states that in 1978 Resnick's application for a gaming

license in Nevada was denied by the Gaming Control Board because of an alleged hidden interest in the Tropicana through fraudulent accounts, a careless attitude toward personal record keeping, and a general reputation for association with organized crime, but that the Board's decision was overridden and he was licensed by the Nevada Gaming Commission. Powers concluded in the memorandum that if Resnick were hired, his responsibilities and authority should be strictly spelled out and "stringent internal controls," Id., should be established to assure his separation from other casino functions, including credit.

On February 18, Wynn responded with a memorandum to Powers, stating that Resnick would not be given authority to grant credit or settle collections during his employment with Golden Nugget. Wynn further noted that none of the allegations against Resnick had been proven but, nonetheless opined that the Golden Nugget "should be very circumspect" with regard to Resnick. Id.

Powers' files describe a number of incidents which occurred while Resnick was in the employ of GNLV, and which cast doubt on his integrity. In one instance Resnick cashed a \$10,000 check at GNLV and the check was dishonored. He claimed to have reimbursed GNLV's cage for the \$10,000, but he could not produce a receipt evidencing reimbursement. In another incident he cashed a \$4,000 check at the cage, and

it was also dishonored. GNLV contacted the maker of the check, who advised that he had given the check to Resnick some time ago in payment of a marker owed to the Aladdin.

Resnick was fired on November 13, 1983, because the Hawaiian market which he was assigned to develop was not proving profitable, and because, in Wynn's words, officials of GNLV complained: "We are breaking our neck arguing with this guy and keeping track of him all the time." T2120-9 to 11.

In assessing the Resnick situation, we cannot overlook the fact that he was licensed in the jurisdiction in which he was hired, but neither can we deem that fact dispositive of all issues.

Where this Commission has found individuals at the highest levels of a holding company to be unqualified, it has required, as a condition of licensure in New Jersey, their removal from any involvement in the corporate structure, in New Jersey, Nevada and elsewhere. We have done so in order to insure the integrity of gaming operations in this State. We, of course, have never taken the position that a corporation operating in both jurisdictions can only hire people in Nevada who are licensed or licenseable in New Jersey. Nonetheless, it is not too much to expect that companies which engage in gaming activities in this State will be sensitive to our licensing

standards and to our desire to foster not only the reality, but the public perception, that our licensees and their holding and affiliated companies maintain the highest standards in all of their activities.

In his summation, Director Parrillo described the hiring of Resnick as "a most arrogant choice of business concerns over regulatory interests." T2404-11 to 13. We agree with the Director's characterization and with his analysis that the Resnick affair evidences a lack of proper corporate governance. Like the Director, we are distressed by the absence of a system which requires complete investigation before a person in Resnick's position is hired, as well as the filing of a complete written report of such an investigation with appropriate corporate officials.

Although Harris and Resnick are the primary examples of Golden Nugget's willingness to allow concern for the bottom line to override regulatory considerations, they are not the only examples.

Julius Weintraub

We have heard testimony at this hearing about Julius Weintraub, to whom we recently denied a junket representative license, and who has associated with alleged members of organized crime. One such individual, Mattie Ianniello, was described by Carone as a reputedly high-ranking member of the Genovese crime family. This

information may not have been known by Golden Nugget officials when they dealt with Weintraub. However, the company conducted no background investigation of Weintraub before contracting with him for personal services and for the purchase, for \$900,000, of a list of his junket customers. The Golden Nugget dispensed with a background check on Weintraub primarily because Wynn knew him for approximately 19 years. However, Wynn was not aware that the Nevada gaming authorities had on two occasions denied Weintraub permission to purchase an interest in the Dunes because of his associations.

Inexplicably, Golden Nugget failed to include in its agreements with Weintraub a condition precedent requiring his licensure. Eventually, Golden Nugget aborted its relationship with Weintraub because of what it describes as its sensitivity to regulatory concerns. However, Golden Nugget paid \$585,000 to Weintraub in order to settle a lawsuit he brought against it for failing to pay for his list. Had the agreements been conditioned on his licensure, it is doubtful that Golden Nugget would have had to make any payment.

It must also be noted that Golden Nugget recently provided \$2,000 in complimentaries to Weintraub. This occurred after our pronouncement regarding Weintraub's unsuitability for licensure.

Paul Perles, Alexander Katz and John Coury

There are at least three other instances of Golden Nugget's hiring practices which are of concern. In Miami, Golden Nugget hired Paul Perles and Alexander Katz, and in Columbus, Ohio it employed John Coury. While each of these men obtained a temporary junket representative license, such licensure precedes a full investigation by the Division and a finding of suitability by the Commission.

One cannot ignore Wynn's decision to hire Perles despite internal reports citing his bookmaking background and alleged associations with reputed underworld figures. Nor is it possible to dismiss lightly Katz' bookmaking activities.

Similarly, one must question Golden Nugget's decision to employ Coury, based in part on Perles' recommendation. Further, pre-employment Golden Nugget internal reports indicated that Coury was arrested for wagering stamp violations and was classified by the Nevada Gaming Control Board as uncooperative and undesirable. Golden Nugget eventually terminated Coury, based on his failure to advise the company that federal search warrants seeking illegal gambling records were executed against its Columbus office within two months of his employment.

V. CONCLUSION

The Commission is satisfied that GNOC, CORP., Atlandia Design and Furnishings, Inc. and their affiliated entities have met all applicable statutory requirements.

Accordingly, a one-year casino license and a gaming-related casino service industry license shall issue to GNOC, CORP. and Atlandia Design and Furnishings, Inc., respectively.

However, in light of all the evidence before us, the Division has requested that we append ten conditions to Golden Nugget's relicensure. Although we will renew the license, it is clear that an unconditional grant of relicensure is most inappropriate under the circumstances. Accordingly, we will now review the specific proposals and counter-proposals which have been advanced.

The Division first requests that GNI establish a compliance committee consisting of three new, independent and outside board members. The GNI, GNOC and GNLV boards now consist of the same nine persons, five of whom are considered management directors, and four of whom are deemed by the companies to be outside, independent directors. The latter group comprises the GNI audit committee. The applicant has represented that an additional outside director will be named to the three boards, in order to create an equality of management and outside directors.

This Commission has never had occasion to determine whether any of Golden Nugget's directors are outside and

independent as we have defined those terms in connection with conditions originally imposed upon Bally Manufacturing Corporation. What is essential here is that there be a committee composed of at least three outside and independent directors, as we have defined those terms. There is no need for this committee to be separate from the audit committee. Once the new director has been appointed and the continuing makeup of the GNI audit committee has been determined, the applicant should file a petition for a ruling that the members of the committee are outside and independent directors as those terms are defined in the Bally case. The petition should be filed within the next 90 days.

Once this first condition has been implemented, we will have the comfort of having a truly independent audit committee in place. However, as suggested by the Division, we should go further and specify what the functions of that committee should be.

The Division requests that the new committee insure compliance with gaming regulations; that it oversee employment and marketing practices, as well as policies regarding credit and complimentaries, of GNI and its gaming subsidiaries; and also that it assure that GNI and its gaming subsidiaries are not dealing with persons lacking integrity and that internal controls are functioning properly and in compliance with all license conditions. In

its response to the suggested conditions, the applicant essentially states that the GNI audit committee already performs some of these duties, and will expand its functions to encompass the remainder. As a condition of GNOC, CORP.'s relicensure, the GNI audit committee will be required to perform these functions and to report directly to the entire GNI board.

The Division next suggests that each GNI gaming subsidiary create a new vice presidential position responsible for surveillance department oversight. It is not our function to dictate the staffing of GNLV. GNOC notes that it presently has a director of surveillance who reports to its board of directors. GNOC argues, and we agree, that imposing an extra layer of corporate bureaucracy would not serve any regulatory purpose.

The Division next suggests that the boards of GNI and its gaming subsidiaries require background investigations of all proposed officers or directors, that the results of the investigations be in writing and filed with the compliance committee of GNI and with the appropriate board, and that no new officer or director assume his duties before the report is filed. The applicant objects to the condition, but essentially agrees to implement all of its provisions. The condition will be imposed with the understanding that

reports can be filed with the GNI audit committee rather than a separate compliance committee.

The Division next proposes a similar condition with respect to employees to be hired at a salary over \$100,000 per year. The applicant states that all prospective employees are and will continue to be investigated, with the scope of the investigation being proportional to the sensitivity of the proposed position. The applicant agrees that investigative reports will be reduced to writing, and further agrees to adopt a policy of providing a written report to the appropriate board if management seeks to hire an employee over an objection of the surveillance department. However, the applicant objects to routinely filing investigative reports with any board committee, and argues that this would shift a management hiring function to the outside directors.

As with most of the other conditions, there is not a great deal of difference between the Division's proposal and the applicant's statement of its present and intended policies. Once again we will impose the condition, so as to require written investigative reports on prospective employees to be paid \$100,000 per year or more, and to require that the written reports be filed with the audit committee and the appropriate company president when the investigation uncovers derogatory information.

The Division next requests that GNI's gaming subsidiaries each be required to maintain an adequately and competently staffed surveillance department responsible for conducting complete background investigations of proposed officers, directors, or employees with salaries of \$100,000 or more. It is not within our province to specify staffing levels for a Nevada gaming corporation. However, we have no problem requiring that GNOC maintain an adequately and competently staffed surveillance department. Nevertheless, we note that GNOC contends that its present surveillance department is adequately and competently staffed, and that the Division does not assert the contrary.

The Division next requests that GNI create a new vice presidential position for corporate security, with responsibility for conducting background investigations of proposed officers, directors or employees with salaries of \$100,000 or more. The applicant responds by noting that GNI has a vice president of security, and that a policy is in place for conducting investigations of proposed officers, directors and employees of GNI. Thus, we see no reason to impose this condition.

The Division next suggests that GNI and each gaming subsidiary promulgate and implement, through the GNI compliance committee, written policies and procedures regarding the issuance of credit and complimentary services

which are designed to advance the public policies of the Casino Control Act. The applicant objects, noting that the promulgation and implementation of such policies is a managerial function. The applicant also states that such policies already exist, and that they will be subject to review and oversight by the audit committee. The applicant further contends that the establishment and implementation of additional policies with respect to persons of unsavory reputations requires guidance from the regulatory authorities. We agree with the applicant's position, and, as has been noted already, this is an issue which is best left to an industry-wide solution. Accordingly, there is no reason to impose this condition.

The Division next urges that reports of the compliance committee of GNI should be in writing and filed with the board, and that reports of the vice president of corporate security of GNI and vice presidents of surveillance of the casino subsidiaries shall be in writing and filed with the compliance committee.

The applicant contends that the audit committee presently files written reports with the GNI board. The applicant further contends that the GNOC director of surveillance presently files written reports with the board, through its designee, and agrees to establish a policy

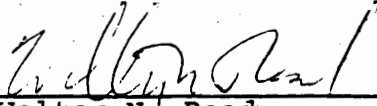
requiring the GNI vice president of corporate security to file written reports with its board.

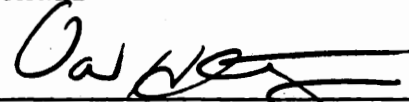
We have already ruled that we will not require the creation of new vice presidential positions or of a compliance committee separate from the GNI audit committee. However, the GNOC director of surveillance and the GNI vice president of corporate security will be required to file written reports with the audit committee, and the audit committee will be required to file written reports with the GNI board.

The Division next suggests that GNI and its subsidiaries be prohibited from engaging in direct or indirect business transactions with Mel Harris, Irving Resnick or Julius Weintraub. While the applicant objects to this condition, we will impose the condition, subject to further order of the Commission.


Finally, the Division requests that it and the Commission be promptly informed in writing of any formal appearances by officials of GNI or its gaming subsidiaries before governmental or investigative bodies where the subject of the inquiry may affect the respective company's reputation as to regulatory compliance. The applicant does not object to the principle, but feels the condition should be industry-wide. While such a condition should perhaps be imposed on other licensees, it is clear from the evidence

that it is justified in this case, and it will be imposed here.

  
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Walter N. Read  
Chair

  
\_\_\_\_\_  
Valerie H. Armstrong  
Vice-Chair

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

  
\_\_\_\_\_  
E. Kenneth Burdge  
Commissioner

As of September 19, 1986

SEPARATE OPINION OF  
VICE-CHAIR VALERIE H. ARMSTRONG

While I join in the opinion of the majority, I write separately for several reasons.

As has been noted, there were two issues which emerged during this hearing which are applicable to Golden Nugget but which are also relevant to the rest of the industry.

Specifically, I am referring to the mandate of section 71(d) of the Casino Control Act, N.J.S.A. 5:12-71(d), which requires a licensee to keep from its premises persons not on the exclusion list, but known to the licensee to fall within the criteria for placement on the list. The second issue is whether the granting or denial of credit and complimentaries should, in some way, relate to a patron's character, reputation or associations.

I agree that those issues cannot be resolved as part of this hearing, but their significance warrants further comment. A resolution of those issues should apply uniformly to the industry. The Casino Control Act is silent as to the issuance of credit and complimentaries as that issue arose in the context of this hearing. While it may be easy for some people to conclude that patrons with unsavory backgrounds should not receive credit and comps, the institution of such policy should be pursuant to appropriate legislation and regulations. Because this involves an

integrity issue directly related to marketing, industry-wide uniformity and consistency is essential, so that all casinos have the same competitive advantage.

Section 71(d) presents another dilemma. While the legislation requires a casino to exclude certain individuals from its premises, no guidance is provided either in the Casino Control Act or by regulation as to the procedures a licensee is to utilize in excluding a person from its premises.

Since a hearing is required before the Commission may place a person's name on the exclusion list, presumably some kind of hearing should be required before a licensee must exclude a person pursuant to the guidelines set forth in Section 71. However, no such hearing process is provided. Furthermore, our regulations provide a mechanism by which a person named to the exclusion list may subsequently apply to have his name removed from the list. No such procedures exist for a person whom a licensee is required to exclude pursuant to Section 71(d).

The section 71(d) issue is further complicated by the common law and case law dealing with access to public places. Our licensees need guidance on this section 71(d) issue in order to minimize their vulnerability to expensive and time-consuming lawsuits, frivolous or otherwise.

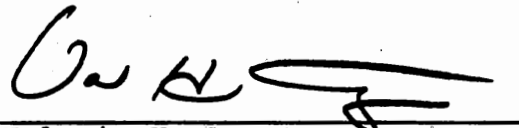
Before we address the licensee's responsibilities

pursuant to section 71(d), I feel that we need to first reevaluate the procedural and substantive issues involving the exclusion list. We must reexamine our regulations in order to clarify the standards for exclusion. Current regulations repeat the statutory exclusion list language without providing clear guidance as to what specific behavior or criminal offenses warrant placement of a person's name on the list.

It is important to define what we are trying to protect by maintaining an exclusion list. Exclusion proceedings are not licensing proceedings. Obviously, a patron does not have to prove he possesses good character before entering a casino. We must evaluate which patrons truly threaten the integrity of the industry or safety of other patrons. Exclusion by any state agency of persons from premises open to the public is serious business. Nevertheless, ensuring that organized crime does not infiltrate the casino industry is a top priority. Once the exclusion list standards are more clearly defined, we can then address the section 71(d) problem.

With regard to all of the issues I have mentioned, we need to first determine the proper forum in which to address them. We need substantially more information than could be presented at this hearing before any recommendations can be made regarding changes in legislation or regulations. These

are issues which are extremely complex and which may impact on law enforcement concerns, public perception and the economic viability of the industry. It may well be that solutions to some of these major issues and some of the collateral issues which will inevitably arise are not practically feasible. However, we need to put them to rest, industry-wide, one way or the other.



Valerie H. Armstrong  
Vice-Chair

SEPARATE OPINION OF  
COMMISSIONER CARL ZEITZ

We are at the end of a long but by no means the longest hearing conducted by this commission concerning the initial plenary or annual renewal license of an Atlantic City casino hotel. For the Golden Nugget this was the fifth annual renewal hearing following its initial license proceeding in 1981, the facility having opened for business in December 1980 under the now defunct temporary permit system.

Interestingly, the Casino Control Commission this year proposed to the legislature that the New Jersey Casino Control Act be amended to phase in a permissive biennial casino licensing system subject to the discretion of the commission, based on information provided by the Division of Gaming Enforcement, to call any licensee forward for a hearing during the pendency of a two-year license. The Atlantic City Casino Association avidly endorsed that proposal with a significant difference. The Association's version would make a two-year license mandatory and would place on the state a burden of justifying the call for a hearing to review a license during the interim two years.

This hearing demonstrates why that concept fails. Having discovered significant information, the DGE brought it to the Commission where it has been aired in public. Had that information been collected during the pendency of a

two-year license under the association's scheme, the state would have had the burden of showing why it should be subject to hearing prior to the expiration of such a license. That simply would not have done in this instance. The law says it is the burden of the licensee to show clearly and convincingly why it should remain licensed in the face of negative information. The Golden Nugget shouldered that burden in this hearing but it would not do for information as weighty as this to sit unattended for up to two years. I speak for the Commission when I say the Commission favors two-year casino licenses but under terms set forth by the Commission to assure the state is protected.

Let us turn now to the hearing, its contents, evidence and meaning. First, I join the majority opinion and support the factual findings and legal conclusions on which it is based and agree that GNOC should be relicensed subject to the proposed conditions.

Still I would like to offer some observations about certain issues that were central to this proceeding and about other issues which consumed a great amount of time and raise difficult questions. These other issues, though closely revealing of the industry, remain peripheral to the key question, indeed the only question before the Commission

now, whether to renew the license of GNOC. As noted, my response to that is yes.

In my view there were four of those central issues as the hearing began, Castelbuono, Harris, Resnick and to a lesser extent Stardust-Fremont.

Castelbuono

I agree with the findings of fact outlined in the majority opinion. In addition I should say that by my calculation, either treating Castelbuono's visits to the Golden Nugget in November and December 1982 as a series of three separate events or as one cumulative event, he lost about \$900,000. However, his first visit was and is the critical moment. On that occasion he brought \$1,187,450 in small denominations, deposited it, withdrew and gambled with a substantial amount of it, lost \$309,000 of it and departed the casino hotel with \$800,000 in currency in large denominations, leaving \$27,400 behind on deposit.

Which says what? Which says that a gambling casino received a cash customer; scrutinized his play; checked his background in a limited way and seemed to find it legitimate; kept his money separate from the money of its other customers and itself; and, observing that most basic indication of a gambler--the loss of a substantial amount of money--returned to Castelbuono the money he did not lose in the larger denomination bills he requested.

The casino acted within the law, acted prudently from a business standpoint, and should not now be examined in the penetrating light of hindsight or by selective general moral judgments that do not attach to specific legal violations because there were none. Casinos are not churches or towers of theological construction. They are businesses. In New Jersey they are legal businesses and they must act within the law. There was then and is now no crime called money laundering. There is now but was not then a federal casino cash transaction report regulation. Castelbuono is charged with breaking the law. GNOC did not. Castelbuono's alleged intention was to violate the law in a conspiracy to hide and send out of the country the proceeds of illegal narcotics trade. The Golden Nugget's intention was to win his money and it did.

Mel Harris

Mel Edward Harris brings to mind a Churchillian expression uttered in the context of far more momentous events. I do not mean to demean that remark, but Harris is "a riddle wrapped in a mystery inside an enigma." In this hearing that is the best Harris is.

Why, knowing all there is to know about his background but less than he told anyone at any given time, probably including this Commission on the occasion of his testimony here, did Mel Harris accept Stephen Wynn's invitation to

join his company? Surely Harris, who is clearly a man of experience and had been warned he would be closely examined, knew at some keen level that the regulatory oversight of legal casinos is a boiling cauldron. Yet he chose to do more than test the heat; he chose to immerse himself in it.

And why, having made that decision, did Harris reveal to his new employer some, but not all, of his background and then turn about and reveal the most troubling and immediately present aspect of it to the Division of Gaming Enforcement? And why, having told the DGE that he had visited Anthony Salerno, did he carelessly misplace the time of that visit. It occurred, he said, very soon after his father's death in late September or early October 1983. It occurred in fact in March 1984. It occurred in fact five months after the death of his father. It occurred in fact a mere four months before his encounter with Mr. Wynn produced an offer of employment. Fortunately, but still defying explanation, Harris revealed this visit to Salerno to the Division just at the end of the same year in which it occurred.

Even then he neglected to mention that there were not one, but two visits. And he neglected to mention that on each occasion he went in the company of another individual, in one instance that of Milton Parness and on another with one Sammy Spiegel.

Why, knowing all that, even if he thought we did not, or could not, or would not, and by then either knowing that the United States had committed his visits to Salerno to a permanent video record or imagining there never would be such a filmed record, did Harris come to New Jersey at long last to confront this information?

I have no certain answers to these questions. I do know it is not sound practice to associate with Anthony Salerno, not because of the truth or not of what is said about him but because it may be true, and at this moment in a federal court in New York the United States is attempting to prove it is true beyond a reasonable doubt. I do know that Mr. Harris' explanation of one visit was nearly and seductively convincing. But the concrete evidence of two visits in the company of two individuals who suffer the same reputational infirmity as Salerno is alarming and portends worse. We know Harris now by some of the company he keeps some of the time, but because of the New Jersey Division of Gaming Enforcement he no longer keeps the company of the Golden Nugget.

If Harris did not lie in the sense that he spoke falsely, still he dissembled. His memory was at all times, even in this hearing room, selective and reluctant.

We are not here to judge the suitability of Harris to be licensed or qualified in New Jersey for participation in

the casino industry. Suffice it to say that Harris' selective memory and deliberate omissions impeach him, impeach his sworn investigative interview by the DGE on December 12, 1984, and in hindsight, but only in hindsight, impeach the decision by Stephen Wynn to offer Harris employment and a directorship with the Golden Nugget family of companies. Mr. Wynn and the Golden Nugget may be thankful that the regulatory system did its job, found out these disturbing facts and caused the removal of Harris from Golden Nugget. Mr. Wynn has complained inexactly and with hyperbole about the cost of this investigation and hearing. Here, as to Harris, he got value for his company's money.

Irving Resnick

Irving "Ash" Resnick was hired by and for the Golden Nugget Las Vegas. He was never employed by or for GNOC. Then why should he be an issue in this hearing? Because a company doing casino business in both legal casino jurisdictions in the continental United States must bear in mind at all times the different standards as they may apply at any given time in both Nevada and New Jersey, and on every occasion must choose the higher standard. It must do that at least because it is the prudent thing to do from a hard-headed business standpoint. After all, no one can operate a casino in either state except under state license.

Neither we nor the licensees operating in both states

need make value judgements about the differences in standards. That is not the point. The point is that the higher standard should be identified and should prevail. If it had, notwithstanding that Resnick was retained and dismissed before this Commission called him "unsavory," J-2-119, p. 15, he would not have been hired. Resnick had, according to the company's own security report, a bad reputation among certain law enforcement sources. Very much more and to the point, that report said Resnick had a reputation within the casino industry as a person who has stolen from casinos when they employed him. The fact that Golden Nugget says it instituted controls to guard against such theft from it by Resnick begs the issue. Casinos shouldn't hire a person when other people in their industry, with reason to know, say he is a thief.

#### Stardust-Fremont

The Stardust-Fremont deed of trust purchase was, as Golden Nugget maintains, a good business deal. It was entered into with a United States government approved overseer of the Central States Southeast and Southwest Areas Teamsters Pension Fund and at no time had any relation to the nefarious history of that fund or the checkered background of the Stardust and Fremont casino hotels.

The only thing left to say is that Stephen Wynn

testified in an investigative interview by the Division of Gaming Enforcement on August 2, 1985, and again here, that he discussed the transaction with the chairmen of the Nevada and New Jersey commissions, and hearing no objection construed those conversations as informal approvals to undertake the deal. In New Jersey, only a formal, public review and approval according to law constitutes Commission action, a point underscored by Chairman Read when he received the information about the Stardust-Fremont deal by telephone from Mr. Wynn in 1984 without reply or comment. None was requested here and none was required. Had there been anything untoward in the deal, and there was not, it would have been exposed at some time and dealt with by the Commission at some cost to the licensee. Recognizing it does not make the conduct of business easier, no one should leave here imagining that anything but formal, public Commission action constitutes a decision by this Commission in those instances where it is required.

We arrive now at what I have called the other peripheral issue or issues in this hearing. It is hard to know whether there are several of them or only one. In general they fall under the rubric of GNOC marketing, and concern (i) individuals hired to attract and cater to high stakes gamblers, (ii) certain of those gamblers or customers

of the company in Atlantic City, (iii) the knowledge the company had about certain of those customers and (iv) what, if anything, it did about their patronage, or for that matter what it could do or should do.

As to the company employees engaged in this part of the company's business about whom the DGE raised questions, clearly Charles Meyerson is the most significant. He is also licensed and he is also facing a challenge from the Division of Gaming Enforcement to his relicensure based on the conduct of his performance as a casino marketing host. That matter is separate from this one and is pending trial in the administrative law court subject to final administrative review by this Commission. Among the other individuals whose retention by Golden Nugget has been called into question are Paul Perles, Alexander Katz, John Coury and Robert Grant.

While each is different--Grant, for instance, was an alias and under his true identity he had a criminal record in Great Britain unrelated to gambling--at least one thread seemed to stitch the others together. They had been, or associated with, bookmakers. However, so did Meyerson, from about 1946 to about 1961, and this Commission knew of his background when it granted him a license in May 1982 after the DGE reported that fact in March 1982 and concluded that his bookmaking activity and record were in the word

appearing in its report to the Commission "insubstantial." A-7-5, p. 2. It seems reasonable that this determination of Meyerson's past in illegal gambling could have become the yardstick for Golden Nugget in measuring whether these other individuals would offend the regulatory system because of similar problematic pasts. However, as noted in the majority opinion, that was not the extent of the problems in their individual backgrounds.

Meyerson was cross-examined at length in this hearing but also in three sworn investigative interviews in January 1984 where he did not have the benefit of counsel immediately present. In any case Meyerson was examined closely about (i) how he came to know more than 70 Golden Nugget customers; (ii) what he knew about them; (iii) when he met them; and (iv) why they had become significant customers of the Golden Nugget. As to many of these customers there was a clear inference in the interrogation that they were or are persons reputed to be members of or associates of organized crime.

When Mr. Meyerson was asked a series of questions about an individual named Venero "Benny Eggs" Mangano, the interrogation in part went as follows:

Q And he introduced you to Benny Eggs?

A Yes

Q And you are pretty sure he introduced you to

Johnny Barbato, too?

A I have to check that, I don't know. I am sure I met Benny Eggs through John Novak.

Q What is Benny Eggs' reputation?

A His reputation is only hearsay, that he is somebody important.

Q What does that mean?

A I don't know what he does.

Q What is his reputation? You said that he is somebody important. What does that mean?

A Somebody that the people respect.

Q What people?

A Everybody respects him.

Q What does it mean that he is important?

A I never pursued it to the point that he was important.

Q You have told me he is somebody important.

A That is right.

Q What does that mean?

A It means that he is a man you have to respect.

Q Why do you have to respect him?

A Because he's a big man.

Q In what?

A I don't know.

[J-3-3, pp. 79-80].

As the record in this hearing reflects, the DGE applied

to the Commission to place Mangano on the casino exclusion list authorized by N.J.S.A. 5:12-71. The case received a preliminary hearing before this Commission. By a vote of three-to-two, based on the specific evidence before it, the Commission concluded the evidence insufficient under the legal standards applied to place Mangano's name on the list. But law enforcement agencies, including the DGE, assert that Mangano is an appropriate candidate for inclusion on the list, which is not to say that Mr. Meyerson knew then, though he knows now, that they make that assertion. Whether he did or didn't, or should or shouldn't have known is a central issue in his own pending case. But Mr. Meyerson, as indicated by the excerpt from his sworn testimony cited above, which was typical of his testimony in those interviews and before this Commission, was not a cooperative witness. He was evasive. He was not forthcoming.

Finally we come to what has been called the gray list, which I submit was a red herring in this case. In a nutshell it concerns action that can or should be taken by Atlantic City casino hotels in accepting the patronage of persons with known criminal backgrounds or reputations for criminal association, and encouraging that patronage by the extension to such persons of service complimentaries and gambling credit when those individuals are not by legal enforcement barred from the casinos.

In so much as that is an issue it appears to be one not confined to the Golden Nugget but probably prevalent in most or all of the casino hotels.

The gray list was ill-advised, was an effort to deal cosmetically with a problem that has no present solution in New Jersey law. The only New Jersey law that deals with this kind of problem is N.J.S.A. 5:12-71 which establishes the basis and mechanism for the DGE to apply to the Commission to place an individual on the casino exclusion list under certain defined terms. The law establishes the outline for such state action through administrative due process and instructs the Commission to flesh out that requirement in regulations, which the Commission has done. The law makes no mention of a limited form of exclusion such as the denial of service complimentaries or gambling credit to patrons, and from my best reading did not envision anything as sophisticated.

It does, in N.J.S.A. 5:12-71(d), place an affirmative burden on casino hotels to exclude such persons when they have knowledge that the individuals fit the enumerated criteria upon which the state may exclude someone. But unlike the statutory text, in which the division and Commission are guided and instructed to adhere to due process, the law is silent as to what basis a private business may assert in seeking to enforce such exclusion by

private action. And again it is absolutely silent as to any partial or limited exclusion from services and customs otherwise available to the general public.

It seems to me this question of what to do with people of whom it is said they are members of or associates of organized crime has no answer in the Casino Control Act, except as I have described the establishment and execution of the exclusion list.

The broadest allegations that police agencies may make, though they sweep tens, hundreds or even thousands of individuals into the description of organized crime, cannot be employed on an individual basis without due process where reputation is at stake; unless perhaps that reputation is such, as in the case of Meyer Lansky or Anthony Salerno, that it becomes so distinct and so widely known to the public that it becomes a truth in itself so powerful and overwhelming that it tends to confirm the actual truth of the reputation asserted. Even then such an assertion at all times remains only that unless established in some forum which recognizes at least a residue of legal due process. We may notice it in the context of associational issues as to licenses but we cannot rely on it in individual cases unless there is due process. Otherwise the cure may become more dangerous than the disease. The worst, most notorious mobster must get the process due him in civil, criminal and

administrative courts because if he does not, someday we may not. As Pastor Niemoeller said in part, "Then they came for me, and by that time no one was left to speak up."

This Commission is an administrative law agency. It must adhere to the law, apply it, and may interpret the one law under which it regulates casino gambling. But it cannot write the law and it cannot interpret what has not been written.

Presently, Section 71 is all there is and it means these matters must go forward on a case by case basis, under the due process requirements of the New Jersey Casino Control Act and the New Jersey Administrative Procedures Act, both of which reserve a right of appeal to the courts of New Jersey. That much about the gray list is clear in black and white.



Carl Zeitz  
Commissioner

SEPARATE OPINION OF  
COMMISSIONER E. KENNETH BURDGE

Although I wholeheartedly endorse the majority opinion, there are two areas on which I would like to comment.

First, with respect to Mr. Mel Harris, I must candidly admit that I was impressed with Mr. Harris after reading his deposition and during his initial testimony. While I still am impressed with Mr. Harris, my final impression is dramatically different than my initial reaction.

In this regard, I note, for example, that Mr. Harris was at a restaurant in February 1984 when an altercation arose involving Mel Adler and Sam Spiegel, a friend of Mr. Harris who is alleged to be an associate of organized crime. There is evidence that James Powers, Director of Corporate Security for GNI, had heard that Mr. Harris was also involved in the incident and indeed picked up a weapon that had been dropped during that altercation. But, more importantly, it is indisputable that, shortly after this incident, Mr. Harris, accompanied by Mr. Spiegel, went to a social club in New York which is frequented by Tony Salerno.

Although the timing of these two events may be nothing more than coincidental, I am content to allow others to draw such inferences as they may from this evidence. For my purposes, it is sufficient to note that I still have not heard a satisfactory explanation as to why Mr. Spiegel was

with Mr. Harris at the social club on March 6 if all that was discussed at that time was Mel Harris' deceased father.

In addition to Mr. Harris, the other area that particularly concerns me involves Irving Resnick.


As we have been reminded at this hearing, Ash Resnick is a man not unknown to us. We found that Resnick was an unsavory individual in connection with our decision on the qualification of Edward Doumani. It is comforting to know that the evidence in this record confirms our prior determination.

Unfortunately, Golden Nugget did not have the benefit of our prior pronouncement when it hired Resnick. However, as clearly stated in the majority opinion, Golden Nugget surely had adequate guideposts which should have convinced it to steer clear of Resnick. What happened, however, was that Mr. Wynn, through his forceful and persuasive personality, hired Resnick without the GNI board receiving a full and complete disclosure of Resnick's background information.

To be sure, Mr. Wynn's dynamic personality is a major factor in the success the Golden Nugget has had in attracting competent staff. However, providing Resnick with stock appreciation rights troubles me. In my view, SARs were a substantial inducement the Golden Nugget used in order to keep key personnel. In bestowing those rights on

Resnick, Mr. Wynn demonstrated a willingness to embrace, much too quickly, a man whose only apparent saving grace was his alleged ability to increase the bottom line. While hindsight is 20-20, Golden Nugget's own experience with Resnick demonstrates that this supposed virtue of his cannot be separated from his all too apparent vices.

In light of the foregoing, the Golden Nugget board must be given the music sheets to allow it, in unison with Mr. Wynn, to sing "Our Way" through the offices of the Golden Nugget, with the renditions of "My Way" being left for the concert stage. Accordingly, it is appropriate for us to impose the conditions of relicensure stated in the majority opinion.

  
E. Kenneth Burdge  
Commissioner

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-286  
OAL DOCKET NO. 4105-85

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
GREATE BAY HOTEL AND CASINO, INC., :  
MERVIN E. HOAGLAND, ROBERT BINSTEN, :  
WILLIAM J. MUSSO AND ROSALYN FREELAND, :  
Respondents. :

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A hearing in this matter having been held before the Office of Administrative Law; and the administrative law judge having filed an initial decision approving a proposed stipulation of settlement between the Division of Gaming Enforcement and respondent Rosalyn Freeland; and this stipulation of settlement having been considered and rejected by the Casino Control Commission (Commission) at its public meeting of July 16, 1986; and the parties having been directed by order dated August 25, 1986, to resubmit a revised stipulation of settlement within 90 days; and the parties having filed a proposed stipulation with the Commission on October 14, 1986; and the Commission having considered this stipulation of settlement at its public meeting of November 17, 1986,

IT IS on this 26<sup>th</sup> day of November 1986, ORDERED that the proposed stipulation of settlement is adopted,

IT IS FURTHER ORDERED that the casino key employee license held by Rosalyn Freeland is suspended for ten working days, during which the respondent shall not be entitled to receive any form of compensation from any casino licensee, and

IT IS FURTHER ORDERED that the authority and responsibility to determine the specific dates for the period of suspension is hereby delegated to the Commission's Legal Division.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

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

W. CARY EDWARDS  
ATTORNEY GENERAL OF NEW JERSEY  
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FILED

OCT 14 1936

CASINO CONTROL COMMISSION  
LEGAL DIVISION

By: Paul A. Vagianos  
Deputy Attorney General  
(609)984-7221

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO.:84-286

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

Plaintiff,

vs.

GREATER BAY HOTEL AND CASINO,  
INC.; MERVIN E. HOAGLAND,  
ROBERT BINSTEN, WILLIAM J.  
MUSSO AND ROSALYN FREELAND,

Respondents.

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STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Paul Vagianos, Deputy Attorney General, and Joseph Sayegh, Attorney for Respondent, Rosalyn Freeland, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS, Respondent, Greate Bay Hotel and Casino, Inc., (hereinafter called "Sands") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Indiana Avenue and Brighton Park in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Sands is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Sands effective on May 7, 1982, and renewed on May 7, 1983, May 7, 1984, May 7, 1985 and May 7, 1986. Sands has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Sands is the holder of, and operates pursuant to, a Certificate of Operation effective August 13, 1980, at which time the predecessor in interest to the Sands was the holder of a temporary casino permit. Said Certificate of Operation entitles Sands to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

4. Rosalyn Freeland, license #01020-11, was at all times referenced herein the Security Shift Supervisor at the Sands.

5. On or about November 25 and 26, 1983, between the hours of 8:30 p.m. and 5:45 a.m., two patrons won approximately \$240,000 playing blackjack at blackjack table #36 (hereinafter BJ36) at the Sands.

6. Pursuant to the approved jobs compendium at the Sands, the Security Shift Supervisor is responsible for ensuring that all policies and procedures are enforced. A true copy of the approved jobs compendium for the aforementioned position is attached hereto as Exhibit "A" and incorporated herein.

7. Respondent Freeland was the Security Shift Supervisor on duty at the Sands on the morning of November 26, 1983. (Exhibit "B", Sworn Statement of Rosalyn Freeland: Transcript p. 29 1.14 to 1.22)

8. At the close of the casino on the morning of November 26, 1983, the Sands Security Department collected the playing cards from all blackjack tables. (Exhibit "B", p. 33 1.13 to 1.25 and p. 35 1.10 to 1.22)

9. Security Officer Joseph W. Kent went to Pit 11 for the purpose of collecting the playing cards but could not locate the playing cards for BJ52. (Exhibit "B", p. 25 1.22 to p. 26 1.10)

10. Officer Kent informed Assistant Security Shift Supervisor Marlene Summers, license #14715-21, about the missing cards from BJ52.

11. Officer Kent then informed Respondent Freeland of the missing cards from BJ52. (Exhibit "B", p. 38 1.9 to 1.16)

12. Officer Kent, Assistant Shift Supervisor Summers and Respondent Freeland physically went to Pit 11 to look for the missing cards. (Exhibit "B", p. 21 1.16 to 1.24)

13. Having been unable to locate the missing cards, Officer Kent placed a "0" on the card and dice sheet from BJ52 indicating that no cards were found for that table.

14. Respondent Freeland informed Respondent Mervin E. Hoagland, Casino Shift Manager, license #829-11, that the cards from BJ52 were missing.

15. Respondent Freeland was aware that the Commission Inspectors were examining the cards from BJ36 and were trying to ascertain why the cards for BJ36 were red rather than blue.

16. Respondent Freeland failed to notify the Commission and Division about the missing cards at BJ52 in a prompt fashion and did not fill out a Card Discrepancy Report.

17. According to Respondent Freeland, Respondent Hoagland advised her that he would inform the Commission and Division about the missing playing cards.

18. N.J.S.A. 5:12-99(a)(15) was effective at all times referenced herein and requires each casino licensee to promulgate

internal control procedures relating to the handling and storage of gaming apparatus inclusive of playing cards.

19. N.J.A.C. 19:46-1.18(1)6 was effective at all times referenced herein and reads as follows:

"Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be reported to an agent of the commission and division by the completion of an approved three-part Card Discrepancy Report."

20. The conduct of Respondent Freeland in notifying Respondent Hoagland about the missing cards at BJ52 rather than the Commission and Division and her failure to prepare a Card Discrepancy Report constituted a violation of N.J.S.A. 5:12-99(a) (15) and N.J.A.C. 19:46-1.18(1)6.

It is therefore agreed and stipulated by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;
2. The key employee license of Respondent shall be suspended for a period of two weeks;
3. This stipulation shall be subject to the approval and acceptance of the Commission.

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

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

Dated: 8/5/86

By: 

Paul A. Vagianos  
Deputy Attorney General

Respondent  
Rosalyn Freeland

Dated: 9/26/86

By: 

Joseph Sayegh, Esq.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-286

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

Complainant, :

DECISION

v. :

GREATE BAY HOTEL AND CASINO, INC., :  
MERVIN E. HOAGLAND, ROBERT BINSTEN, :  
WILLIAM MUSSO AND ROSALYN FREELAND :

Respondents.

---

William J. Musso appeared pro se.

E. Allen Nickerson, Esq., appeared for respondent Mervin E. Hoagland.

Roberto Rivera-Soto, Esq., appeared for the respondent Greate Bay Hotel and Casino, Inc.

Joseph Sayegh, Esq., appeared for respondent Rosalyn Freeland.

Donald Targan, Esq., appeared for respondent Robert Binsten.

Fredric E. Gushin and Paul Vagianos, Deputy Attorneys General, appeared for the Division of Gaming Enforcement.

INTRODUCTION

This matter comes before the Casino Control Commission (Commission) as a result of a complaint filed by the Division of Gaming Enforcement (Division) against the respondents Greate Bay Hotel and Casino, Inc. (Greate Bay), which operates the Sands Hotel and Casino (Sands), Mervin E.

Hoagland, Robert Binstein, William J. Musso and Rosalyn Freeland. The complaint alleged that the respondents violated the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the attendant Commission regulations as the result of an investigation initiated by respondent Hoagland into an incident in which two casino patrons were suspected of cheating at blackjack. In particular, the alleged violations alleged concerned the respondents' handling of the playing cards used by these patrons, the failure of the respondents to comply with various reporting and internal control requirements and, as to certain respondents, the failure to comply with the duty to cooperate with the regulatory authorities.

The matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et. seq. Thereafter, the case as it concerned respondent Binstein was severed. Administrative Law Judge (ALJ) Edgar R. Holmes heard the case with respect to respondents Greate Bay, Hoagland, Musso and Freeland and issued two initial decisions on November 25, 1985. The case with respect to Robert Binstein was heard by ALJ Jeff S. Masin who issued an initial decision on May 8, 1986.

After hearing oral argument in this matter we issued an order dated August 25, 1986, finding each of the individual

respondents liable for violations of the Act and regulations and respondent Greate Bay vicariously liable for each of the violations committed by the individual respondents under the doctrine of respondeat superior.

PROCEDURAL HISTORY AND FACTS

The complaint filed by the Division arose out of an incident which took place at the Sands during the evening of November 25 and morning of November 26, 1983 (gaming day, Friday, November 25). On that date Tony Chantes and Harry King Chor Liu were playing at blackjack table number 36 (BJ36). Fairly early in the evening these two patrons came to the attention of casino personnel because of the unorthodox manner in which they were gambling. Thereafter, their play was closely monitored by casino shift manager Mervin E. Hoagland and assistant shift manager Robert Binstein. At some point in the evening Hoagland and Binstein became convinced that the two men were cheating but were unable to determine how they were doing so. By approximately 5:45 a.m., when they left the gaming table, Chantes and Liu had won approximately \$240,000.

After the casino closed, respondent Hoagland directed respondent Binstein to remove the playing cards from BJ36 and inspect them. Mr. Binstein did so but was unable to detect any irregularities. Mr. Hoagland then directed Mr. Binstein to have the cards delivered to the office of the

credit manager. Binstein did as he was told. He then removed the cards from another table, BJ52, and placed them in the envelope designated for the collection of the cards from BJ36 at the end of the gaming day. Thereafter Mr. Hoagland asked respondent Musso to take the cards from BJ36 home to examine them. Mr. Musso did so but was also unable to find any marks on the cards and returned the cards to Mr. Hoagland on the morning of November 28, 1983.

Commission Inspector Carol Lively, who had been monitoring the play at BJ36, had asked Mr. Binstein for the cards from that table. Mr. Binstein gave the inspector the envelope from BJ36 knowing, but not stating, that it contained the cards from BJ52. When the casino's security officers collected the playing cards from all the blackjack tables on the morning of November 26, 1985, the cards from BJ52 could not be located. Security shift supervisor, Rosalyn Freeland, was informed that the cards were missing. Although required by Commission regulations to notify the Commission and Division of such an irregularity by preparing a Card Discrepancy Report, Freeland notified respondent Hoagland who told her that he would handle the matter. Ultimately, Commission inspectors also realized that the cards from BJ52 were missing and that the cards turned in for BJ36 were red-backed when the cards used on that table had been blue-backed.

Investigations into these two incidents were begun by the Division. Although respondents Hoagland and Binstein eventually cooperated fully, they initially attempted to conceal the fact that the cards from BJ36 had been removed and that Mr. Hoagland was conducting his own independent investigation of the cheating scam which he believed had been perpetrated by Chantes and Liu.

On the morning of November 28, 1983, Mr. Hoagland turned the cards from BJ36 over to Stephen Hyde, then President of Greate Bay. Immediately after receiving the cards and learning what had happened, Mr. Hyde suspended Hoagland, Binstein and Musso and called the Division to report that he had the actual playing cards from BJ36.

The cards from BJ36 did turn out to be marked and the two patrons were successfully prosecuted for their part in the cheating scam. The dealer who aided the patrons, we are advised, was granted immunity from criminal prosecution in return for his testimony. In proceedings unconnected with this case, the dealer's casino employee license was revoked.

On September 10, 1984, the Division filed a three-count complaint charging the respondents with violations of N.J.S.A. 5:12-100(b), N.J.S.A. 5:12-80(d), N.J.S.A. 5:12-99(a)(15), N.J.A.C. 19:46-1.18 and N.J.A.C. 19:41-7.2, as well as various internal control procedures submitted to the Commission by Greate Bay. On April 25, 1985, a

prehearing conference was held before Commissioner Carl Zeitz, who, by prehearing conference order dated June 27, 1985, forwarded the matter to the Office of Administrative Law. A prehearing conference<sup>1</sup> on this matter was held before Edgar R. Holmes, ALJ on August 15, 1985. A hearing was held on October 1, 1985. At that time respondents Greate Bay and Hoagland filed stipulations of facts, respondent Freeland filed a stipulation of settlement dated September 26, 1985, and respondent Musso entered into an oral stipulation of facts. The Division and respondents Hoagland, Musso and Greate Bay presented arguments on the issue of penalties. Contemporaneous with the hearing, respondent Hoagland filed a brief on the issue of sanctions and Greate Bay filed a memorandum regarding penalty. A reply brief and memorandum were filed thereafter. The record was held open until October 28, 1985, to determine whether respondent Binstein would enter into a stipulation. When he failed to do so, his case was severed and adjourned by order of Judge Holmes dated November 25, 1985.

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1. At the prehearing conference respondent Binstein who had not filed an answer to the complaint appeared pro se and a general denial was entered on his behalf. All other respondents answered and appeared with the exception of Musso who did neither.

On November 27, 1985, Judge Holmes filed two initial decisions addressing the liability of all of the respondents in this matter except Mr. Binstein. Following the issuance of these initial decisions, counsel for Mr. Binstein moved to have Judge Holmes recuse himself. Judge Holmes granted this request over the objection of the Division and the matter concerning respondent Binstein was presented before Judge Masin.

On February 11, 1986, we entertained oral argument on behalf of respondent Greate Bay. On February 19, 1986, respondent Musso briefly addressed us on his own behalf and on March 5, 1986, the Commission heard oral argument from counsel for respondent Hoagland. At the conclusion of this oral argument, we determined to reserve judgment in the entire matter until we had the opportunity to review the record concerning Mr. Binstein whose case was pending a hearing in the OAL.

Hearings in the Binstein matter were held on February 18, 19 and 24, 1986. The record was held open until April 8, 1986, for the submission of additional exhibits and closing arguments. On July 2, 1986, the Commission heard oral argument on behalf of respondent Binstein and we again reserved judgment for two weeks to deliberate as permitted by N.J.S.A. 10:4-12b(9). After examining the entire record in this case, we made findings of fact and imposed sanctions

upon all respondents on July 16, 1986, in the following manner.

With respect to respondent Hoagland, we found that he had violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling of cards and prevented the security department from performing its assigned duties under subsections (j) and (l) of N.J.A.C. 19:46-1.18 by ordering respondent Binstein to remove the cards from BJ36 from the casino and respondent Musso to take these cards to his home. In so doing, Mr. Hoagland also violated the approved internal control procedures of respondent Greate Bay. See N.J.S.A. 5:12-99(a) (15). We further determined that respondent Hoagland violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2 by lying to the Division concerning his part in ordering the cards from BJ36 removed from the casino and in failing to disclose the fact that he was conducting an independent investigation into the suspected cheating scam. We concluded that these violations severely undermined Mr. Hoagland's qualifications for licensure and warranted the revocation of his casino key employee license.

With respect to respondent Binstein, we found that he had violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling cards and also prevented the security department from performing its

assigned duties under subsection (j) and (l) of N.J.A.C. 19:46-1.18 by removing the cards from the BJ36 envelope and replacing them with cards from BJ52. In so doing, Mr. Binstein also violated the approved internal control procedures of respondent Grete Bay and N.J.S.A. 5:12-99(a)(15). We further found that Binstein violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2 by misrepresenting significant facts to and withholding critical information from the Division. For these violations we imposed a civil penalty in the amount of \$9,000.

With respect to respondent Musso, we found that he too had violated N.J.A.C. 19:46-1.18(h), (j) and (l) and N.J.S.A. 5:12-99(a)(15) by removing the cards from BJ36 from the casino. For these violations we imposed a civil penalty in the amount of \$4,000.

With respect to respondent Freeland, we determined that she had violated N.J.S.A. 5:12-99(a)(15) and N.J.A.C. 19:46-1.18(1)(6) by failing to notify the Commission and Division that cards were missing from BJ52 and by failing to prepare a card discrepancy report. Ms. Freeland and the Division had entered into a proposed stipulation of settlement. However, we rejected the proposed settlement and directed the parties to resubmit a proposed stipulation of settlement within 90 days.

As to respondent Greate Bay, we held it liable for the violations committed by its employees under the doctrine of respondeat superior. We imposed a civil penalty of \$30,000 and ordered Greate Bay to conduct seminars for all of its casino-related supervisory personnel on the Casino Control Act and regulations designed to promote an attitude of respect for the regulatory system and to discourage an attitude of blind adherence to the orders of superiors.

These findings and sanctions are reflected in our order dated August 25, 1986,<sup>2</sup> from which only respondent Greate Bay has appealed.<sup>3</sup> Accordingly, the remainder of this opinion will concern the basis for our decision as it affects the casino licensee.

Despite the fact that respondent Greate Bay stipulated that it "may be held vicariously liable for the conduct of the...respondents [Hoagland, Binstein, Musso and Freeland]...", (Stipulation of Fact, ¶35), ALJ Holmes

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2. An amended order dated October 28, 1986, was issued subsequently. The amended order corrects item "c" of the Commission's findings of fact to indicate that respondent Musso removed cards from BJ36 rather than BJ32 as was erroneously stated in the August 25, 1986 order.
  3. Respondent Freeland and the Division recently submitted a revised stipulation of settlement which has not, as of this writing, been considered by the Commission.

concluded that Greate Bay was not guilty of any wrongdoing and recommended that the Commission dismiss the complaint as it pertains to this respondent. Judge Holmes based this conclusion on his finding that the behavior of the other respondents was ultra vires, noting that the Division did not show that "these individuals acted in conformity with some unarticulated policy or attitude which holds the regulatory scheme in contempt." Judge Holmes also considered Mr. Hyde's action in suspending the respondents (except Freeland) and notifying the Division as to the whereabouts of the cards from BJ36 as well as Greate Bay's loss of \$240,000 as a result of the scam, as additional factors in his determination that Greate Bay did not violate the provisions of the statutes and regulations with which it was charged.

The Division filed exceptions to all of the ALJ's findings and conclusions with respect to Greate Bay. In its letter of exceptions the Division argued both the proposition that corporations are, as a matter of law, accountable for the acts of their agents and that the Casino Control Act imposes strict liability on the part of casino licensees for the acts of its employees. The Division sought a civil penalty of between \$25,000 and \$35,000. Greate Bay contended in its reply that, as found by the ALJ, the actions of the individual respondents were ultra vires

and beyond the course and scope of their employment and that Greate Bay did not ratify the employees' actions, hence it cannot be held liable.

The long established rule is that a principal will be held liable for the acts of its agent if they are within the scope or course of the agent's duties or employment. See, e.g., 53 AM. Jur. 2d, Master and Servant §426 at 441. The courts have applied the doctrine of respondeat superior to corporations and have held that a corporation is liable for the torts, wrongful acts or omissions of its officers, agents or employees acting within the actual or apparent scope of their authority or the course of their employment. Brokow v. N.J.R. and Transportation Co. and Campbell, 32 N.J.L. 328, 330 (Sup. Ct. 1867). See also Mueller v. Seaboard Commercial Corp., 5 N.J. 28 (1950). Although the terms "scope of authority" cannot be exactly defined, it can be said that an employer is liable for the acts of his employee or agent in cases where "the servant acts by authorized means, in an authorized manner and in pursuit of his master's business." Wright v. Globe Porcelain Co., 72 N.J. Super., 414, 418 (App. Div. 1962). Moreover, corporations may be held liable even though such conduct was not necessary for the proper performance of an agent's or employee's duties or was contrary to orders. See Klitch v. Betts, 89 N.J.L. 348, 351 (E. & A. 1916).

[I]n general terms, it may be said, that an act is within the course of employment if (1) it be something fairly and naturally incident to the business, and if (2) it be done while the servant was engaged upon the master's business and be done, although mistakenly or ill-advisedly, with a view to further the master's interests, or from some impulse or emotion which naturally grew out of or was incident to the attempt to perform the master's business, and did not arise wholly from some external, independent and personal motive on the part of the servant to do the act upon his or her own account. Fletcher, Corporations (Perm. ed. 1986 rev. vol.) §4877 at 326 (hereinafter Fletcher).

See also Roth v. First National State Banks of New Jersey, 169 N.J. Super., 280, 286 (App. Div. 1979). Such a determination is, in the final analysis, a question of fact which must be decided based on the circumstances of each use. However, once it is determined that an employee or agent is acting within the scope of his authority and in the course of his employment, the employer will be held liable. Moreover, where the agent or employee is found to have acted in furtherance of the employer's business interests the principal will be liable even if the acts were committed in clear contravention of the principal's instructions. See Wright v. Globe Porcelain Co., supra, 72 N.J. Super., at 418-419; Restatement, Agency 2d (1950) § 230 at 511.

Employees of respondent Greate Bay violated a variety of regulations regarding the handling of gaming equipment.

The practices and procedures involving the handling of gaming equipment are among the most sensitive aspects of casino operations. Here, playing cards were deliberately switched in an attempt to circumvent these controls and then removed from the casino-hotel complex entirely at the direction of Greate Bay's senior manager on the site. The security shift supervisor on duty failed to report that a bag of cards was missing. The actions of the supervisory personnel at every level, i.e., Casino Shift Supervisor, Assistant Casino Shift Supervisor, Pit Boss and Security Shift Supervisor, as well as the subsequent cover-up of the situation, evidence a total breakdown of the internal controls pertaining to the handling of gaming equipment. The end result was that casino management in two distinct departments of the casino operation violated regulations regarding the handling of gaming equipment. Such a situation constituted a serious breach of internal controls because it involved a breakdown of the system of checks and balances built into the regulatory structure.

Applying the test described in Fletcher, we find it manifest from this record that the acts of Hoagland, Binstein, Musso and Freeland were in furtherance of Greate Bay's interests and not due to any personal motives. Accordingly, as a matter of basic agency and corporate law, Greate Bay should be held accountable for the acts of its

employees which are found violative of the Act and Commission regulations.

The determination to hold a corporation accountable for the acts of its agents has its true basis in social policy that a corporation which can only act through its officers, employees and agents should not be able to use its corporate structure to shield itself from liability for their acts. Such a determination is even more compelling in the casino gaming context given the legislative policy of strict regulation and the nature of the public interest sought to be protected.

Moreover, this is not the first occasion where we have imposed vicarious liability upon a casino licensee for the unlawful or improper acts of its employees. In State v. Boardwalk Regency Corporation, Docket No. 81-32 (Commission Decision, January 4, 1983), we adopted an initial decision by ALJ Steven L. Lefelt in which he ruled that casinos, like other heavily regulated industries such as liquor and racing, require strict controls to further public confidence. Judge Lefelt further ruled, and we agreed, that a casino licensee should be held liable for the misconduct of all of its employees without regard to the level of employee or the fact that the violation was inadvertent or unintentional. Judge Lefelt's rationale warrants iteration at length:

To further the public confidence in the integrity of casino operations, the regulatory provisions of the act were designed to extend "strict State regulations to all persons, locations, practices and associations related to the operation of licensed casino enterprises...." N.J.S.A. 5:12-1(6) (emphasis added). "The statutory and administrative controls over casino operations established by the [Casino Control Act] are extraordinarily pervasive and intensive." Knight v. Margate, 86 N.J. 374, 380-381 (1981).

...

N.J.S.A. 5:12-129(5) states that the Commission may "assess such civil penalties as may be necessary to punish misconduct and to deter future violations" and specifically mentions individual licensees and casino licensees. Thus, civil penalty actions were contemplated against both individuals and corporations. The casino licensee corporation may act only through its agents and employees. If a distinction were made among categories of employees to isolate the casino from the acts of "lower-level" employees, a dilution of the regulatory effect would result. The casino would have less reason to monitor carefully all of its employees' activities. It is no defense to a discipline action that the licensee inadvertently, unintentionally, or unknowingly violated a provision of this act. N.J.S.A. 5:12-130(g). Other jurisdictions have had little difficulty in holding a corporation liable for its employee's acts in discipline proceedings. See, e.g., Northeast Dodge Co. v. Commonwealth, 54 Pa. Commw. Ct. 182, 185, 420 A.2d at 771, 773 (1980) (car dealership license suspended for transgression of salesmen).

To insure faithful compliance and strict regulation, I, therefore, CONCLUDE that the Legislature intended in N.J.S.A. 5:12-129(5) that casino licensees shall be responsible for all misconduct occurring on the licensed premises. If any casino employee violates a regulation or statute, the casino licensee shall be responsible whether it had knowledge or not. N.J.S.A. 5:12-130(g). [Initial decision at 13 to 14.]

We endorse this prior ruling as fully dispositive of the casino licensee's liability issue raised in this instance.

SANCTIONS

In his initial decision in the present matter Judge Holmes noted that the Division failed to show that the respondents "acted in conformity with some unarticulated casino policy or attitude which holds the regulatory scheme in contempt." While, for the reasons stated above, it is unnecessary to demonstrate such a corporate practice in order to impose liability on respondent Greate Bay, the record makes it clear that the respondents were, in fact, acting in conformity with a policy of blind adherence to the commands of a supervisor which we find to be at odds with the purpose of the strict regulatory system under which legalized casino gaming is permitted in this state.

Mr. Binstein testified that, when one is told to do something by a superior in the casino industry, he does it.

He believed that if he had not followed Hoagland's orders to remove the cards from BJ36 he would have been "at least fired." Transcript of OAL proceeding dated February 19, 1986, p. 258, lines 4 to 5. Similar testimony was provided by two other witnesses and by respondent Musso.

The New Jersey State Police Investigation Report, introduced as exhibit P-7, included an account of an interview with Sarah Grattic, the floorperson assigned to the pit in which BJ36 was located. Ms. Grattic is reported to have stated that at some point after the casino closed down Mr. Binstein came to her with an empty envelope for BJ36 and asked her to sign it. She did so and gave the envelope to the dealer to sign even though she had previously collected the cards from BJ36 in another envelope, signed that envelope and placed it in the pit stand. Asked if it was unusual to sign two envelopes for one table and if she questioned Binstein regarding the second envelope she is reported to have replied that "it was unusual but she does not question her superiors. She said in the casino business you do what they tell you." P-7 at 3.

Robert Kesel, assistant casino manager at the Tropicana, testified that it had previously been the practice in the casino industry "to do what your boss told you to do, other than steal. If your boss told you to get me this you did it. It was just a reaction that we were

taught from an early age in this business." Transcript of OAL proceedings dated February 18, 1986, p. 195, lines 9 to 12.

When respondent Musso appeared before the Commission on February 19, 1986, he stated, "This was something I did under the direction of my superior. My mistake was not using my head and questioning at the time what I did."

Thus, we find that, the violations committed by the individual respondents (excepting Hoagland) were, in large measure, a consequence of a long-standing practice in the industry of doing anything short of a crime that a supervisor says to do. Such a practice cannot and will not be tolerated in this jurisdiction. It is for that reason that sanctions, as we deem appropriate, have been meted out to the individual respondents. Moreover, we take this occasion to admonish all persons employed in the casino industry and subject to the strictures of the Casino Control Act, that unthinking obedience to the orders of superiors which are contrary to the Act, Commission regulations and approved internal control systems will not be excused or condoned.

We now turn to the issue of what sanction, if any, is appropriate for the casino licensee under these circumstances.

In his initial decision, ALJ Holmes found several mitigating circumstances in considering the question of

Greate Bay's liability. First, he accepted the proposition that because casino licensees can only hire individuals who have been licensed by the Commission, they are entitled to rely on the Commission's determination that these individuals have demonstrated the requisite honesty and integrity. Second, the ALJ noted the fact that when Mr. Hyde first became aware of the violations which had occurred he immediately notified the Division and terminated<sup>4</sup> the individuals involved. Third, the ALJ pointed out that the casino lost \$240,000 as a result of the scam and that the loss will serve to remind Greate Bay that "its employees should place greater reliance upon the regulatory scheme." (Init. dec. at 14).

Greate Bay's asserted "reliance" on the licensure of its employees is untenable and unworthy of extended discussions. If accepted, it would exonerate the casino licensee from responsibility for the actions of any employee. Similarly, the casino's "loss" of \$240,000 to the

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4. "Terminated" was the ALJ's word. The record suggests that Hoagland, Binstein and Musso were initially suspended by Hyde (stipulation of facts, ¶23) though it appears they were terminated on or about December 22, 1983. (Greate Bay's notice of defense count one ¶33). Respondent Freeland was not suspended, but rather received a written reprimand from her employer. (Greate Bay's notice of defense count two, ¶17).

perpetrators of the scam is not at all relevant to the issue of an appropriate regulatory response to the violations committed by employees of Greate Bay. We do agree that Mr. Hyde's actions should be considered as a mitigating factor in this case. However, we do not find these corrective actions, taken after the fact, to be so ameliorative as to warrant the withholding of any sanction. As discussed above, the violations were extremely serious in that they culminated in a near-total breakdown of Greate Bay's internal controls and thereby presented a grave threat to the integrity of the regulatory process.

Considering these and the other factors listed in section 130<sup>5</sup>, we impose a civil penalty in the amount of

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5. N.J.S.A. 5:12-130 provides:

In considering appropriate sanctions in a particular case, the Commission shall consider:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee or registrant;
- d. The prior history of the particular license [sic]  
(Footnote Continued)

\$30,000 and require that Greate Bay conduct seminars for its casino-related supervisory personnel on the Casino Control Act and Commission regulations. These seminars should be designed to promote an attitude of respect for the regulatory system and should expressly discourage the attitude of uncritical adherence to the orders of superiors in the face of obvious irregularities.

CONCLUSION

For the reasons expressed above, we conclude that Greate Bay Hotel and Casino, Inc., is vicariously liable for the violations of N.J.S.A. 5:12-80(d), N.J.S.A. 5:12-99(a) (15), N.J.A.C. 19:46-1.18, N.J.A.C. 19:41-7.2 and its own internal control procedures committed by respondents

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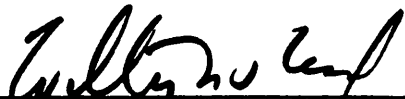
(Footnote Continued)  
or registrant involved with respect to gaming activity;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the Commission, and not to a finding of a violation itself.

Hoagland, Binstein, Musso and Freeland. As a consequence, a civil penalty of \$30,000 is imposed and Greate Bay is ordered to conduct seminars for all of its casino-related supervisory personnel in conformance with this decision.

  
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Walter N. Read, Chair

  
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Valerie H. Armstrong, Vice-Chair

  
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Carl Zeitz, Commissioner

  
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E. Kenneth Burdge, Commissioner

Dated: November 12, 1986

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-286  
OAL DOCKET NO. CCC 4105-85

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

Complainant, :

AMENDED  
FINAL ORDER

v. :

GREATE BAY HOTEL AND CASINO, INC., :  
MERVIN E. HOAGLAND, ROBERT BINSTEIN, :  
WILLIAM J. MUSSO AND ROSALYN FREELAND, :

Respondents. :

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Hearings in this matter having been held in the Office of Administrative Law (OAL) on October 1, 1985, before Administrative Law Judge (ALJ) Edgar R. Holmes and February 18, 19 and 24, 1986, before ALJ Jeff S. Masin; and two initial decisions having been filed by ALJ Holmes on November 27, 1985, addressing in one decision the liability of respondents Greate Bay Hotel and Casino, Inc. (Greate Bay), Mervin E. Hoagland and William J. Musso and in a second decision the liability of respondent Rosalyn Freeland; and a third initial decision having been filed by ALJ Masin on May 9, 1986, addressing the liability of respondent Robert Binstein; and the Division of Gaming Enforcement (Division) having filed exceptions to the initial decision concerning respondents Greate Bay, Hoagland

and Musso by letter dated January 3, 1986; and respondent Greate Bay having filed a memorandum in opposition to the Division's exceptions on January 10, 1986; and respondents Musso and Hoagland having filed exceptions on December 23 and 18, 1985, respectively; and respondent Binstein having filed exceptions to ALJ Masin's initial decision on June 16, 1986; and the Division having filed a response to respondent Binstein's exceptions on June 25, 1986; and the Commission having considered the entire record of these proceedings at its public meetings of February 11, February 19, March 5, July 2 and July 16, 1986,

IT IS on this 28<sup>th</sup> day of October 1986, ORDERED that the following factual findings of the Commission be entered upon the record in this matter:

A. With regard to Mervin E. Hoagland

(1) By ordering respondent Binstein to remove the cards from BJ36 from the casino and respondent Musso to take these cards to his home, Hoagland violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling of cards and prevented the security department from performing its assigned duties under subsections (j) and (l) of N.J.A.C. 19:46-1.18. In so doing Hoagland also violated the approved internal control procedures of respondent Greate Bay and N.J.S.A. 99(a)(15).

(2) By lying to the Division concerning his part in ordering the cards from BJ36 removed from the casino and in failing to disclose the fact that he was conducting an independent investigation into the cheating scam which he believed had been perpetuated, respondent Hoagland violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2.

B. With regard to Robert Binstein

(1) By removing the cards from the BJ36 envelope and replacing them with cards from BJ52, Binstein violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling cards and also prevented the security department from performing its assigned duties under subsections (j) and (l) of N.J.A.C. 19:46-1.18. In so doing Binstein also violated the approved internal control procedures of respondent Greate Bay and N.J.S.A. 99(a)(15).

(2) By misrepresenting significant facts to and withholding critical information from the Division, Binstein violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2.

C. With regard to William J. Musso

By removing the cards from BJ36 from the casino Musso violated N.J.A.C. 19:46-1.18(h), (j) and (l) and N.J.S.A. 5:12-99(a)(15).

D. With regard to Rosalyn Freeland

By failing to notify the Commission and Division that cards were missing from BJ52 and by failing to prepare a Card Discrepancy Report, respondent Freeland violated N.J.S.A. 5:12-99(a)(15) and N.J.A.C. 19:46-1.18(1)(6). The sanction proposed by the parties and approved by the administrative law judge is inadequate to address these violations which amounted to a breakdown in the checks and balances system created by the Act and regulations.

E. With regard to Greate Bay Hotel and Casino, Inc.

Under the doctrine of respondeat superior, Greate Bay is liable for each of the violations committed by the individually named respondents.

IT IS FURTHER ORDERED that the casino key employee license held by Mervin E. Hoagland is revoked and that he be prohibited from applying for any license, registration or

approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that Robert Binstein pay a civil penalty in the amount of \$9,000; and

IT IS FURTHER ORDERED that William J. Musso pay a civil penalty of \$4,000; and

IT IS FURTHER ORDERED that Greate Bay pay a civil penalty of \$30,000; and

IT IS FURTHER ORDERED that, within a reasonable period of time, Greate Bay conduct seminars for all of its casino-related supervisory personnel on the Casino Control Act and Commission regulations designed to promote an attitude of respect for the regulatory system and to discourage an attitude of blind adherence to the orders of superiors; and

IT IS FURTHER ORDERED that the proposed stipulation of settlement between Rosalyn Freeland and the Division is rejected and the parties are directed to resubmit a proposed stipulation of settlement directly to the Commission within 90 days of the date hereof, absent which the matter as it applies to respondent Freeland will be remanded to the OAL for further proceedings without further order of this Commission; and

IT IS FURTHER ORDERED that the civil penalties assessed herein shall be due and payable upon receipt of an invoice

from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, to the extent these findings and conclusions are inconsistent with the several initial decisions filed in this matter, the latter are modified or reversed.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



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DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-286  
OAL DOCKET NO. CCC 4105-85

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

Complainant, :

: FINAL ORDER

v. :

GREATE BAY HOTEL AND CASINO, INC., :  
MERVIN E. HOAGLAND, ROBERT BINSTEIN, :  
WILLIAM J. MUSSO AND ROSALYN FREELAND, :

Respondents. :

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Hearings in this matter having been held in the Office of Administrative Law (OAL) on October 1, 1985, before Administrative Law Judge (ALJ) Edgar R. Holmes and February 18, 19 and 24, 1986, before ALJ Jeff S. Masin; and two initial decisions having been filed by ALJ Holmes on November 27, 1985, addressing in one decision the liability of respondents Greate Bay Hotel and Casino, Inc. (Greate Bay), Mervin E. Hoagland and William J. Musso and in a second decision the liability of respondent Rosalyn Freeland; and a third initial decision having been filed by ALJ Masin on May 9, 1986, addressing the liability of respondent Robert Binstein; and the Division of Gaming Enforcement (Division) having filed exceptions to the initial decision concerning respondents Greate Bay, Hoagland

and Musso by letter dated January 3, 1986; and respondent Greate Bay having filed a memorandum in opposition to the Division's exceptions on January 10, 1986; and respondents Musso and Hoagland having filed exceptions on December 23 and 18, 1985, respectively; and respondent Binstein having filed exceptions to ALJ Masin's initial decision on June 16, 1986; and the Division having filed a response to respondent Binstein's exceptions on June 25, 1986; and the Commission having considered the entire record of these proceedings at its public meetings of February 11, February 19, March 5, July 2 and July 16, 1986,

IT IS on this 25<sup>th</sup> day of August 1986, ORDERED that the following factual findings of the Commission be entered upon the record in this matter:

A. With regard to Mervin E. Hoagland

(1) By ordering respondent Binstein to remove the cards from BJ36 from the casino and respondent Musso to take these cards to his home, Hoagland violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling of cards and prevented the security department from performing its assigned duties under subsections (j) and (l) of N.J.A.C. 19:46-1.18. In so doing Hoagland also violated the approved internal control procedures of respondent Greate Bay and N.J.S.A. 99(a)(15).

(2) By lying to the Division concerning his part in ordering the cards from BJ36 removed from the casino and in failing to disclose the fact that he was conducting an independent investigation into the cheating scam which he believed had been perpetuated, respondent Hoagland violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2.

B. With regard to Robert Binstein

(1) By removing the cards from the BJ36 envelope and replacing them with cards from BJ52, Binstein violated the regulations set forth in N.J.A.C. 19:46-1.18(h) for the collection and handling cards and also prevented the security department from performing its assigned duties under subsections (j) and (l) of N.J.A.C. 19:46-1.18. In so doing Binstein also violated the approved internal control procedures of respondent Greate Bay and N.J.S.A. 99(a)(15).

(2) By misrepresenting significant facts to and withholding critical information from the Division, Binstein violated N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2.

C. With regard to William J. Musso

By removing the cards from BJ32 from the casino Musso violated N.J.A.C. 19:46-1.18(h), (j) and (l) and N.J.S.A. 5:12-99(a)(15).

D. With regard to Rosalyn Freeland

By failing to notify the Commission and Division that cards were missing from BJ52 and by failing to prepare a Card Discrepancy Report, respondent Freeland violated N.J.S.A. 5:12-99(a)(15) and N.J.A.C. 19:46-1.18(1)(6). The sanction proposed by the parties and approved by the administrative law judge is inadequate to address these violations which amounted to a breakdown in the checks and balances system created by the Act and regulations.

E. With regard to Greate Bay Hotel and Casino, Inc.

Under the doctrine of respondeat superior, Greate Bay is liable for each of the violations committed by the individually named respondents.

IT IS FURTHER ORDERED that the casino key employee license held by Mervin E. Hoagland is revoked and that he be prohibited from applying for any license, registration or

approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that Robert Binstein pay a civil penalty in the amount of \$9,000; and

IT IS FURTHER ORDERED that William J. Musso pay a civil penalty of \$4,000; and

IT IS FURTHER ORDERED that Greate Bay pay a civil penalty of \$30,000; and

IT IS FURTHER ORDERED that, within a reasonable period of time, Greate Bay conduct seminars for all of its casino-related supervisory personnel on the Casino Control Act and Commission regulations designed to promote an attitude of respect for the regulatory system and to discourage an attitude of blind adherence to the orders of superiors; and

IT IS FURTHER ORDERED that the proposed stipulation of settlement between Rosalyn Freeland and the Division is rejected and the parties are directed to resubmit a proposed stipulation of settlement directly to the Commission within 90 days of the date hereof, absent which the matter as it applies to respondent Freeland will be remanded to the OAL for further proceedings without further order of this Commission; and

IT IS FURTHER ORDERED that the civil penalties assessed herein shall be due and payable upon receipt of an invoice

from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that, to the extent these findings and conclusions are inconsistent with the several initial decisions filed in this matter, the latter are modified or reversed.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

ONE RESPONDENT ONLY

OAL DKT. NO. CCC 4105-85

AGENCY DKT. NO. 84-286

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

Petitioner,

v.

GREATE BAY HOTEL AND  
CASINO, INC., MERVIN E.  
HOAGLAND, ROBERT BINSTEIN,  
WILLIAM J. MUSSO AND  
ROSALYN FREELAND,

Respondents.

---

Frederic Gushin, Deputy Attorney General and Paul Vagianos, Deputy Attorney General for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Joseph Sayegh, Esq., for respondent, Rosalyn Freeland (Goldenberg, Mochler and Sayegh, attorneys)

Record Closed: October 28, 1985

Decided: November 25, 1985

BEFORE EDGAR R. HOLMES, ALJ;

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq and N.J.S.A. 52:14F-1 et seq.

The parties have agreed to a settlement and have prepared a stipulation of settlement indicating the facts, conclusions of law and penalties appropriate thereto, which is attached and fully incorporated herein.

I have reviewed the entire record including the stipulations of fact filed by other respondents, heard testimony, read depositions, briefs and arguments of counsel and **I FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

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

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

November 25, 1985  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

11/27/85  
DATE

Patricia L. Hunt  
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 3 1985  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS

Stipulation of Settlement marked, Exhibit 3 and Exhibit A

WITNESSES

None

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for the State of New Jersey  
25 Market Street  
CN-047  
Trenton, New Jersey 08625

By: Paul A. Vagianos  
Deputy Attorney General  
(609) 984-7221

RECEIVED  
STATE OF N.J.  
OFFICE OF THE ATTORNEY GENERAL  
SEP 26 2 14 PM '85

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-286

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

Plaintiff, :

vs. :

STIPULATION OF SETTLEMENT

GREATER BAY HOTEL AND CASINO, INC. :  
MERVIN E. HOAGLAND, ROBERT BINSTEIN :  
WILLIAM J. MUSSO AND ROSALYN :  
FREELAND :

Respondent. :

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Fredric Gushin and Paul Vagianos, Deputy Attorneys General, and Joseph Sayegh, attorney for Respondent, Rosalyn

Freeland, and said matters having been resolved, it is hereby consented to and agreed by and among parties that:

COUNT TWO

1. WHEREAS, Respondent, Greate Bay Hotel and Casino, Inc., (hereinafter called "Sands") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Indiana Avenue and Brighton Park in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Sands is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Sands effective on May 7, 1982, and renewed on May 7, 1983, May 7, 1984 and May 7, 1985. Sands has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Sands is the holder of, and operates pursuant to, a Certificate of Operation effective August 13, 1980, at which time the predecessor in interest to the Sands was the holder of a temporary casino permit. Said Certificate of Operation entitles Sands to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq. and the regulations promulgated thereunder.

4. Rosalyn Freeland, license #01020-11 was at all times referenced herein the Security Shift Supervisor at the Sands.

5. On or about November 25 and 26, 1983, between the hours of 8:30 p.m. and 5:45 a.m. two patrons won approximately \$240,000 playing blackjack at blackjack table #36 (hereinafter BJ36) at the Sands.

6. Pursuant to the approved job compendium at the Sands, the Security Shift Supervisor is responsible for ensuring that all policies and procedures are enforced. A true copy of the approved job compendium for the aforementioned position is attached hereto as Exhibit "A" and incorporated herein.

7. Respondent Freeland was the Security Shift Supervisor on duty at the Sands on the morning of November 26, 1983. (Exhibit "B", Sworn Statement of Rosalyn Freeland: Transcript p. 29 1.14 to 1.22)

8. At the close of the casino on the morning of November 26, 1983, the Sands Security Department collected the playing cards from all blackjack tables. (Exhibit "B", p. 33 1.13 to 1.25 and p.35 1.10 to 1.22)

9. Security Officer Joseph W. Kent, went to Pit 11 for the purpose of collecting the playing cards but could not locate the playing cards for BJ52. (Exhibit "B", p. 25 1.22 to p. 26 1.10)

10. Officer Kent informed Assistant Security Shift Supervisor Marlene Summers, license #14715-21, about the missing cards from BJ52.

11. Officer Kent then informed Respondent Freeland of the missing cards from BJ52. (Exhibit "B", p. 38 1.9 to 1.16)

12. Officer Kent, Assistant Shift Supervisor Summers and Respondent Freeland physically went to Pit 11 to look for the missing cards. (Exhibit "B", p. 21 1.16 to 1.24)

13. Having been unable to locate the missing cards, Officer Kent placed a "0" on the card and dice sheet from BJ52 indicating that no cards were found for that table.

14. Respondent Freeland informed Respondent Mervin E. Hoagland, Casino Shift Manager, license #829-11, that the cards from BJ52 were missing.

15. Respondent Freeland was aware that the Commission Inspectors were examining the cards from BJ36 and were trying to ascertain why the cards for BJ36 were red rather than blue.

16. Respondent Freeland failed to notify the Commission and Division about the missing cards at BJ52 in a prompt fashion and did not fill out a Card Discrepancy Report.

17. According to Respondent Freeland, Hoagland advised her that he would inform the Commission and Division about the missing playing cards.

18. N.J.S.A. 5:12-99(a)(15) was effective at all times herein and requires each casino licensee to promulgate internal control procedures relating to the handling and storage of gaming apparatus inclusive of playing cards.

19. N.J.A.C. 19:46-1.18(1)6 was effective at all times referenced herein and reads as follows:

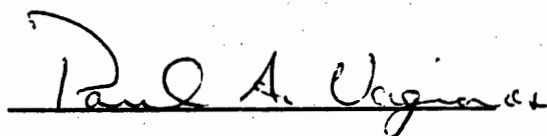
"Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be reported to an agent of the commission and division by the completion of an approved three-part Card Discrepancy Report."

20. The conduct of Respondent Freeland notifying Respondent Hoagland about the missing cards at BJ52 rather than the Commission and Division and her failure to prepare a Card Discrepancy Report constituted a violation of N.J.S.A. 5:12-99(a)(15) and N.J.A.C. 5:46-1.18(1)6.

It is therefore agreed and stipulated by and between the parties that:

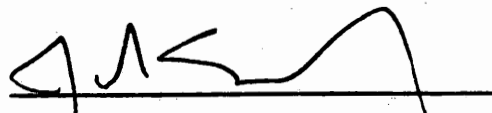
1. The facts stated herein in Count Two, supra, are true and did, in fact, occur.
2. The key employee license of Respondent shall be suspended for a period of three days.
3. Respondent shall be fined a civil penalty of \$500.00.
4. This stipulation shall be subject to the approval and acceptance of the Commission.

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



Paul A. Vagianos

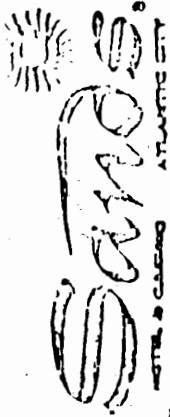
Deputy Attorney General



Joseph Sayegh, Esquire

Attorney For Respondent

Rosalyn Freeland



ADDITION

DELETION

X

REVISION  
07-15-82

NUMBER OF  
EMPLOYEES

SALARY GRADE

JOB TITLE

Shift Supervisor -  
Security

4

SZ - 04

**APPROVED**  
SEP 15 1982

CCC TITLE

Security Supervisor

DUTIES

Carries out procedure, trains, schedules and evaluates personnel in keeping with corporate objectives; specifically, acts to ensure that all policies and procedures are enforced. Makes certain that all security measures required by the Casino Control Act are provided. Promotes outstanding customer relations. Must be knowledgeable of the Casino Control Act and its attendant regulations.

REPORTS TO:

Assistant Director of Security

REPORTING TO POSITION:

Supervisor - Security and Deputy Shift Supervisor - Security

QUALIFICATIONS:

Requires background in law enforcement or security.

DEPT. CODE

62

EEO CLASS

1d

LOG CODE

235

PDF TYPE

1

393

ACCESS CODE

5

CCC CODE

5425

**EXHIBIT**  
A



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**PARTIAL INITIAL DECISION**

OAL DKT. NO. CCC 4105-85

AGENCY DKT. NO. 84-286

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

Petitioner,

v.

GREATE BAY HOTEL AND CASINO,  
INC., MERVIN E. HOAGLAND,  
ROBERT BINSTEIN, WILLIAM J.  
MUSSO AND ROSALYN FREELAND,

Respondents.

---

Frederic E. Gushin, Deputy Attorney General, and Paul Vagianos, Deputy Attorney General, for the petitioner (Irwin L. Kimmelman, Attorney General of New Jersey, attorney)

Roberto Rivera-Soto, Esq., Vice-President and Corporate Counsel, for the respondent Greate Bay Hotel and Casino, Inc.

E. Allan Nickerson, Esq., for the respondent Mervin E. Hoagland

William J. Musso, respondent, pro se

Record Closed: October 28, 1985

Decided: November 25, 1985

BEFORE EDGAR R. HOLMES, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on September 10, 1984, seeking sanctions against respondents Greate

Bay Hotel and Casino, Inc., Mervin Hoagland, Robert Binstein, William J. Musso and Rosalyn Freeland. Answers were filed by Greate Bay, Hoagland and Freeland. The matter was set down for a pretrial conference on August 15, 1985. At the pretrial conference respondent Binstein appeared pro se, and a general denial was entered on his behalf. Respondent Musso failed to appear. A plenary hearing was scheduled for Tuesday, October 1, 1985, in Brigantine Municipal Court in Atlantic County. At the plenary hearing respondent Musso appeared pro se and entered a stipulation on the record. Respondent Binstein obtained legal counsel in the week prior to the plenary hearing and his matter was continued. Respondent Freeland did not appear, but a negotiated settlement was obtained and has been filed with the Office of Administrative Law. That settlement will be addressed in a separate opinion. Respondents Greate Bay and Hoagland appeared at the plenary hearing and filed stipulations of fact. The Division of Gaming Enforcement, respondents Greate Bay and Hoagland were heard on the issue of penalty which was not addressed in the filed stipulations. Respondent Musso was also heard on the issue of penalty since that issue was not addressed in his agreement with the Division.

The record was held open until October 28, 1985, in order to ascertain whether or not respondent Binstein would enter a stipulation of fact. He elected not to do so. His matter was severed on that date.

Based upon the filed stipulations of fact and conclusions of law, the depositions filed with the Office of Administrative Law, the documents attached thereto, the testimony of the parties and the un rebutted representations of counsel consistent with the stipulations of fact I **FIND** the following **FACTS**:

1. On November 25 and 26, 1983, between the hours of 8:30 p.m. and 5:45 a.m., two patrons won approximately \$240,000 playing blackjack at blackjack table no. 36 (BJ36) at the Sands Casino. The cards at BJ36 were subsequently, and much later, determined by the State police to have been "marked."
2. Respondent Hoagland, license no. 829-11, was the casino shift manager at the Sands and, as the most senior representative of the Sands from the table game department on the casino floor, was responsible for the operation of the casino at the aforementioned time.

3. Based upon the unorthodox play of the two patrons and the reputation of one of the patrons, about which he learned from a telephone inquiry made to his superior's home, respondent Hoagland sought, by telephone, and was denied, permission from his superiors to change the cards in use at the table because he was unable to clearly determine that a scam was being perpetrated.
4. Hoagland and, at his direction, other employees of the casino closely followed the play at BJ36 but were still unable to detect the nature of the scam being perpetrated.
5. Hoagland did not then, or at any time subsequently, alert casino security, or the representatives of the Division of Gaming Enforcement or the representatives of the Casino Control Commission regarding his suspicions.
6. When the patrons at BJ36 noticed the close surveillance by Hoagland at 5:45 a.m. on November 26, 1985, they withdrew from the game.
7. Pursuant to regulations, at the conclusion of the gaming day the cards used at the various games were placed in envelopes to be collected by the security department.
8. Respondent Hoagland, suspecting the cards at BJ36 were marked, instructed respondent Binstein, license no. 1308-11, assistant shift manager at the Sands, to remove the cards from BJ36 in order to have them inspected. Binstein complied with his request.
9. Respondent Binstein, realizing that the removal of the cards from BJ36 would be discovered by the Casino Control Commission, replaced the cards from BJ36 with cards from BJ52. He caused the cards from BJ36 to be taken to the casino credit office. He placed the cards from BJ52 in the envelope for BJ36 and instructed the dealer and floorperson to re-sign the envelope, representing to them that the cards were from BJ36. They complied with his request.

10. Respondent Hoagland instructed respondent Musso, license no. 2675-11, a pit boss at the Sands, to take the cards from BJ36 home with him and examine them for markings. Musso complied with his request, but was unable to determine how the cards were marked. Musso kept the cards for approximately two days.
11. In the meantime, the Casino Control Commission inspector on duty, because of the large amount of money won at BJ36, was required to confiscate the cards from that table. Respondent Binstein knowingly gave the inspector the cards from BJ52 which he had replaced in the BJ36 envelope.
12. The Commission inspector noted that the cards were the wrong color for that table; they were red cards and should have been blue. She began an investigation.
13. Simultaneously, respondent Freeland, license no. 01020-11, the security shift supervisor at the Sands, learned that the cards from BJ52 were missing. She advised respondent Hoagland of this fact but did not advise the Commission inspectors who she knew were investigating the wrong color cards at BJ36. She assumed Hoagland would do so. She also failed to fill out a card discrepancy report.
14. Respondent Hoagland was questioned by the Commission concerning the color discrepancy of the cards and offered no information.
15. Subsequently, respondent Hoagland retrieved the cards from Musso and turned them over to Stephen Hyde, president of the Sands, who immediately turned them over to the Division.
16. On December 1, 1983, Hoagland was again interviewed by the Division; he acknowledged that he had removed the cards from BJ36 and substituted the cards from BJ52. He did not implicate others. A polygrapher's opinion indicated deception. Respondent Hoagland then implicated respondents Binstein and Musso.

RESPONDENT WILLIAM J. MUSSO

This respondent, who appeared for the first time at the plenary hearing, entered on the record an agreement, reached orally with the Division, that the facts and conclusions of law set forth in Count One of the complaint fully and adequately explain his actions in these events. He did not, however, agree with the Division on the issue of penalty and left that issue to the discretion of the administrative law judge and, ultimately, to the Casino Control Commission.

I **CONCLUDE** that respondent Musso violated N.J.S.A. 5:12-100(b) when he took the cards home. That statute reads as follows:

Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a casino hotel complex except in the casino room and in secure areas used for the inspection, repair or storage of such equipment and specifically designated for that purpose by the casino licensee with the approval of the commission. No gaming equipment shall be possessed, maintained, exhibited brought into or removed from a casino room by any person unless such equipment is necessary to the conduct of an authorized game, has permanently affixed, imprinted, impressed, or engraved thereon an identification number or symbol authorized by the commission, is under the exclusive control of a casino licensee or his employees, and is brought into or removed from the casino room at times authorized for that purpose by the commission or at other times when prior notice has been given to and written approval granted by an authorized agent of the commission.

Despite respondent Musso's stipulation that Count One of the complaint adequately and fully describes his conduct on the date in question, I **CONCLUDE** that he did not violate either N.J.S.A. 5:12-99(a)15 or N.J.A.C. 19:46-1.18(h) (g) or (l).

The statute N.J.S.A. 5:12-99 requires casinos to submit descriptions of internal controls; and a(1) through (17) are requirements of the description. Subsection b requires Casino Control Commission review of the internal controls and prohibits the commencement of casino operations until approved. It also proscribes changing the internal controls "in fact." Clearly Musso had no real or apparent authority to promulgate or change the internal controls for the casino.

The regulation, N.J.A.C. 19:46-1.18, describes the receipt, storage inspection and removal of cards. It designates what certain licensed persons must do regarding these functions. Respondent Musso, coming as he did from another area of the casino, was not one of these enumerated in the chain of command by this regulation and could not, therefore, be properly charged with its violation.

The seriousness of his offense is beyond the ken of this respondent. Not only has he seriously breached a statute promulgated to insure the integrity of the gaming process, he has created an evidence problem for those charged with the prosecution of the individuals engaged in the "scam" by seriously interfering with the chain of evidence.

Nevertheless, the Division does not press for revocation. It seeks instead a suspension of his license and a substantial fine. I agree. In the respondent's favor is the otherwise clean record he possesses as a licensed employee. He is a third-generation gaming employee in the State of Nevada. He has been out of the casino industry since this event occurred, a period of almost 23 months. He now supports himself buying and selling antiques. The Division has impressed upon him the seriousness of his offense. I consider him to be capable of rehabilitation. His purpose here was to assist his superior in uncovering a scam against the casino. But vigilantism cannot be condoned where an adequate police force is in place.

I **CONCLUDE** that respondent Musso's continued licensure is not inimical to the Casino Control Act and casino operations. His conduct should be penalized, however. I therefore **ORDER** that respondent Musso's license be suspended for a period of three years, with credit for the time served since his license was temporarily suspended by the Commission in December 1983.

It is further **ORDERED** that he pay a civil penalty in the amount of \$2,000.00.

RESPONDENT MERVIN E. HOAGLAND

I do not accept all of the stipulations of fact and conclusions of law contained in the stipulation filed between respondent Hoagland and the Division of Gaming Enforcement. They beg the question to be determined when the liability of the respondent casino is addressed. For instance, these parties (Hoagland and the Division)

stipulate that Hoagland violated N.J.S.A. 5:12-99(a). That statute can only be violated by a casino, and then in only two ways.

It can be violated by the casino failing to submit a description of its system of procedures and administration and accounting controls within 90 days of its commencement of gaming operations. It can be violated by a casino altering in fact its internal controls without the prior approval of the Casino Control Commission.

Hoagland had no such authority. His job description, which was exhibit A-2 attached to the depositions, makes him responsible for "implementing policy" and to "set procedure and develop personnel in keeping with corporate objectives. . . ." There was no suggestion at the hearing that Hoagland was acting with the tacit approval of casino management in furthering some hidden corporate objective to frustrate either its own security department or the Division of Gaming Enforcement and Casino Control Commission. I expressly invited comment at the hearing as to whether or not Hoagland was acting in accordance with some perceived notion that the casino or its managers disdained the regulatory scheme. No such evidence was forthcoming. The fact remains that President Hyde immediately suspended Hoagland when his conduct on November 26, 1983, was discovered.

I **CONCLUDE** that respondent Hoagland did not violate N.J.S.A. 5:12-99(a)15 as alleged in paragraph 29 of the stipulation and in Count One of the complaint.

Both respondent Hoagland and the Division stipulated that Hoagland violated N.J.A.C. 19:46.1.18(h) which reads as follows:

At the end of each shift or day and at such other times as may be necessary, the casino supervisor shall collect all cards used to play out the shift or day.

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date, time and shall be signed by the dealer and casino supervisor.
2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or day.

I **CONCLUDE** that respondent Hoagland did violate this regulation. He was at all relevant times the casino supervisor. He diverted the cards from BJ36 and prevented the security officer from collecting them.

Respondent Hoagland and the Division stipulated that respondent Hoagland violated N.J.A.C. 19:46-1.18(j) which reads as follows:

At the end of each shift or day, a security officer shall collect and sign all envelopes or containers with damaged cards and cards used during the shift or day, and shall return the envelopes to the security department.

This section regulates the activities of the security officer and only a security officer can violate this provision. Hoagland's conduct is adequately dealt with by section (h). At the very least there is a merger here and I therefore **CONCLUDE** that respondent Hoagland did not violate N.J.A.C. 19:46-1.18(j).

Respondent Hoagland and the Division stipulated that Hoagland violated N.J.A.C. 19:46-1.18(l) which reads as follows:

When the envelopes or containers of used cards and reserve cards with broker seals are returned to the security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. The casino licensee shall cause to be inspected either:
  - i. All decks used during day; or
  - ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample is submitted to and approved by the Commission or its authorized designee;
2. The casino licensee shall also inspect:
  - i. Any cards which the Commission or Division requests the casino licensee to remove for the purpose of inspection; and
  - ii. Any cards the casino licensee removed for indications of tampering;

3. The procedures for inspecting all decks required to be inspected under this subsection shall, at a minimum, include:
  - i. The sorting of cards sequentially by suit;
  - ii. The inspection of the backs with an infra red filter; and
  - iii. The inspection of the sides of the cards for crimps, bends, cuts and shaving;
4. The individuals performing said inspection shall complete a work order form which shall detail the procedures performed and list the tables from which the cards were removed and inspected. The individual shall sign the form upon completion of the stated inspection procedures;
5. The casino licensee shall submit the training procedures for those employees performing the inspection, which shall be approved by the Commission or its authorized designee;
6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be reported to an agent of the Commission and Division by the completion of an approved three-part Card Discrepancy Report.
  - i. The report shall accompany the cards when delivered to the agent of the Commission.
  - ii. The cards shall be retained for further inspection by the Commission.
  - iii. The Commission Inspector receiving the cards shall sign the original, duplicate and triplicate copy of the Card Discrepancy Report and retain the original at the Commission Booth. The duplicate copy shall be delivered to the Division's office located within casino hotel facility. The triplicate copy shall be retained by the casino licensee.

This regulation covers the procedure to be followed in inspecting and accounting for used cards. It also contains an important provision regarding evidence of tampering and unfair play in paragraph 6.

Respondent Hoagland, as the casino manager at the time of this event had a responsibility to report his suspicions concerning the unfair play he observed to an agent of the Commission and Division, pursuant to this regulation. He did not. I therefore **CONCLUDE** that respondent Hoagland violated N.J.A.C. 19:46-1.18(1).

I **CONCLUDE**, based on the stipulation entered by Hoagland and the Division and my independent findings of fact, that respondent Hoagland did violate N.J.S.A. 5:12-100(b). That statute reads in pertinent part as follows:

Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a casino hotel complex except in the casino room and in secure areas used for the inspection, repair or storage of such equipment and specifically designated for that purpose by the casino licensee with the approval of the commission. No gaming equipment shall be possessed, maintained, exhibited, brought into or removed from a casino room by any person unless such equipment is necessary to the conduct of an authorized game, has permanently affixed, imprinted, impressed or engraved thereon an identification number or symbol authorized by the commission, is under the exclusive control of a casino license or his employees, and is brought into or removed from the casino room at times authorized for that purpose by the commission or at other times when prior notice has been given to and written approval granted by an authorized agent of the commission.

Respondent Hoagland violated this statute when he instructed Binstein to remove the cards from BJ36 and when he instructed Musso to take the cards home and examine them.

I **CONCLUDE**, based on the stipulations of fact entered by Hoagland and the Division and my independent findings of fact, that respondent Hoagland violated N.J.S.A. 5:12-80(d). That statute reads in pertinent part as follows:

- d. All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation, or hearing conducted by the Commission. If, upon issuance of a formal request to answer or produce information, evidence, or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the commission.

Respondent Hoagland violated this statute when he failed to report to the Division his actions of November 26, 1983, in causing the removal of the cards from BJ36

and BJ52 when he was initially requested to give information and, again, when he failed to disclose all the facts to Division investigators prior to his polygraph test.

Finally, the Division and respondent Hoagland stipulated that respondent Hoagland violated N.J.A.C. 19:41-7.2 which reads in pertinent part as follows:

It shall be the affirmative responsibility and continuing duty of each applicant, licensee, registrant and person required to be qualified to provide all information, documentation and assurances pertaining to qualifications required or requested by the Commission or Division and to cooperate with the Commission and Division in the performance of their duties. Any refusal by any such person to comply with a formal request for information, evidence or testimony shall be a basis for denial, revocation or disqualification. No application shall be granted to any applicant who fails to provide information, documentation and assurances required by the Act or requested by the Commission or who fails to reveal any fact material to qualification.

The language of this regulation is stronger than the language of the statute N.J.S.A. 5:12-80(d). It makes the duty to disclose not only continuing but "affirmative." I therefore **CONCLUDE** that respondent Hoagland violated this regulation when he failed to disclose to the Division or Commission that he had removed the cards from the normal sequence of disposition.

The remaining issues to be decided in this matter with respect to respondent Hoagland are as follows:

- A. Do these violations impact upon respondent's casino experience and business ability as set forth in N.J.S.A. 5:12-89(b)3?
- B. Do these violations reflect upon respondent Hoagland's honesty, integrity and good character as required by N.J.S.A. 5:12-89(b)1?
- C. Is Respondent Hoagland's conduct inimical to casino operations or the act, pursuant to N.J.S.A. 5:12-86(c)4?

HOAGLAND'S CASINO EXPERIENCE AND BUSINESS ABILITY

The relevant statute reads as follows:

N.J.S.A. 5:12-89(b)3. Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved.

Respondent Hoagland enjoys a good reputation for business ability and casino experience in the casino industry. Stephen Hyde, executive vice president of the Golden Nugget and, at the time of these events, president of the Sands, favorably testified to the background of respondent Hoagland. He called numerous people in the industry regarding respondent Hoagland prior to installing him as casino manager at the Sands in Las Vegas. He reports his reputation as "straight up, nonpolitical and high on integrity." He is reported to be a "perfect casino manager" and one who "always has his eyes open looking for problems." Mr. Hyde was cognizant of the serious consequences of respondent Hoagland's actions on November 26, 1983 (he, in fact, suspended him) but described these actions as an "aberration."

Additionally, the respondent has been licensed as a key casino employee. Presumably, he met this test in his original licensing application. There is no suggestion here that Hoagland did what he did in ignorance of Casino regulations. I therefore **CONCLUDE** that respondent Hoagland's violations do not impact on his casino experience and business ability as set forth in N.J.S.A. 5:12-89(b)3.

I **CONCLUDE** that respondent Hoagland has failed to establish his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)1. He knowingly and purposefully subverted the regulatory scheme and, while under investigation for the incident, on two occasions withheld information crucial to the resolution of the incident.

I further **CONCLUDE** that respondent Hoagland's continued licensure would be inimical to the Casino Control Act and casino operations, pursuant to N.J.S.A. 5:12-86(c)4.

Despite respondent Hoagland's statements in mitigation; that he intended only to assist the casino in resolving a scam perpetrated upon it, there is not a modicum of evidence that his activities on November 25 and 26, 1983, did anything other than frustrate the attempts by the Casino Control Commission, the Division of Gaming Enforcement and casino security to resolve the matter. Nothing can be more inimical to the casino industry than the licensure of a key employee who holds the regulatory scheme in contempt and subverts that scheme when it runs counter to his own interests, whatever that interest may be.

I **ORDER** that the license of respondent Hoagland be revoked as of December 1983.

RESPONDENT GREATE BAY

The Division of Gaming Enforcement seeks to impose liability on the respondent Greate Bay based on the single proposition that the casino "... hired each of the individuals cited in the complaint and placed them in the positions of authority that allowed them to commit these violations." Division of Gaming Enforcement, letter brief, October 15, 1985, p. 4.

This proposition cannot be maintained for several reasons. The casino was not free to hire willy-nilly just any person it selected to hold those positions. It is required by statute to only hire persons who are thoroughly investigated by the Division of Gaming Enforcement and licensed by the Casino Control Commission for these positions.

The casino does have an obligation to train its licensed employees. There was no suggestion in this case that any of the individuals acted in ignorance of the laws and regulations. The stipulations show that the individuals acted "knowingly" and "intentionally." In addition, it appears that these violations occurred because the individuals had a thorough knowledge of the statutes and regulations. See, for instance, paragraph 11 of Count One of the stipulation between respondent Hoagland and the Division. Binstein is alleged to have replaced the cards on BJ36 with the cards from BJ52 because he knew that the procedures which would be invoked at the conclusion of the gaming day would ultimately lead to the discovery that the cards from BJ36 were missing, and an investigation would commence. He sought to use the procedures to throw the investigators off the scent.

Additionally, the Division has not shown that these individuals acted in conformity with some unarticulated casino policy or attitude which holds the regulatory scheme in contempt.

I am satisfied that this was an "aberrant" act. Aberrant, not only in the dictionary sense employed by Mr. Hyde in his testimony describing respondent Hoagland, but aberrant, too, in the sense that it was ultra vires.

When respondent Hoagland called his superior at home after he began to suspect unfair play at BJ36, he could not articulate the basis of his belief that there was in fact unfair play, and was accordingly told not to take any action. No inference adverse to the casino can be drawn from that statement.

Additionally, when Hoagland's violation was discovered by the casino he was immediately terminated, as were the others.

Finally, the casino lost approximately \$240,000 as a result of this scam.

If the respondent Greate Bay needs an admonition that its employees should place greater reliance upon the regulatory scheme in order to lessen the opportunities for unfair play, that loss will serve as a reminder.

Accordingly, I **CONCLUDE** that under the facts of this case the respondent Greate Bay did not violate the provisions of the statutes and regulations with which it was charged. I therefore **DISMISS** so much of the complaint as pertains to this respondent.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 1985  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

11/27/85  
DATE

Receipt Acknowledged:  
Pith Stout  
CASINO CONTROL COMMISSION

DEC 3 1985  
DATE

Mailed to Parties:  
Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

m1/E

EXHIBITS IN EVIDENCE

- H-1 Letter, dated September 29, 1985, from El Embajador Hotel Casino
- J-1 Stipulation of Facts - Greate Bay
- J-2 Stipulation of Facts - Hoagland
- J-3 Stipulation of Facts - Freeland (not included)

(See separate opinion entitled Initial Decision - Settlement, of even date herewith)

- C-1 Brief - Hoagland
- C-2 Memorandum - Greate Bay
- C-3 Letter Brief - Division
- C-4 Reply Memorandum - Greate Bay
- C-5 A-1, A-2, A-3, and A-4 - job descriptions and D - letter from CCC
- C-6 Deposition - Hoagland (B)
- C-7 Deposition - Robert Binstein (C)

WITNESSES

**For Respondent Hoagland:**

**Stephen Hyde  
Mervin Hoagland**

**For Respondent Musso:**

**William J. Musso**



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4105-85

AGENCY DKT. NO. 84-286

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

Petitioner,

v.

**ROBERT BINSTEIN,**

Respondent.

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

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

Record Closed: April 8, 1986

Decided: May 8, 1986

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

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on September 10, 1984, in which it charged that several employees of the Greate Bay Hotel and Casino (Sands) had engaged in actions violative of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations issued pursuant thereto. The complaint, which also alleged violations by the entity, arose from the actions of the named respondents which occurred on or about November 25 and 26, 1983. Essentially, the violations alleged concerned the handling of playing cards which were used at Black Jack table 36 (BJ36) during the hours between 8:30

p.m. and 5:45 a.m. on November 26-27, 1983. The details of the incident and the purported violations will be set forth below.

Following the filing of the complaint and answers by the respondents, the matter proceeded to the Office of Administrative Law (OAL) as a contested case. Hearings were held in connection with the charges against the casino and respondents Mervin E. Hoagland, William J. Musso and Rosalyn Freeland before Administrative Law Judge Edgar Holmes on October 1, 1985. The case against respondent Robert Binstein was severed from the original proceedings. Thereafter, following the issuance of Judge Holmes' decision, counsel for Binstein moved to have Judge Holmes recuse himself. Judge Holmes granted this request over objection of the Division. The matter was then transferred for hearing to Administrative Law Judge Jeff S. Masin. Hearings were held before Judge Masin on February 18, 19 and 24, 1986, in Mays Landing. Thereafter, the respondent requested the opportunity to examine certain evidence from a related criminal proceeding (not involving this respondent). On April 4, 1986, respondent submitted several exhibits and the parties presented their closing arguments via telephone conference call. The record closed upon receipt of the last exhibits on April 8, 1986.

#### THE INCIDENT

The charges against Mr. Binstein arose out of his conduct during the early morning hours of November 26, 1983. Binstein was at the time the assistant casino shift manager at the Sands Hotel. He worked under Casino Shift Manager Mervin Hoagland.

At approximately 8:30 p.m., on November 25, 1983, two individuals later identified as Tony Chantes and Harry King Chor Liu began playing blackjack in the Sands Casino. During the evening, they moved from table 34 to table 35 and eventually to table 36, referred to throughout the hearings as BJ36. Something about the way in which these men played blackjack, as well as the amount of money which they gambled, brought their activities to the attention of casino personnel and throughout the evening and the night hours their actions at BJ36 were watched closely by Hoagland, Binstein, and others. It appeared to observers of the game that Chantes and Liu were not following any particular system of play and yet were betting large amounts of money, at times losing and at other times winning. During the night, crowds gathered around the table and Hoagland and Binstein became convinced that the two men were cheating. They arranged for members of the casino's count team (individuals skilled in determining if players were counting

cards) to assist in observing the play. In addition, Hoagland and Binstein advised casino security that the game should be video taped and the tapes preserved. At various times during the evening, representatives of the Division of Gaming Enforcement as well as the Casino Control Commission observed the play as well.

The parties in this hearing do not contest the facts surrounding the events of the night of November 25-26. Indeed, as part of the evidence in this proceeding, they entered in evidence stipulations of fact which were entered into by the Division and counsel for the Greate Bay Hotel and Hoagland in the companion proceeding. Although not every fact contained in the stipulation was agreed to as a stipulation for the purposes of this proceeding against Binstein, the great majority of the stipulations, which refer to factual incidents rather than findings as to the actions or intentions of the respondents, are not disputed. From the stipulations, as well as the testimony in this hearing, it is clear, and I **FIND**, that during the night hours, while observing the play of Chantes and Liu, Hoagland became convinced that a scam was being perpetrated on the casino, advised Binstein of the same, and placed a call to Jeff Ross, the casino manager. Ross was off duty at the time. Although Hoagland suggested switching the decks of cards which were being used on BJ36, Ross advised against this because of the possibility that the players might leave the table. However, Ross told Hoagland to take a look at the cards after the play ended.

Eventually, at approximately 5:45 a.m., Chantes and Liu concluded their play as the casino prepared to close for the day. By this time, the two patrons had won approximately \$240,000.

At approximately 5:45 a.m., Mervin Hoagland, who was responsible for the operation of the shift and the effective operation of all games, advised Robert Binstein, who as assistant shift manager was responsible for opening and closing the casino, to remove the playing cards which had been used at BJ36 in order that they might be inspected. As set forth in the stipulations of fact between the Division and Hoagland, and as established by the testimony in this case, the procedure used with respect to the handling and collection of cards used on blackjack tables in the Sands Casino as of November 26, 1983, required that the cards used on the table be placed in an envelope which was initialed by the dealer and pit boss. This envelope was then placed on the floor inside the pit from which it was collected by the security department. As a matter of

course, these cards were eventually punched or marked and were then destroyed or distributed by the casino to charity groups or in other unspecified ways.

Pursuant to Hoagland's direction, Robert Binstein went to BJ36 and opened the sealed envelope which contained the cards which had been played on the table that evening. He removed these cards and handed them over to another employee to be placed in the casino credit office of Credit Manager Don Woods. This location had been selected by Hoagland. At this point, Binstein proceeded to BJ52, removed the cards from that area and placed them in a new envelope given to him by Hoagland, had the envelope initialed by the BJ36 personnel, and placed that envelope, containing BJ52's cards in the normal spot from which the BJ36 envelope would be collected. Subsequently, Hoagland without Binstein's knowledge, had the cards removed from the building by another employee, Musso, whom he directed to examine them at Musso's home.

As noted, none of the facts set forth above are disputed. The charges against Mr. Binstein arise in significant part from the conduct just described. Additional allegations arise from his subsequent dealings with representatives of the Division and Commission who became involved of the investigation of the then alleged scam at BJ36.

It is perhaps important at this point in the narrative of the undisputed events to note that at no time has anyone even contended that Messrs. Binstein or Hoagland had any role whatsoever in what ultimately was established to have been a cheating scam conducted by Chantes, Liu and a dealer by the name of Cham Phan Sihapanya. Investigation of the incident eventually led to the indictment of Chantes and Liu, who were convicted and sentenced to state prison. Sihapanya turned State's evidence.

According to the undisputed facts referred to during trial and contained in the Greate Bay stipulation, the Casino Control Commission, because of the large amount of money won at BJ36, was required to confiscate the cards used at that table at the end of the shift. Somewhere after 5:45 a.m. on November 26, Commission Inspector Carol Lively requested Binstein to turn over the cards from BJ36. Binstein did so, except that he gave Lively the envelope from BJ36 which actually contained the cards from BJ52 and did not tell her that the cards from BJ36 had in fact been removed and sent to the casino credit office at Hoagland's direction. Ultimately, as will be explored below, investigators realized that the cards from BJ52 were missing as the card and dice tallies showed no cards from BJ52. In addition, at approximately 8:00 p.m., on November 26, Casino

Control Commission Senior Inspector Michael R. Kurtz advised the Division that upon examination of the surveillance tapes of the play at BJ36 he had determined that the cards used on the table had been blue-backed when in fact the cards turned in for that table were red. The Division then began an investigation to determine why the cards which were turned in for BJ36 did not match the color shown by the surveillance tapes.<sup>1</sup>

The details of the questioning of Merv Hoagland and Robert Binstein during the investigation conducted by the Division concerning the BJ36 cards is central to several of the charges. The testimony of the participants in those interviews will be set forth below, after a detailing of the charges. Although the statements and actions of the participants are not particularly in dispute, motivations and reasons for their actions, as expressed in their testimony, can best be understood with the charges in mind.

#### THE CHARGES

Robert Binstein was charged by the Division with violating N.J.S.A. 5:12-100b, N.J.A.C. 19:46-1.18h, j and l. N.J.S.A. 5:12-100b provides that:

Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a casino hotel complex except in the casino room and in secure areas used for the inspection, repair or storage of such equipment and specifically designed for that purpose by the casino licensee with the approval of the Commission. No gaming equipment shall be possessed, maintained, exhibited, brought into or removed from the casino room by any person. . . .

N.J.A.C. 19:46-1.18h, j and l provide:

- (h) At the end of each shift or day and at such other times as may be necessary, the casino supervisor shall collect all cards used to play out the shift or day.
  - 1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date, time and shall be signed by the dealer and casino supervisor.

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<sup>1</sup>The surveillance tapes are in black and white. The blue cards show up much darker than the red cards on the tapes.

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or day.

(j) At the end of each shift or day, a security officer shall collect and sign all envelopes or containers . . . and cards used during the shift or day, and shall return the envelopes to the security department.

(l) provides for inspection for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play. This inspection is to be carried out by the security department according to further procedures set forth in the regulation.

In addition to the above-alleged violations, the Division contends that these violations impact on the ability of Binstein to establish the casino experience and business ability required for licensure as a casino key employee, pursuant to N.J.S.A. 5:12-89(b)3. This ability and experience must be established by clear and convincing evidence, so "as to establish the reasonable likelihood of success and efficiency in the particular position involved." Further, Binstein is alleged to have failed to disclose accurately and truthfully the facts concerning the handling of the BJ36 cards and this failure is purportedly a reflection upon his honesty, integrity and good character, traits required to be proven by clear and convincing evidence for licensure as a casino key employee, pursuant to N.J.S.A. 5:12-89b1. Additionally, the Division alleges that Binstein's failure to disclose "accurately and truthfully" the facts concerning the cards constituted a failure to cooperate with the Division, a requirement for a licensee, pursuant to N.J.S.A. 5:12-80(d) and N.J.A.C. 19:41-7.2, as well as condition no. 2 of the certificate of operation issued to Greate Bay.

Finally, the Division argues that Binstein's conduct in connection with this incident indicates that his continued licensure would be inimical to casino operations and the policies of the Casino Control Act, therefore requiring that his license be removed, pursuant to N.J.S.A. 5:12-86(c)4.

#### THE INVESTIGATION

As previously noted, the Commission investigator examining the surveillance tapes determined that the cards turned in for BJ36 did not appear to be of the same color as those played at the table. At the same time, casino security became aware that no cards had been turned in for BJ52. Detective Richard LaSasso, a state police detective

assigned to the casino investigations section and then assigned to the Sands, was assigned to investigate the apparent contradictions and inconsistencies. According to LaSasso's testimony, after Commission Inspector Kurtz discovered the color difference, LaSasso began reviewing paperwork concerning the collection of cards. He too saw that no cards had been turned in for BJ52. He made this discovery at approximately 10:30 p.m. on November 26. LaSasso questioned various persons who had been observing the game in order to check on the color of the cards used. No one could recall the color. When LaSasso spoke with Mike Middelman, who had been the relief dealer in pit 9 which contained BJ36, Middelman mentioned that he had been asked to sign an additional envelope after the cards were picked up. LaSasso questioned Sara Grattick, the floor person assigned to pit 9. She did not know what happened to the first envelope which she had signed, but noted that she thought that the request to sign a second one was unusual. The request had come from Robert Binstein, who gave her the unsigned envelope and said "here get this signed."

As LaSasso recalled, he then interviewed Robert Binstein at approximately midnight, November 26-27. He asked Binstein about the color of the cards played at BJ36, and Binstein said that he didn't know and could not explain why the color was different from that shown on the surveillance tapes. LaSasso recalled that he specifically questioned Binstein as to why there was no cards turned in from BJ52 and Binstein claimed to have no knowledge regarding these cards. LaSasso then asked if Binstein had handled the cards from BJ36 or the envelopes and he said "no."

LaSasso then interviewed Mervin Hoagland. Hoagland also was specifically asked about the card color and the missing cards from BJ52.

LaSasso continued his investigation on December 1. At that time he met with Hoagland again. On November 28 Hoagland had produced the eight decks of missing cards from BJ36, giving them to the Sands' president, Stephen Hyde. When LaSasso reinterviewed Hoagland on December 1, he still was unaware of Binstein's role, as Hoagland had not revealed it to Hyde. Hoagland initially told LaSasso that he, Hoagland, had gone to pit 11, gotten the cards from BJ52, gotten a new security envelope, put the cards from 52 in the new envelope, placed that envelope in pit 9 at BJ36 and removed the original BJ36 cards from the casino and examined them at home on Saturday and Sunday before returning them to Hyde. He did so because he felt that he had been cheated by the gamblers and did not believe that the Commission could detect card-marking. Following

Hoagland's statement, LaSasso had him submit to a polygraph examination. The polygraph operator reported inconsistent results and the impression that Hoagland was trying to protect someone. Hoagland was confronted with this information and then admitted that he had indeed attempted to protect Binstein, Musso and others. He then explained that he wanted the cards from table 36 and that Binstein had gotten the cards at his direction and had then obtained the BJ52 cards and placed them in a new envelope which Hoagland gave him. Binstein had the new envelope signed and placed in pit 9 for collection as BJ36's cards. In addition, Hoagland advised that he had had Musso remove the cards from the credit office and take them home for examination.

Following the second Hoagland interview and the revelation of Mr. Binstein's role, LaSasso contacted Binstein and asked him to come in for another interview. This interview occurred on December 15. At that time, Binstein told LaSasso essentially what Hoagland had told him, including his role in the switching of the cards. Binstein added that as he removed the cards from BJ36 he ran into John Maxheimer, a credit executive at the Sands, and asked Maxheimer to put the cards in Don Wood's office.

Detective LaSasso was questioned concerning the use of the decks of cards as evidence in the criminal trial of Chantes and Liu. He testified that the cards were not entered in evidence and that he was told by the deputy attorney general who tried the criminal case that because the chain of custody had been broken due to the removal of the cards from the envelope and from the casino the cards were not offered. In addition, this break in the chain purportedly played some role in the determination to use Cham Phan Sihapanya as a witness rather than to prosecute him along with the two players.

Detective LaSasso was also called as a witness on behalf of Mr. Binstein. During his testimony he acknowledged that the actions taken by Hoagland and Binstein in attempting to determine whether Chantes and Liu were cheating were a significant factor in the ultimate uncovering of the scheme. As part of the testimony, he was questioned concerning the chronology of events at the time of his interviews with Binstein. Although he was uncertain, LaSasso indicated that it was possible that during his initial interview with Binstein during the evening of November 26 he may not yet have been aware that cards were missing from table 52 and therefore may not have questioned Binstein directly about the missing cards.

Robert Binstein testified in his own behalf. He is presently employed as a pit boss in the bacarrat pit at the Tropicana Hotel. He has been a key licensee for five and a half years and held that license for about three years at the time of the incidents in question. Binstein explained his responsibilities and duties as assistant shift manager at the Sands. These involved responsibility for table games, staff, patrons, problems with respect to the same. He had a certain degree of discretion and ability to make decisions with respect to such items as staff sickness, scheduling, raising minimum limits on tables and certain minor comps given to players. Where there were questions concerning possible cheating or major comp determinations, these were referred to Hoagland, who was his immediate supervisor.

The witness described his job as requiring that he make an ongoing series of decisions, generally on an immediate basis. He had to deal with questions concerning irregularities in the play, the making of change, purported insults toward patrons, players who claimed they have not been paid what they were due, etc. Sometimes he received instructions from Hoagland, and he was to carry out his orders as directed. Hoagland had a reputation in the industry of having good character, honesty and integrity. Binstein had been told by friends in Las Vegas and Atlantic City who had worked for and were otherwise familiar with Hoagland that he was a person from whom Binstein could learn a lot and was one of the most respected men in the industry, knowledgeable in all phases of casino operations. His own personal opinion of Hoagland at the time was that he was quite impressed by the way Hoagland handled every decision. He trusted him explicitly.

The witness described his involvement with the November 25-26 incident, his observations of the play of Chantes and Liu, his interplay with Hoagland during the surveillance of the games, and the ultimate decision by both men that the two patrons were indeed cheating.

When it came time for the casino to close, Hoagland asked Binstein if he had had an opportunity to examine the BJ36 cards. Binstein had not and Hoagland told him to do so. Binstein went over to the podium inside pit 9, took out the cards and spread them, looked at them for marks under the fluorescent lights, which he described as "poor," and after a two minute look determined that he saw nothing. He told Hoagland that he couldn't find anything, and Hoagland said "I want the cards" and directed him to put them in Don Wood's office. Binstein considered these remarks as an order and performed in accordance with the instructions. He took the cards, and gave them to Maxheimer, who

put them in Wood's office, which was 30 to 40 feet away. Hoagland came back with an envelope from security and said "have this signed." Binstein went to BJ52, took the cards, put them in the new envelope, sealed it, had it signed by the required personnel and dropped it on the floor in pit 9. No one from the Commission had yet asked for the cards. Binstein knew that security would pick the envelopes up in a matter of minutes. He assumed that Hoagland was going to look at the cards under some good light and had no knowledge that Hoagland was going to have the cards removed from the building. Binstein "felt that Hoagland would find something" and take the matter up with the Commission personnel. At the time, Binstein did not think that Hoagland had told him to do anything wrong.

The witness testified that had he told Hoagland that he would not get the cards or otherwise follow through with the instructions he was given he would have been "at least fired" and would have been under suspicion as being part of the scheme.

On November 26, Hoagland brought Binstein up to the Division office at the Sands to see Detective LaSasso. At this point, Hoagland had not been interviewed and he told Binstein that "I told you what to do with these cards. I will take responsibility to explain it." Hoagland told Binstein not to say anything about his role in the card switch. Binstein believed that Hoagland would do as he said and therefore when he talked to LaSasso, a conversation which he believed occurred approximately between 10:30 and 11:00 p.m., he did not advise Binstein of his role. A conversation was held concerning the color of the cards and the possibility of a scam occurring at BJ36. Binstein told LaSasso that he couldn't recall the color of the cards. He explained that usually people watching the game were looking at the face of the card and not the back and it was not unusual that the back color was not remembered. Binstein did not believe that he was asked about table 52.

Sometime later in the week, Binstein learned that Musso had taken the cards out of the building. He called LaSasso and told him that he wanted to come and make a statement about the whole situation. He met with him on December 15 and at that time explained his role. He was told by LaSasso that someone would get back to him soon and when no one did he called several times over the next few months to find out what further information the Division might want.

The witness explained that all his actions on the night in question were performed in good faith. However, as a result of what occurred, he was fired by the Sands on December 22, 1983. He had been employed at the time at a salary of approximately \$63,000, including his bonus. After being fired, he was without a casino job from January through June 1984. The bank repossessed his home at the end of 1984. His marriage fell apart. In August of 1984, he began to work as a driver of a small bus and limousine. He was making \$150 a week. He was hired by the Tropicana in December of 1984. Mr. Binstein explained that the entire situation had a "devastating effect" on him.

The respondent has been employed at the Tropicana since December of 1984 as a pit boss in the bacarrat pit. He has had no problems with management.

Mr. Binstein acknowledged that he knew that the cards that were placed in the envelope from table 36 were indeed those from table 52. He really did not know the color of the cards and when he told LaSasso that he didn't he was not lying. However, he did not explain that he knew why the color was wrong.

Binstein testified that when he took the cards and gave them to Maxheimer to put in Wood's office he did not feel that he was doing anything wrong. He also felt that he was doing nothing wrong when he switched the cards or when he got the new envelopes signed. When he gave the cards to the Commission investigator in the second envelope "at that moment" he didn't think he was doing anything wrong nor did he think he had done anything wrong when he did not reveal that he knew that the cards had been switched. He acknowledged that he did not speak truthfully when he told LaSasso that he knew nothing about why the color of the cards might not match; however, he did not lie, as such. He relied upon Hoagland's statement that he was going to tell the truth and therefore said nothing about his role in the incident.

Sometime after the incident, Binstein realized that he had in fact done wrong. Upon questioning, he indicated that in July 1984 he became aware of the full extent of Hoagland's failure to reveal the full details of the incident to LaSasso in the initial interview and when this became clear to him he realized his wrong. At the time of the incident he felt that the only way to stop the cards from going to security and being destroyed was to do what was done. He also felt that he had no option but to do as Hoagland told him. According to the witness, in the casino industry when one is told to do something by a superior he does it.

The witness was questioned concerning his priorities in connection with his job duties. He stated that the rules of the state were the primary concern, followed by a tie between loyalty to the company and to his boss.

In connection with the issue of good character, honesty and integrity, Mr. Binstein presented a series of witnesses. Among these were such as Leon Scott Beeman, director of gaming operations at Harrah's Marina Casino. Beeman has known Binstein for four years, having started as a pit boss at the Sands in February of 1982 working under Binstein, who was his shift boss. Binstein has an excellent reputation for good character, honesty and integrity, as well as an outstanding reputation for skill and knowledge in all aspects of casino operations. His technical and people skills are also "excellent."

Robert J. Cirincion, assistant shift manager at the Tropicana, testified that he worked with Binstein when both were pit bosses at the Sands. He heard only "good things" about him. He is "very fair and concerned for all, very honest."

Both Cirincion and Binstein are now employed at the Tropicana and Binstein is the bacarrat pit boss. Cirincion has the obligation to observe and monitor Binstein's work. He described the respondent as "more responsible than any other pit boss on the shift" and "highly regarded" by management.

Robert Kesel, assistant casino manager at the Tropicana, observes Binstein at work on a nightly basis. He has never heard anything bad about him, and Kesel would trust Binstein with his own money. The bacarrat pit produces 40 percent of the drop at the Tropicana on a daily basis, and therefore the pit boss of the bacarrat pit must be held in the upmost trust by management.

Mr. Kesel commented on the concept that in the casino industry one does what he is told to do by his bosses without question. He described this as a system that was "taught from early age," that an employee would do anything that his boss told him to do, except steal. This ingrained thinking no longer applies because the system in the casino industry today is "absolutely different."

Robert M. James, vice president of casino operations at the Tropiciana, testified that he hired Binstein to work at that casino on the recommendation of, and

along with, William A. Sorrentino, the casino manager. Binstein is held in the "highest regard" and "all pit bosses should be of Binstein's quality." In James' opinion, if the Tropicana expanded "tomorrow," Binstein would be the top candidate to promote to a position of assistant shift boss.

William A. Sorrentino, casino manager at the Tropicana, testified that he was in total agreement with James' assessment. He described Binstein as having a reputation that was "beyond reproach." His own opinion is that the respondent is of the "highest integrity and honesty."

Other witnesses from the casino industry generally supported the high reputation of the respondent. Many of these witnesses were asked whether the charges against Binstein, including the charges relating to lying and false misrepresentations to the Division and Commission, affected their attitudes toward him. Most indicated that they did not know enough about the incident and would have to know the full details, including all the circumstances, before being able to make such a determination.

#### DISCUSSION

As noted, the factual context in which the violations are alleged to have occurred is not really in dispute. As the findings set forth supra indicate, Chantes and Liu, along with a dealer who marked cards for them, engaged in a scam which resulted in a large loss to the casino. These gentlemen had apparently been involved in a similar incident at Caesars Boardwalk Regency Hotel some weeks before, but were not convicted for that incident. The involvement of Mr. Binstein in the matter arose because of his position as a assistant shift manager and because he was directed to do certain things by his boss, Mervin Hoagland. It is possible that Binstein's actions might not have occurred had he not been following orders. Had Binstein been the senior supervisory person on duty at the time that the casino closed down, there is no telling what he might have done.

I **FIND** that Robert Binstein did remove the cards from the BJ36 envelope in which they had been properly placed by the pit personnel, put cards that were not from BJ36 into a new envelope, had the envelope signed and placed back in the proper location

for an envelope that should have contained the BJ36 cards. In doing so, he violated N.J.A.C. 19:46-1.18(h), because as a casino supervisor, he did not comply with the regulation that the cards be placed in a sealed envelope identifying the table number at which the cards were played. The regulation specifies that the cards from any particular table be in an envelope identifying the table at which they were used. Here, the cards from table 36 were in fact not in the envelope which purported to hold those cards, but the cards in the envelope were from table 52. By engaging in the card switch, Mr. Binstein set up a situation where the cards collected from table 36 at the specific request of the representative of the Commission were not the cards which the Commission thought they were, that is, the cards played on the table where the scam purportedly occurred. By removing the cards from their original container and replacing them with a set of cards that had no relation to table 36, Binstein not only destroyed the clear chain of custody of evidence related to a criminal gambling scam, but also hindered the Commission and the Division from performing their investigative function. Although it is recognized that both Mr. Binstein and Mr. Hoagland were attempting to investigate whether a scam had occurred and whether the cards were marked, there is no evidence that it was the responsibility of these gentlemen to engage in an investigation of this sort in place of the duly constituted law enforcement agency and the regulatory body. Had Hoagland and Binstein sought out Commission and Division representatives, advised them of what they thought had occurred, and presented the actual BJ36 cards in their original envelope to the agency personnel they could have avoided damaging the chain of custody, offered their assistance in the investigation (be it in connection with information about personnel, examination of the cards, etc.), and avoided the problems which ensued. Instead, on their own and without lawful approval, they chose to become their own investigators and did so in a manner which could conceivably have severely hindered the possibility of proving the case against the perpetrators.

In addition to violating the regulation concerning the collection and handling of cards, the respondent's actions resulted in cards being removed from the casino floor by someone other than a representative of the security department, preventing the security department from engaging in its assigned duties under sections (j) and (l) of N.J.A.C. 19:46-1.18. I **CONCLUDE** that the actions of Mr. Binstein made it impossible for the security officers to perform their assigned tasks, and therefore he is responsible for a violation of sections (j) and (l).

With respect to the charge that Binstein violated N.J.A.C. 5:12-100b, it is clear that the regulation requires that gaming equipment such as cards not be possessed on the premises of a casino hotel except "in the casino room and secure areas used for inspection, etc." Here, Binstein knowingly aided and abetted Hoagland in removing cards from the casino floor to the credit manager's office. Although counsel for respondent argued that this was not violative of the regulation in that the credit office was "part of the casino floor," a reasonable interpretation of the regulation, when read in the context of regulations governing the collection of cards following play contained in N.J.A.C. 19:46-1.18, compels the conclusion that section 100b does not permit the removal of gaming equipment off of the playing floor to areas such as offices which may adjoin the playing floor unless those offices or areas are specifically identified as being for the purpose of inspection, repair or storage. The statutory language itself contains the requirement for a special designation for such purposes of any area other than the casino room. No evidence has been presented that Mr. Wood's office was then so designated. I **CONCLUDE** that Binstein's action in handing the cards to Maxheimer and directing him to take the cards to the credit manager's office constituted a violation of section 100b.

Although Mr. Binstein testified that at the time he did not think he was doing anything wrong, as a responsible casino supervisor he had an obligation to be aware of the statute, rules and regulations governing the handling of gaming equipment. He was particularly responsible for the games and for opening and closing the casino. There is no reason to believe that he thought that it was permissible to take the cards off the gaming floor, particularly when he knew full well what was supposed to be done with the cards; that is that they were to be secured in sealed envelopes and left at a pit stand until collected by security. Therefore, I **FIND** that although Binstein expressed the feeling that he did not know at the time that he was doing anything wrong when he had the cards removed that indeed he knew that this was an action which the regulations did not allow.

Perhaps the most serious allegations against Mr. Binstein are not those dealing with the handling of the cards and the transfer of the BJ36 cards to the credit manager's office. While these are surely serious in and of themselves, they pale in comparison with Binstein's actions thereafter, and it is to these that consideration must now be addressed.

When Mr. Binstein was approached by a casino commission inspector and asked for the cards for table 36, he knew full well that the cards that were in the envelope

which he produced for the inspector were not the cards from BJ36. There can be no conceivable explanation for why Binstein chose to misrepresent what he was giving to the inspector. Although there is no evidence that he directly told the inspector in so many words that the cards and the envelope were from BJ36 when he knew they were from BJ52, the fact that he handed over the envelope and said nothing of an explanatory nature to the inspector is as serious a "sin of omission" as it might be a "sin of commission." Saying nothing under these circumstances was tantamount to saying that the cards were indeed from BJ36.

To compound matters, Mr. Binstein also misrepresented to Detective LaSasso during his initial interview on November 26 that he did not know why there might be a problem concerning the color of the cards from BJ36. Although I do not **FIND** that LaSasso asked Binstein during this initial interview about the cards from table 52, which I **FIND** he learned about at a later time, I do **FIND** that Binstein was asked if he knew the color of the cards from 36 and that at the time he was asked this question he knew that the Division was investigating the possibility of some problems with the play at that table. Although Binstein full well knew that the cards that had been played on that table had never been handed into the Division or Commission and that in fact the cards handed in were, by his own doing, cards other than those played at 36 he did not in any way attempt to clarify the situation for LaSasso, aid the detective by telling him of the switch, or in any way cooperate with the Division investigator. Instead he asserted a lack of knowledge about the color. Given the circumstances, and what Binstein knew, his failure to explain the circumstances forthrightly and immediately constituted a serious incident of misrepresentation and withholding of information from the Division. Again, while there is no question that Binstein's original intention, as Hoagland's, was to determine whether a scam had occurred, this action of failing to cooperate with the Division, covering up what he and Hoagland had done, and allowing false impressions to be created and maintained concerning the cards played at 36 and turned in from there constituted inexcusable conduct on Binstein's part. I **FIND** that as a result of his actions in failing to completely, truthfully and immediately advise Detective LaSasso and Inspector Lively of what he knew Binstein violated N.J.S.A. 5:12-80d. Binstein failed to fulfill his:

Continuing duty to provide any assistance or information required by the Commission or Division, and to cooperate in any inquiry or investigation conducted by the Division and any inquiry, investigator or hearing conducted by the Commission.

Further, he violated N.J.A.C. 19:41-7.2, which places upon any licensee an:

Affirmative responsibility and continuing duty . . . to provide all information, documentation and assurances pertaining to qualifications . . . and to cooperate with the Commission and Division in the performance of their duties.

In view of the above findings, it becomes necessary to consider what affect they have upon the respondent's continuing obligation to establish his casino experience and business ability, his good character, honesty and integrity and, further, what the findings and conclusions demonstrate about the possible inimicality of continued licensure for this respondent. Implicit in this consideration is the necessity of determining what the appropriate penalty is for Binstein's violations.

It is absolutely clear from the testimony of the various character witnesses presented by Mr. Binstein that he has the highest reputation within the casino industry, that his technical skills are outstanding, that his personal relationships are equally excellent, and that in the opinion of those with whom he works and under whom he operates he is a top notch employee, highly responsible and respected and destined for higher positions in the future just as he has held higher positions in the past. I have no doubt as to the sincerity of the testimony of each of the many character witnesses who spoke on his behalf or wrote letters. I also fully understand their reluctance to express an opinion of how their thoughts concerning Binstein might be affected if he did what the Division says he did without knowing all the details concerning the purported violations and the circumstances surrounding them.

In general, the activities engaged in by Binstein, violative of casino statutory and regulatory provisions governing gaming equipment and cooperation with the regulatory and law enforcement agencies, reflect adversely on his ability to perform in a senior supervisory capacity within the casino industry. Where an individual operating at Binstein's level, as an assistant casino shift manager, does not know how he is to handle gaming equipment, does not know how to follow the regulations concerning the closing of games and the securing of the playing apparatus, and/or purposely and knowingly violates those regulations for reasons which are not justified by the regulations, his judgment and abilities are certainly suspect. Although it is quite understandable that Binstein and Hoagland wanted to uncover evidence of a scam, they knew full well that there was a regulatory commission and a division of the attorney general's office which were assigned

by statute and regulation the tasks of regulating the industry and enforcing the law and they certainly knew that these were the appropriate agencies to turn to for assistance, and to assist, in uncovering wrongdoing. Indeed, neither Hoagland nor Binstein was even a member of the security staff of their own hotel and if they suspected wrongdoing one would think that they at least would have called in their security personnel to be involved in the securing of the evidence and the proper handling of such material until such time as it could be examined by duly authorized law enforcement personnel. Instead, Binstein and Hoagland took it upon themselves to become the investigators. They had no authority to do so, and Binstein does not purport to claim that he had such authority.

In addition, the attitude demonstrated by Binstein toward his actions and his belated recognition of wrongdoing causes concern. The respondent testified that within his industry some sort of blind adherence to the commands of a supervisor was the norm. At least one character witness expressed this very idea, as did another employee, Ms. Graddick. While the character witness did advise that one would not steal at the direction of a supervisor, it appears that the limits of what one would do short of such clearly criminal conduct were indistinct at best. Thus here Hoagland directed Binstein to do something which Binstein no doubt knew he shouldn't have done and he did it anyway because his boss told him so. Binstein failed to exercise any sort of discretion, and apparently did not attempt to dissuade Hoagland in the least from Hoagland's chosen course. Surely Binstein had the knowledge and should have exercised the option of suggesting to Hoagland that although they might have questions as to whether the Commission could detect the marked cards, they should still call in the Division and Commission, advise them of their concerns about the game, and be sure that their actions were coordinated with the law enforcement and regulatory authorities. Binstein did none of this, but instead automatically and instantaneously responded to Hoagland's directions. Where one holds a position as important as Binstein did, subject to the kind of responsibilities imposed on him, operating in a highly regulated context, one must be able to exercise more judgment, more independent thinking, and one must be able to at least voice one's objections to conduct and directions which appear adverse to the regulatory scheme. The fact that Binstein failed to do so here is not excused by his fear that he would be dismissed if he objected or that he would be considered part of the scheme. Certainly it would have been strange for Hoagland to have suspected Binstein of being a party to the criminality if Binstein was the one who suggested that the Commission and

Division be called in immediately to examine the cards, secure them and otherwise aid in the investigation. Therefore, the justifications put forth by the respondent for his actions appear thin indeed.

I **CONCLUDE** that the respondent's violations call into serious question his ability to demonstrate the requisite casino experience and business ability required for licensure as a casino key employee. Pursuant to section 89b(3), a showing of sufficient business ability must be made by "clear and convincing evidence." Based on Binstein's actions, I cannot find that he has demonstrated that he possesses the requisite business ability. The ability to exercise judgment and discretion, to object to wrongdoing, and the ability to both know and follow the regulatory scheme all are essential portions of the business ability required for one holding a key employee license. I cannot conclude that Mr. Binstein has demonstrated clearly and convincingly that he has such abilities.

Serious questions concerning the respondent's good character, honesty and integrity are certainly raised by his conduct in this incident. The actions of the respondent in misrepresenting facts to the Division and Commission, withholding information, and fostering misconceptions by his failure to cooperate fully and truthfully all bespeak a lack of integrity, a deficit in character, a blot on honesty. Although I fully recognize Binstein's good faith in attempting to investigate wrongdoing, his actions vis-a-vis the Commission and Division cannot be excused. Aiding in an investigation by lying, withholding of evidence, and misrepresentation is certainly no aid to the investigators at all.

No doubt in general Mr. Binstein is an honest man. His reputation is probably essentially accurate. However, in the casino industry one holding a casino key employee license is held to an extremely high standard. Given the facts and circumstances of the incident of November 1983, I am forced to conclude that, certainly at that time, Mr. Binstein's good character, honesty and integrity were wanting.

The respondent's continued licensure is not inimical to the policies of the Casino Control Act and the interests of the Casino Control Commission, at least as that term is used in N.J.S.A. 5:12-86c(4). Mr. Binstein did not commit any "other offense" which would justify a determination of inimicality since offense in c(4) is limited to a criminal or quasi-criminal activity other than those listed in the automatic disqualification portion, 86c(1), (2) and (3). Although certainly one could argue that the continued

licensure of one who lied to the Commission and Division would be "bad" and not commensurate with the interests which the act seeks to further, such broader considerations are not contemplated by c(4).<sup>2</sup>

PENALTY

N.J.S.A. 5:12-129 provides for sanctions which may be imposed upon licensees. Among the sanctions permitted are revocation, suspension and/or civil penalties. In contemplating the penalty to be imposed upon Mr. Binstein for his violations, I have carefully considered his actions, the nature of the violations, the significance thereof, the motivations for his actions, and the consequences thereof. I have also considered his overall record in the industry, as well as the character evidence presented.

There is no doubt that lying to the Division of Gaming Enforcement and the Casino Control Commission, misrepresenting significant facts concerning matters under investigation, and withholding critical information are among the most serious offenses that a licensee can commit. The entire system of regulation is based upon trust, honesty and the integrity of the participants. In any system involving mass regulation of an industry, the need for truth and honesty is paramount. Particularly with respect to an industry as sensitive as the casino industry, subject to the pressures, dangers and temptations inherent therein, those participating in the system must be held to an extremely high standard of truthfulness. This is even more especially so with individuals operating at the casino key employee level. These individuals, those who are entrusted by their employers with positions of significant responsibility and who act in a supervisory capacity, are required to be of the highest character. There is little room, if any, for those who cannot live up to such standards. While no one is expected to be perfect, where an individual casino key employee licensee offends against the regulatory system, the regulatory body must give serious consideration to whether that individual should be permitted to retain a position of high responsibility in the future.

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<sup>2</sup>Other sections of the Act appear to contemplate determinations of inimicality based on a broader conception of what is "improper" under the policies of the Act or "bad" for the industry. Thus, section 86e and f do not require that the determination of inimicality be based on convictions of crime, but instead upon certain associations or economic activities which are viewed as suspicious and/or threatening to the overall perception of and actual integrity of the system.

Despite the fact that Mr. Binstein has in general established a very good reputation and no doubt is quite adept of fulfilling the obligations and duties of his chosen employment, I cannot conclude that his continued licensure as a casino key employee should be permitted. Where an individual holding a key license has been proven to have violated regulations with respect to gaming equipment and practices something less than the severest sanction may be properly considered. Where that individual has been shown to have engaged in actions which call into question his business ability, some limitation on the severity of the punishment might be considered. However, where that individual has committed acts of lying, misrepresentation and withholding of material information, the ultimate sanction of revocation is fully warranted. Although the incident involved here occurred sometime ago, because it was the type of action which strikes directly at the heart of the regulatory process, I **CONCLUDE** that Mr. Binstein's casino key employee license must be revoked.

I have given serious contemplation to whether Mr. Binstein should be permitted to retain a casino employee license. Although his actions sprung from an incident in which he acted in good faith to attempt to investigate wrongdoing, again the nature of his most serious violations, that is the lying, the misrepresentation and the withholding, are of such gravity, and are in and of themselves so significant separate and apart from the underlying incident, that I cannot in good conscience draw a distinction between the penalty that should be imposed with respect to the key employee license and any other license which Mr. Binstein may have or desire. Although retention of a casino employee license might be appropriate where a key employee loses his key license because of questions about his showing of business ability (in a supervisory or policy-type context), where the loss of key employee status results from violations of the cooperation regulations as serious as occurred here, and where there has been a failure to demonstrate the necessary good character, honesty and integrity, a distinction in the sanctions appears unjustified. For those reasons, I **CONCLUDE** that I cannot recommend that Mr. Binstein be permitted to retain a casino employee license.

For the reasons expressed, I **CONCLUDE** that the respondent's license must be **REVOKED**. It is so **ORDERED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

May 8, 1986  
DATE

Jeff S. Masin  
JEFF S. MASIN, ALJ

Receipt Acknowledged:

May 4, 1986  
DATE

N. Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 12 1986  
DATE

Ronald A. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Stipulation of Facts between Division of Gaming Enforcement and Mervin E. Hoagland
- P-2 Stipulation of Facts between Division of Gaming Enforcement and Greate Bay Hotel and Casino, Inc.
- P-3 Stipulation of Settlement between Division of Gaming Enforcement and Rosalyn Freeland
- P-4 Transcript of Proceedings, October 1, 1985
- P-5 Memorandum of February 26, 1984, from Detective LaSasso, to Detective Sergeant Kuhn
- P-6 For identification - Not in evidence
- P-7 Investigative Reports of Detective LaSasso, November 26, 1983 through January 11, 1984
- P-8 For identification - Memorandum from Mr. Lewis, to Detective LaSasso
- P-9 Sworn Statement of Mervin Hoagland, July 29, 1984
- P-10 Sworn Statement of Robert Binstein, of July 6, 1984
- P-11 Sworn Statement of Rosalyn Freeland, taken July 13, 1984

On behalf of respondent:

- R-1 Letter of February 3, 1986, from Bob Cirancion
- R-2 Letter of February 6, 1986, from Kenneth Eisenberg
- R-3 Letter of February 12, 1986, from Scott Beeman
- R-4 Letter of January 18, 1986, from Art Casciato
- R-5 Letter of January 14, 1986, from Robert Kesel
- R-6 Letter of January 28, 1986, from Neil Waldie
- R-7 Letter from Ned Connery
- R-8 Letter of January 13, 1986, from Frankie Torcasio
- R-9 Letter of January 29, 1986, from William A. Sorrentino
- R-10 Letter of February 10, 1986, from Robert M. James

- R-11 Letter of February 3, 1986, from Hugh McCullough
- R-12 Letter of January 31, 1986, from Emil Russell
- R-13 Letter of January 17, 1986, from Joseph Gallerani
- R-14 Letter of February 2, 1986, from James L. Dew
- R-15 Letter of February 10, 1986, from Peter Eliakis
- R-16 Letter of January 29, 1986, from James Sattazahn
- R-17 Letter of February 10, 1986, from Patrick D. Cox
- R-18 Letter of February 7, 1986, from Sharon Altman Eisenberg
- R-19 Letter of February 7, 1986, from James J. Newman
- R-20 Letter of January 20, 1985, from Michael F. Speller
- R-21 Letter of May 24, 1985, from James Reed Tuthill
- R-22 Letter of January 22, 1986, from Andy Cansalo
- R-23 Letter of July 19, 1985, from George A. Deverell
- R-24 Letter of July 5, 1985, from Ron Nadeau
- R-25 Handdrawn diagram of BJ36 (not to scale)
- R-26 Continuation page, page 3 of 3, report date December 1, 1983, by Detective LaSasso
- R-27 Supplementary Investigation Report of December 2, 1983, from Detective Leary
- R-29 Continuation page of report of November 26, 1983, page 5 of 5, by Detective LaSasso
- R-30 Supplementary Investigation Report of Detective C.T. Brennan, December 5, 1983
- R-31 Supplementary Investigation Report of Sergeant Reilly, dated December 5, 1983, 2 pages
- R-32 Supplementary Investigation Report of Detective Brennan, dated December 22, 1983
- R-33 Supplementary Investigation Report of Agent Janco, dated December 13, 1985

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

Complainant,

v.

DECISION

GREATE BAY HOTEL AND CASINO, INC., :  
t/a SANDS HOTEL AND CASINO OF :  
ATLANTIC CITY, :

Respondent. :

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Roberto Rivera-Soto, appeared for the respondent.

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

INTRODUCTION

This matter comes before the Casino Control Commission (Commission) as a result of a complaint filed by the Division of Gaming Enforcement (Division) alleging that Greate Bay Hotel and Casino, Inc. (Greate Bay), refused to provide copies of IRS Forms 8362 (Currency Transaction Reports by Casinos,<sup>1</sup> hereinafter CTRs) in response to verbal

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1. Currency Transaction Reports must be filed by all financial institutions with the United States Treasurer pursuant to the Bank Secrecy Act and Title 31 of the Code of Federal Regulations whenever a currency

(Footnote Continued)

and written requests for such reports. The complaint seeks a ruling that Greate Bay's refusal to provide CTRs as requested violated the Act, in particular N.J.S.A. 5:12-78, -80(d), -96(e), and Commission regulations N.J.A.C. 19:45-1.8(a) and N.J.A.C. 19:41-7.1 et seq., and an order compelling Greate Bay to immediately provide copies of the requested reports. The complaint further requests that the Commission take whatever action necessary to prevent similar violations from occurring in the future.

Respondent raises a variety of defenses as grounds for dismissal, including that the Commission lacks jurisdiction to grant the relief requested due to the application of the Supremacy Clause of the United States Constitution and the doctrine of federal preemption, the fact that the Secretary of the Treasury was an indispensable party, possible liability to third parties and the application of various equitable doctrines. The respondent also claims that the Division's complaint is moot. For the reasons set forth below, we order Greate Bay to turn over the CTRs at issue

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(Footnote Continued)

transaction involving \$10,000 or more occurs. Effective May 7, 1985, the regulations were revised to include casinos within the definition of "financial institutions" in order to subject casinos to its reporting and recordkeeping requirements. 31 CFR 103.11.

and we impose a fine upon Greate Bay for its unjustified resistance to the proper and continued efforts of the Division to obtain information directly relevant to the operation of the casino.

PROCEDURAL HISTORY AND FACTS

In June 1985 the Division began an investigation into the activities of a junket representative who was purported to have brought gaming patrons to respondent's casino hotel on June 10 and 11, 1985. On July 16, 1985, as part of this investigation, a Division agent requested access to the CTRs prepared by the respondent for the week of June 7 through June 14, 1985. This request was refused by Greate Bay on the grounds that CTRs were without the jurisdiction of the Division and that their disclosure might impinge on the privacy rights of third parties. The oral request from the Division's agent was followed by two written requests for CTRs for gaming dates June 10 and June 11, 1985. These two requests were likewise refused by the respondent.

On February 11, 1986, the Division filed its complaint against respondent Greate Bay. On February 25, 1986, respondent Greate Bay filed a Notice of Defense, Affirmative Defenses and Request for a Hearing.

On April 1, 1986, a prehearing conference was held before Walter N. Read, Chair, Casino Control Commission. At the prehearing conference the parties agreed that there were

no disputed issues of fact. However, seven legal issues were identified for resolution and a schedule was established for filing briefs on these issues.

On May 2, 1986, Greate Bay submitted a Notice of Motion for Omnibus Relief and a memorandum in support of said motion. On May 21, 1986, the Division filed a brief addressing the legal issues in this matter and opposing Greate Bay's motion. On May 30, 1986, Greate Bay filed a reply memorandum in response to the Division's brief and on June 5, 1986, a Notice of Motion for Dismissal and a memorandum in support of this motion in which Greate Bay asserted that the Division's complaint is moot. On June 27, 1986, the Division filed a letter brief in response to Greate Bay's motion to dismiss.

The parties presented oral arguments on July 23, 1986, and upon consideration of the entire record of the proceedings, we unanimously determined that the respondent had violated N.J.S.A. 5:12-78, N.J.S.A. 5:12-80(d), N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.8(a) and N.J.A.C. 19:41-7.1 et seq., and ordered Greate Bay to immediately provide the Division with copies of the CTRs prepared by it for gaming dates June 10 and 11, 1985.

The Commission also resolved to deliberate in executive session pursuant to N.J.S.A. 10:4-12(b)(9) on the question of whether additional or supplemental sanctions should be

imposed. The Commission met in closed session on July 28, 1986, and determined that additional sanctions might be appropriate. The parties were apprised of this decision and a schedule for the filing of briefs on this issue was established.

On August 15, 1986, the parties filed memoranda concerning the question of additional sanctions. The parties addressed this question at the Commission's public meeting of August 20, 1986. After considering these arguments the Commission unanimously determined to impose a civil penalty in the amount of \$35,000.

#### Legal Issues

The seven legal issues identified at the prehearing conference are:

- (1) Do the provisions of 31 CFR 103.51 which mandate the preparation of casino CTRs expressly or impliedly preclude access to such records by State regulatory agencies?
- (2) Is the Division's request for CTRs prepared by the respondent within the statutory authority of the DGE?
- (3) Is respondent's refusal to provide copies of CTRs a violation of the following provisions of the Act and regulations: N.J.S.A. 5:12-78, -80(d), -96(e) and N.J.A.C. 19:45-1.8, -7.1, -7.2, -7.3 and -7.6?
- (4) Does the Commission lack jurisdiction over the subject matter of the Division's complaint.

due to the application of the  
Supremacy Clause?

- (5) Does the Commission lack jurisdiction over the subject matter of the Division's complaint due to the doctrine of preemption?
- (6) Is the Secretary of the Treasury an indispensable party to the Division's complaint?
- (7) Is the Division's complaint barred by reasons of the application of the doctrines of laches, estoppel, waiver, "unclean hands" or illegality?

In addition, the respondent claimed that, based on the outcome of an independent investigation conducted by respondent's counsel, it had determined that the Division's complaint was moot.

#### The Scope of the Division's Authority

The most significant issue raised in this case is the scope the Division's investigatory authority. The Division claims that its investigatory authority under the Casino Control Act grants it an entitlement, indeed imposes an obligation upon it, to review all books, records, documents, memorandum, or other writings prepared by, generated in or maintained with a licensed casino establishment in Atlantic City. See N.J.S.A. 5:12-19(a)(4). In support of this position the Division quotes extensive authority for the general proposition that administrative agencies have broad investigatory authority. However, we do not believe that

this issue should be solved by resorting to the general principles of administrative law. Rather we look to the Casino Control Act to determine whether the Division's request is within the limits of its authority.

The statutory grant of authority for the Division to conduct investigations is set forth in sections 76 and 77 of the Act. As the Division asserts, this power is broad and comprehensive. Section 76 describes the Division's civil investigatory responsibilities while section 77 describes the Division's criminal investigatory responsibilities. Of particular importance in this matter is N.J.S.A.

5:12-76(b) (8) which provides that the Division shall be "entitled to request information, materials and any other data from any licensee or registrant, or applicant for a license or registration under this act."

Equally relevant are the provisions of the Act which concern the responsibility of casino licensees to cooperate with the Division's investigations.

N.J.S.A. 5:12-78 states:

Each licensee or registrant, or applicant for a license or registration under this act shall cooperate with the division in the performance of its duties.

N.J.S.A. 5:12-80(d) provides in pertinent part:

All applicants, licensees, registrants and any other person who shall be qualified pursuant to this act shall

have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation or hearing conducted by the commission....

The Commission had the opportunity to consider the proper scope and meaning of a casino licensee's legal duty to cooperate in State v. Boardwalk Regency Corporation, Docket No. 81-32 (Commission opinion, January 3, 1983). In that case the Commission stated:

We believe it is important to interpret §80(d) in the broadest possible fashion, in order to maximize the casino's obligation to cooperate with the Commission and the Division. State v. Boardwalk Regency Corporation, supra at 22.

Section 96(e) of the Act, pertaining to the Certificate of Operation which entitles Grete Bay to operate its casino hotel, states that all books, records and documents "shall be immediately available for inspection during all hours of operation in accordance with the rules of the commission."

Each of these statutory provisions is further bolstered by Commission regulations which iterate the broad and comprehensive grant of authority to investigate on the one hand, and casino licensees duty to cooperate on the other.

See, e.g., N.J.A.C. 19:41-7.1 et seq. and N.J.A.C. 19:45-1.8.

Thus it is apparent that the Legislature intended the Division to have broad investigatory powers and we hold that pursuant to those powers, the Division is entitled to review all the books and records of a casino licensee. So long as the Division's request for information bears a reasonable relationship to its investigatory responsibilities as set forth in the Act, a casino licensee has a duty to provide the information requested. Thus, unless some reason plainly appears why this particular request was improper or barred by overriding legal considerations, the Division was entitled to demand and Grete Bay was obliged to deliver promptly the specified CTRs.

Jurisdiction of the Commission

The respondent argues that the Commission is without jurisdiction to hear the Division's complaint on the grounds that the "Commission is neither empowered nor authorized to determine federal law under either the New Jersey Constitution or the Casino Control Act." On the other hand the Division argues that, although the Commission has jurisdiction over its complaint, the Commission should not consider the merits of the respondent's preemption defense because it lacks the authority to hold any portion of its enabling legislation unconstitutional.

Based upon our review of relevant case law we are convinced that we have the authority to entertain the

Division's complaint, (See N.J.S.A. 5:12-63(b))<sup>2</sup> and to consider all of the defenses raised by the respondent, even those based on federal law. If an administrative agency makes a decision within its "special area of competence...it does not exceed its jurisdiction merely because it applies relevant law...in order to reach that decision." Hunterdon Central High School Board of Education v. The Hunterdon Central High School Teachers Association, 174 N.J. Super 468, 475 (App. Div. 1980), aff'd o.b., 86 N.J. 43 (1981). "Administrative agencies are competent to pass upon constitutional issues germane to proceedings before them" and "such action is necessary so as to better focus the issues for judicial review, if such action is later necessary." Alcala v. Wyoming State Bd. of Barber Exam'rs, 365 F. Supp. 560, 564 (D. Wyo. 1973).

While we agree with the Division's argument that the Commission does not have the authority to declare any portion of its own enabling legislation unconstitutional we nevertheless have the power to construe a federal statute when the effect of that statute is called into question by a

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2. N.J.S.A. 5:12-63(b) provides that the Commission has the responsibility [t]o conduct all hearing pertaining to civil violations of the act or regulations promulgated hereunder.

party to a matter before it. See In re Exclusion of Merlino and Leonetti from Casino Hotel Facilities, Docket Nos.

82-EL-19 and 20 (Commission decision, May 25, 1984).

Indeed, should we find that a request by the Division contravenes a federal law or a federally protected privilege, our responsibility would be to deny the request. It follows, therefore, that we should address each of the respondent's federal claims.

Supremacy Clause and Doctrine of Federal Preemption

The respondent's arguments with respect to the supremacy clause and the doctrine of federal preemption are based on the premise that the Division's request for CTRs is in direct conflict with the purpose of the Bank Secrecy Act to limit access to such documents to agencies of the federal government. Although respondent concedes that the Division's access to CTRs is not expressly prohibited by the Bank Secrecy Act,<sup>3</sup> it argues that such an intent should be implied from the Bank Secrecy Act and the federal regulations which implement it.

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3. The respondent provides an opinion letter from the Philadelphia law firm of Morgan, Lewis and Bockius as Exhibit E to its Memorandum in Support of its Motion. This opinion letter concludes, "we find nothing in the Act [Bank Secrecy Act] or the regulations which expressly compels or prohibits disclosure."

As a general proposition, Congress can preempt state laws pursuant to the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, §.2. The Supremacy Clause mandates federal supremacy where the law of the State, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941). The "exercise of federal supremacy is not lightly to be presumed." Ibid. In Schwartz v. Texas, 344 U.S. 199, 202-203 (1952), the Court held that it would not extend by implication a statute of the United States so as to invalidate a state statute. "It will not be presumed that a federal statute was intended to supercede the exercise of the power of the state unless there is a clear manifestation of intention to do so." Ibid.

The regulatory provision which requires that casinos file CTRs is contained in Subpart B of Part 103 of Title 31 of the Code of Federal Regulations. 31 CFR §103.22(a) provides as follows:

Each casino shall file a report of each deposit, withdrawal, exchange of currency, gambling tokens or chips, or other payment or transfer by, through, or to such casino, which involves a transaction in currency of more than \$10,000. Such reports shall be made on forms prescribed by the Secretary under 31 CFR 103.25(a)(2) and all information called for in the forms shall be

furnished in accordance with  
§103.25(a)(2).

31 C.F.R. §103.43 permits the Secretary of the Treasury to make any information set forth in any CTRs available to other agencies or departments of the federal government. 31 C.F.R. §103.43 states:

The Secretary may make any information set forth in any report received pursuant to this part available to any other department or agency of the United States upon the request of the head of such department or agency, made in writing and stating the particular information desired, the criminal, tax or regulatory investigation or proceeding in connection with which the information is sought and the official need therefor. Any information made available under this Section [§103.43] to other departments or agencies of the United States shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation or proceeding in connection with which the information is sought.

The Division relied on 31 CFR 103.51 as authority for its request for access to Greate Bay's CTRs. This section entitled "access to records," states:

Except as provided in...§103.36(a) and except for the purpose of assuring compliance with the record-keeping and reporting requirements of this part [Part 103], this part does not authorize the Secretary or any other person to inspect and review the records required to be maintained by Subpart C [CTR records] of this part. Other inspection, review or access to such

records is governed by other applicable law. (Emphasis supplied.)

The Division argues that because the Casino Control Act clearly gives it the right to access all of the records of the respondent, its access is permitted under the provisions of this regulation. The respondent counters that the federal regulations differentiate between CTR records and CTRs and that section 103.51 on which the Division relies for its authority to access such reports deals with access to CTR records. While this is true, respondent's contention that a congressional intent to preclude access to CTRs by the Division can be inferred from section 103.51 is, in our judgment, unpersuasive.<sup>4</sup>

The apparent purpose of section 103.51 was to give the records which form the basis for the CTRs protection from unauthorized inspection. The respondent attempts to turn this concern for protecting the records of financial institutions into an argument against disclosing the CTRs.

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4. Congressional intent vis a vis state regulating activity is manifested directly in 31 C.F.R. 103.45(c) which permits an exemption and alterations to reporting by the casinos directly to the Treasurer. Instead, the casinos may supply information and reports to the state authorities under appropriate controls and requirements so long as the Treasurer can obtain the materials, in turn, from the state. This hardly bespeaks a repugnance between an effective federal system and state access to CTRs.

However, it would seem more reasonable to assume that an agency entitled to review CTR records would also be entitled to review the CTRs prepared from those records. Indeed, the respondent has not alleged that the Division is not entitled to CTR records. In fact, the respondent acknowledged the Division's right to these records by stating that "these are the very records, with the exception of social security numbers, the Sands is required to maintain under Chapter 45 of Title 19 of the New Jersey Administrative Code." Moreover, it is important to keep in mind that the Division is not requesting CTRs from the Secretary of the Treasury to whom these federal regulations expressly relate.<sup>5</sup>

Based on the foregoing we find that CTRs in the possession of Greate Bay are among those "books, records and documents" which must be "held immediately available for inspection" by agents of the Division pursuant to N.J.A.C. 19:45-1.8,<sup>6</sup> and nothing in the code of federal regulations requires otherwise.

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5. We also note in passing that, although casino licensees and casino key employees are required to turn over copies of their federal income tax returns, no one has challenged the Commission's right to that information. See N.J.S.A. 5:12-89(b)(1).
  6. N.J.A.C. 19:45-1.8(b) defines "books, records and documents" as follows:

(Footnote Continued)

Liability to Third Parties

The respondent argues that complying with the Division's request for CTRs would expose it to possible liability to third parties. In California Bankers Ass'n v. Shultz, 416 U.S. 21 (1974), the Court considered the question of the standing of the Bankers Association or a particular bank to assert that the reporting requirements of the Bank Secrecy Act violated Fourth Amendment privacy rights on behalf of bank customers. The Court determined that they had no such right absent a showing that the depositors had sustained or were in immediate danger of sustaining some direct injury. See also Massachusetts v. Mellon, 262 U.S. 447 (1923).

In United States v. Miller, 425 U.S. 435 (1976), the Court held that a bank depositor had no protectable Fourth Amendment interest in bank records relating to his accounts maintained pursuant to the Bank Secrecy Act. The Court explained that all of the documents obtained by the federal

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(Footnote Continued)

...any book, record or document pertaining to, prepared in or generated by the operation of a casino or an approved hotel including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records.  
N.J.A.C. 19:45-1.8(b).

government in Miller, such as financial statements and deposit slips, contained information voluntarily given to the bank and exposed to its employees in the ordinary course of business. Thus the Court held that the depositor takes the risk in revealing his affairs to the bank that this information will be conveyed to the government. Indeed it was firmly established before the passage of the Bank Secrecy Act that an Internal Revenue Service Summons directed to a third-party bank does not violate the Fourth Amendment rights of a depositor under investigation. See First National Bank of Mobile v. United States, 267 U.S. 576 (1925).

If a bank depositor has no protectable Fourth Amendment interest in bank records relating to his accounts vis-a-vis the federal government, a fortiori gaming patrons can not claim a protectable privacy interest in the information provided to a casino licensee vis-a-vis the State. In light of the extraordinarily pervasive and intrusive regulatory scheme under which casino gaming exists in New Jersey, gaming patrons should be well aware that the information collected from them by casino licensees is subject to scrutiny by state regulators. It is, therefore, frivolous in our view, to suggest that gaming patrons have a reasonable expectation of privacy in their financial dealings with New Jersey Casinos.

Secretary of Treasury as an Indispensable Party

The respondent argues that the Secretary of the Treasury is an indispensable party to this controversy and that the Division's complaint must be dismissed because the Secretary cannot be joined in this action. The respondent relies on R. 4:28-1(b)<sup>7</sup> as the basis for its argument.

Although the Division discusses the question of whether or not the Secretary is an indispensable party as defined as by the rules, we agree with its more fundamental contention that the rules governing the courts of the State of New Jersey are not binding on the Casino Control Commission, thus we need not become enmeshed in the legal technicalities of mandatory joinder of indispensable parties. The conduct of a hearing before the Commission is governed by section

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7. Rule 4:28-1(b) provides as follows:

If a person should be joined pursuant to R. 4:28-1(a) but cannot be served with process, the court shall determine whether it is appropriate for the action to proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, the extent to which the judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

107 of the Act and the Administrative Procedures Act. Nowhere in the Act or Commission regulations is there a mandatory joinder rule for a person identified as an indispensable party. Similarly rules governing administrative practice (N.J.A.C. 1:1-1 et seq.) do not contain mandatory joinder rules for indispensable parties.

In any event the respondent has not demonstrated that the Secretary of the Treasury is, in fact, an indispensable party to this action. Greate Bay merely asserted that it is "intuitively obvious" that the Secretary has an interest in this matter and that a judgment cannot justly be made between the parties in his absence. However, these are the very considerations which must be resolved in determining whether a party is or is not indispensable within the meaning of the court rules. R. 4:28-1(a) provides:

A person who is subject to service of process shall be joined as a party to the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest in the subject of the action and is so situated that the disposition of the action in his absence may either (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff

but refuses to do so, he may be made a defendant.

The Secretary of the Treasury is not subject to process by this agency; on that point there is no disagreement. But we fail to see how complete relief cannot be accorded to the Division. In the main the Division seeks production of reports in the respondent's possession. The Division sought nothing from the Secretary of the Treasury. Yet Greate Bay seems to equate the Secretary's interest in CTRs generally to a specific interest in the dispute here. Without some indication from the Secretary or his designees that the Secretary is interested in this dispute, which, in the circumstances here is the obligation of the respondent to establish, we are disinclined to assume that is the case. Similarly we find that the respondent has not established that it would be subjected to any substantial risk of "inconsistent obligations," by reason of the Secretary's claimed interest, even if we assume such an interest. "Inconsistent obligations" in the context of this case would be liability to patrons. Since we have established that casino patrons have no reasonable expectation of privacy in such financial matters, we fail to see how the respondent is exposed to any liability.

Equitable Defenses

The respondent also argued that the Division's complaint is barred by the application of various equitable doctrines including laches, estoppel, waiver and unclean hands.

Laches

In its memorandum in support of its Notice of Motion for Omnibus relief, the respondent presents a timetable spanning the period from May 7, 1985, when CTR reporting became effective, to February 26, 1986, when its notice of defense to the Division's complaint was filed. The respondent claims that the nine months delay that occurred between June 1985 when the Division first requested copies of CTRs and February 11, 1986, when the Division's complaint was filed, prejudiced its ability to discuss the Division's request with the Internal Revenue Service during the original "start up" period of CTR report compliance.

We have reviewed this chronology and we find that it belies the respondent's contention that the Division "sat on its hands." In addition, the respondent omits several verbal requests by two Division agents and a Deputy Attorney General between June 20 and July 16, 1985, for copies of CTRs. The fact that there was some delay between these requests and the Division's written request on November 22, 1985, cannot reasonably be construed as an intent on the

part of the Division to abandon its position that it was entitled to these documents. Moreover, we do not agree that the Division's conduct interfered with the respondent's ability to discuss the question of the Division's right to CTRs with the IRS. They are still free to do so at any time.

Estoppel

Greate Bay asserts that the Division misled it to believe that the Division was only concerned with statistical data regarding currency transactions. Although the Division's first request on June 20, 1985, for CTRs was for the purpose of gathering statistical information, the respondent's refusal to provide copies of these reports in that instance did not result in a complaint by the Division. The Division's complaint in this matter is based on the respondent's refusal to provide CTRs for June 10 and 11, 1985, in response to the Division's July 16, 1985, request for this information in connection with a specific investigation of junket activities. During this entire period the Division consistently asserted its right of access to CTRs in both written and verbal communications with the respondent.

We do not understand how the respondent could have misunderstood the Division's position in this matter and we can perceive no intent on the part of the Division to mislead the respondent. Accordingly, we find the respondent's estoppel claim is without merit.

Waiver

The respondent further argues that the Division waived its right to have the Commission compel the production of CTRs by its delay in filing the instant complaint. Since we do not believe the Division delayed unreasonably in making its request for CTRs or in the filing of its complaint in this matter, we find this argument equally without merit.

Unclean Hands

The respondent argues that the Division's complaint should be dismissed because the information it seeks is available through other records and therefore its motivation in requesting these records is questionable. We find this argument totally specious. If the Division's request for information was within its authority, its reasons for making the request cannot be questioned by the respondent.

Mootness

On June 5, 1986, respondent Greate Bay filed a Notice of Motion for Dismissal and a memorandum in support of this motion contending that the complaint should be dismissed on the grounds that the Division's request for CTRs was moot. Counsel for the respondent explained that he determined the identity of the junket representative who was the subject of the Division's investigations. Thereafter he reviewed the CTRs prepared by Greate Bay for the gaming dates June 10 and 11, 1985, and prepared a list of all individuals for whom

reports were filed. Counsel then compared this list against the list of junket representatives contained in the Commission's Junket Employee and Enterprise Licensing Report and determined that "none of the names listed on the CTR List appears on the Junket list." Based on this investigation, counsel for the respondent asserts that the information sought by the Division does not exist and that therefore "the required elements of adverseness between the parties and true stake in the outcome are absent."

Whatever steps counsel for the respondent may have taken to review the CTRs prepared by Greate Bay most assuredly do not render the Division's complaint moot. The issue of the Division's entitlement to copies of casino CTRs and a casino licensee's legal duty to cooperate are not contingent on whether the requested materials do or do not disclose the presence of a junket representative at the Sands on June 10 or 11, 1985. Indeed it may be just as relevant to the Division's investigation if the casino CTRs do not disclose the junket representative's presence. In any event, in the context of a strictly regulated industry, it is not within the province of the regulated to determine what is or is not significant to the regulators. Respondent's assertions in this regard are frivolous.

Administrative warrant or subpoena

Greate Bay also maintained that in the event that the Commission determines that the Division is entitled to review CTRs, the Division must obtain an administrative warrant or a subpoena in order to gain access to these reports. Although the Supreme Court generally has held that the states may not conduct administrative searches of private property without a warrant, it has recognized an exception to this rule for "pervasively regulated" businesses (United States v. Biswell, 40 U.S. 311 (1972) (firearms)) or industries "long subject to close supervision and inspection." Colonnade Catering Corp., v. United States, 397 U.S. 72, 77 (1970) (liquor). See also State v. Dolce, 178 N.J. Super 275, 283-85 (App. Div. 1981) (horse racing). In In Re Boardwalk Regency Casino License Application, 180 N.J. Super 324, 341 (App. Div. 1981) mod. 90 N.J. 361 (1982), the court held that "we see every reason, including those expressed in N.J.S.A. 5:12-1b, for legalized casino gambling to take its desired place among those industries." In In Re Martin, 90 N.J. 295 (1982), the Court upheld the Division's authority to conduct warrantless searches on the grounds that casino gambling is a pervasively regulated industry that is subject to close supervision and because such searches are clearly authorized

by the governing statute. Id. at 313. Section 79(a)(4) of the Act provides that:

The division and its employees and agents, upon approval of the director shall have the authority, without notice and without warrant...[t]o inspect, examine and audit all books, records and documents pertaining to a casino licensee's operation.

The Division is therefore empowered by statute to conduct warrantless searches of a licensee. Licensees are obligated to submit to such searches under N.J.S.A. 5:12-80(c). Thus, the Division could have proceeded directly to obtain the CTRs and remove them from the casino hotel. Of course, the Division did not have to proceed by way of a physical seizure since, as noted previously, the respondent was under a clear and unwavering duty to cooperate in any Division investigation and to provide any information reasonably sought by the agency. See N.J.S.A. 5:12-78 and -80(d). We therefore find the respondent's contention that the Division is required to obtain an administrative warrant or a subpoena to gain access to CTRs to be totally without merit.

#### Sanctions

Greate Bay asserts that, in refusing the repeated requests of the Division for the CTR's, it was merely exercising a constitutionally protected right to petition for redress of grievances and that it may not be sanctioned for

seeking the Commission's guidance. Such a contention is at best disingenuous. Respondent did not seek immediate review of its conduct. Greate Bay could have sought a declaratory ruling from this Commission at the time of the Division's request, but it did not. Rather it chose to challenge the Division's authority. The present action was brought on by a formal complaint by the Division pursuant to N.J.S.A. 5:12-108. While the respondent was certainly free to resist and defend against the Division's complaint, such an election was not without risk. We have found that Greate Bay violated those provisions of the Act and regulations which make the duty to cooperate with the Division the affirmative responsibility of every casino licensee. By its defiance, respondent effectively delayed a Division investigation for over nine months. It is impossible at this time to determine to what extent the Division's investigation has been prejudiced by this delay. Nevertheless, the seriousness of the respondent's transgression is self evident. Considering this and the other factors listed in section 130,<sup>8</sup> including the absence

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8. N.J.S.A. 5:12-130 provides:

In considering appropriate sanctions in a particular case, the commission shall consider:

(Footnote Continued)

of any justification or excuse and the purposefulness of the refusal to turn over the CTRs upon request, we find that a monetary penalty of \$35,000 is appropriate. N.J.S.A. 5:12-129(5).

Nor should there be any question as to the authority of this Commission to impose such a sanction in the present

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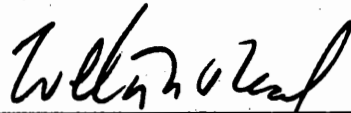
(Footnote Continued)

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee or registrant;
- d. The prior history of the particular license [sic] or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
- g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

case. Despite the respondent's contention that the Division sought only a legal clarification and an order compelling disclosure, the complaint plainly requests the Commission to take any action needed to prevent similar violations in the future. It is axiomatic that fines and penalties in the regulatory context are intended not so much to punish past acts but to deter future violations and encourage compliance. See, e.g., In re Suspension of DeMarco, 83 N.J. 25, 37-38 (1980). Thus, the Commission's sanction in this case is well within the relief requested in the Division complaint. Moreover, even if the Division had not specified any remedy other than an order to produce the CTRs, the Commission is fully empowered and obligated to assess the respondent's behavior and to impose appropriate sanctions for misconduct. See N.J.S.A. 5:12-129. Indeed, even in cases where the Division and a respondent have reached a tentative settlement arising out of a complaint, the Commission must review and approve or disapprove. Since the respondent was fully apprised that the Commission would consider sanctions and was given ample opportunity to present any arguments or evidence bearing on that point, there can be no question of surprise or unfairness. Stated simply, the sanction was authorized, warranted and fairly imposed.

CONCLUSION

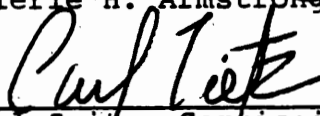
For the reasons expressed above we conclude that the Division was well within its statutory authority in requesting the respondent to provide CTRs and that the respondent unjustifiably defied this request. Such actions constitute flagrant violations of N.J.S.A. 5:12-78 and N.J.S.A. 5:12-80(d), N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.8(a) and N.J.A.C. 19:41-7.1 et seq. As a consequence, a civil penalty of \$35,000 is imposed and Greate Bay is ordered to provide the Division with true and accurate copies of the CTRs prepared by it for the gaming days June 10 and 11, 1985. Further Greate Bay is ordered to comply with any future requests from the Division to review CTRs or obtain copies of such reports.



Walter N. Read, Chair



Valerie H. Armstrong, Vice-Chair



Carl Zeitz, Commissioner



E. Kenneth Burdge, Commissioner

Dated: October 23, 1986

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-47

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

Complainant, :

SUPPLEMENTAL  
ORDER

v. :

GREATE BAY HOTEL AND CASINO, INC. :

Respondent. :

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The Commission having heretofore determined that the respondent violated N.J.S.A. 5:12-78, N.J.S.A. 5:12-80(d), N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.8(a) and N.J.A.C. 19:41-7.1 et seq.; and the Commission having directed the parties to submit written arguments on the questions of whether or not sanctions for such violation would be appropriate and, if so, what sanctions should be imposed; and the parties having filed such arguments on August 15, 1986; and the Commission having considered the entire record in this matter at its public meeting of August 20, 1986.

IT IS on this day <sup>4th</sup>27 of August 1986, ORDERED that  
Greate Bay Hotel and Casino, Inc. pay a civil penalty in the  
amount of \$35,000, due and payable upon receipt of an  
invoice from the Commission's Division of Financial  
Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-47

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

Complainant, :

v. :

ORDER

GREATE BAY HOTEL AND CASINO, INC. :

Respondent. :

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A complaint having been filed by the Division of Gaming Enforcement (Division) on February 11, 1986, alleging that Greate Bay Hotel and Casino, Inc. (Greate Bay), refused to provide copies of IRS Forms 8362 (Currency Transaction Reports by Casinos) for June 10 and 11, 1985, in response to verbal and written requests therefor; and a Prehearing Conference Order dated April 3, 1986, having been issued reciting the parties' agreement that there were no disputed issues of fact, setting forth the legal issues to be resolved by the Commission, and establishing a briefing schedule for the parties to present argument on such issues; and the respondent having filed a "Motion for Omnibus Relief" on May 2, 1986, seeking dismissal contending that the Commission lacks subject matter jurisdiction, that the complaint fails to state a claim upon which relief could be

granted, that the relief sought by the complaint is barred by various equitable doctrines and that respondent is entitled to judgment on the pleadings; and the respondent having filed on June 5, 1986, a Motion to Dismiss on the grounds of mootness; and the Division having opposed Greate Bay's motions; and the Atlantic City Casino Association (Association) having filed a motion to participate in this matter by letter brief; and the Commission having considered the entire record of these proceedings at its public meeting of July 23, 1986,

IT IS on this 24<sup>th</sup> day of July 1986,  
ORDERED that the Association's motion to participate by letter brief is granted;  
and

IT IS FURTHER ORDERED that, Greate Bay's Motion to Dismiss and Motion for Omnibus Relief are denied; and

IT IS FURTHER ORDERED that, for the reasons stated on the record at the Commission's meeting of July 23, 1986, and for the further reasons to be stated in a formal opinion to be issued forthwith, the respondent is found to have violated N.J.S.A. 5:12-78, N.J.S.A.

5:12-80(d), N.J.S.A. 5:12-96(e),  
N.J.A.C. 19:45-1.8(a) and N.J.A.C.  
19:41-7.1 et seq.; and

IT IS FURTHER ORDERED that Greate  
Bay immediately provide the Division  
with true and accurate copies of  
Currency Transation Reports prepared by  
it for the gaming dates June 10 and 11,  
1985;

And the Commission having resolved to deliberate  
pursuant to N.J.S.A. 10:4-12(b)(9) on the question of  
whether additional or supplemental sanctions should be  
imposed,

IT IS FURTHER ORDERED that, should  
the Commission determine that additional  
or supplemental sanctions are  
appropriate, the parties be afforded the  
opportunity to present written or oral  
argument on the nature of such sanctions  
at a regularly scheduled Commission  
meeting on a date to be hereafter  
determined.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-360  
OAL DOCKET NO. CCC 227-86  
LICENSE NO. 48206-22  
REGISTRATION NO. 36487-40

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

Complainant, :

v. : FINAL ORDER

RICHARD K. GRUHLER, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of August 6, 1986,

IT IS on this <sup>20<sup>th</sup></sup> day of August 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

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

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

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

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 227-86

AGENCY DKT. NO. 84-360

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

Petitioner,

v.

**RICHARD K. GRUHLER,**

Respondent.

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**William E. Mountford, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Morton Feldman, Esq., on behalf of respondent**

Record Closed: May 13, 1986

Decided: June 20, 1986

**BEFORE RALPH J. TOLOMEO, ALJ:**

**PROCEDURAL HISTORY**

Petitioner, Division of Gaming Enforcement, filed a complaint with the Casino Control Commission on October 29, 1984, seeking the revocation of respondent's casino employee license (No. 48206-22) and casino hotel employee registration (No. 36487-40). Respondent requested a hearing with respect to petitioner's action, and on January 7, 1986, the matter was forwarded to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The case was received by the Office of Administrative Law on January 10, 1986, and scheduled for a prehearing conference on February 18, 1986. At the prehearing conference, the matter was

scheduled for hearing on May 13, 1986, at the Galloway Township Municipal Building at which time a hearing was conducted and the record closed.

STATEMENT OF FACTS

The relevant and material facts in this matter were presented through the testimony of Detective I. C. Johnston, called by petitioner, and respondent Richard K. Gruhler who testified on his own behalf. Additionally, both parties offered documents into evidence without objection. I have reviewed the testimony of the witnesses and the documents and there appears to be no dispute as to the relevant and material facts in this case. Therefore, I **FIND** the following as fact.

On June 29, 1984, respondent, Richard K. Gruhler, was employed by the Golden Nugget Casino Hotel as a locksmith. He was 25 years of age and his job consisted of working all the casino areas in the hotel, offices, garages and off-complex buildings. He was responsible for maintaining, installing and repairing locks and changing new keys for security reasons. In summary, he was involved in security for the entire casino hotel operation and had access to master keys for the entire facility. Respondent commenced his employment in this capacity with the Golden Nugget in August 1983.

On June 28, 1984, respondent worked the 3:00 p.m. to 11:00 p.m. shift, which he completed. At approximately 12:30 a.m. on June 29, 1984, respondent went to his office in the casino hotel facility, changed his clothes, and obtained master keys from the safe in his office. Respondent and three friends then went to hotel suite 2028-30 for purposes of having a party. They entered the suite, utilizing the master key which respondent had obtained. Respondent and his three friends drank approximately nine cans of beer and a portion of a bottle of vodka. They used the jacuzzi, towels and the bed in the suite. They remained there for a couple of hours and were observed by a security guard as they were leaving the premises with their belongings and trash they had generated from their activities in the suite. Respondent, when observed, ran from the twentieth floor to a stairwell on the nineteenth floor, at which time he was approached by other casino hotel security employees and returned to the security office of the facility. The Division of Gaming Enforcement was notified. When questioned regarding his involvement, respondent acknowledged his activities to both the security personnel of the Golden Nugget and Detective Johnston. Thereafter, a complaint was signed in the Atlantic City Municipal Court by Security Officer John Hayes of the Golden Nugget

charging respondent with offenses of defiant trespass (N.J.S.A. 2C:18-3b); theft under \$200 (N.J.S.A. 2C:20-3a) and theft of services (N.J.S.A. 2C:20-8a). This complaint was forwarded to the Atlantic County prosecutor's office and, subsequently presented to an Atlantic County Grand Jury which, on September 26, 1984, returned an indictment charging respondent in two counts with theft of services and theft of goods in excess of \$500, crimes of the third degree and violations of N.J.S.A. 2C:20-8 (P-2 Evidence). Shortly thereafter, respondent applied for the pretrial intervention program which he successfully completed (P-3, R-4 Evidence). A condition of his pretrial intervention requirements was to make restitution in the amount of \$525 to the Golden Nugget Casino Hotel, which he did. Respondent successfully completed the pretrial intervention program at which time the indictment was dismissed.

Respondent was terminated from his position a few days after his activities on June 29, 1984, and attempted to obtain employment with other casino hotels in Atlantic City without success. He then obtained work as a carpenter; however, over the wintertime when no such work was available, he obtained work driving a trash truck through the winter season so that he could provide for his wife and two children. The following spring he returned to construction work and has been employed in that industry to the present time.

Respondent offered letters from his former supervisor at the Golden Nugget Casino (R-2 Evidence) and letters from employers in the construction business indicating his work accomplishments and efforts (R-1, R-3 Evidence). At the present time he is project manager for a construction company and supervises two jobs, one in Ventnor and another in Ocean City.

Throughout the hearing and at the time of the incident, respondent acknowledged his involvement in the use of the suite in the hotel. He readily gave the information to security staff of the Golden Nugget, and shortly thereafter to the investigator from the Division of Gaming Enforcement. He also testified and had previously indicated to all concerned that he knew that what he did was wrong; however, he was personally aware of other hotel personnel utilizing facilities within the hotel on occasion. Respondent testified those individuals have not suffered the consequences of job loss and license revocation. He testified that the use of facilities, when not occupied by guests, is somewhat commonplace and had he requested to be "comped" to use a room, he probably would have obtained permission. Respondent recognizes that he did not do so

and he realizes that his position of locksmith to obtain keys entrusted for his employment use, to gain access to the suite he and his friends utilized in the early morning hours of June 29, 1984, was a breach of trust. Respondent further testified that he is a person who acknowledged his mistake and recognizes that he did a foolish thing. He has never been in trouble before nor after this incident, and having lost his job and not being able to obtain other employment in the casino industry, has taken work outside the industry. Respondent wishes to return to casino industry employment.

In arriving at the facts as found above, a consideration of the demeanor, attitude and credibility of respondent is acknowledged.

#### ISSUES

Petitioner argues that the conduct of respondent on June 29, 1984, is inimical to the policies of the Casino Control Act and the casino industry pursuant to Section 86c4 of the Casino Control Act and, further, that petitioner, by his conduct, does not possess the requisite reputation for good character, honesty and integrity required under the provisions of Section 89b(2) of the Casino Control Act.

Respondent acknowledges his actions in the early morning hours of June 29, 1984, and acknowledges that such conduct was a mistake and an exercise of poor judgment, but that it does not constitute an action that is inimical to the Casino Control Act and the casino industry, in that it was the use of a hotel room for a brief period of time. Further, he has made restitution and has otherwise not been in any further trouble. Respondent further argues that he has established as of this time his good character, honesty and integrity by clear and convincing evidence.

#### DISCUSSION AND ANALYSIS

There is no question that respondent committed the conduct alleged by petitioner. Respondent disputes the value of the use of the room as provided by the Golden Nugget Hotel to Detective Johnston and, for purposes of this matter, petitioner has conceded that the proofs are not sufficient to establish an amount in excess of \$500 to establish a third-degree offense which would be a statutory disqualifier.

Petitioner, however, argues that by the acknowledged conduct respondent committed a breach of trust because his position with the Golden Nugget Casino Hotel allowed his access to master keys which he utilized for his own purpose. A review of respondent's conduct indicates that he acknowledged that he had breached the trust placed upon him in his position of employment.

In order to determine whether or not respondent's conduct is inimical to the policies of the Casino Control Act and to casino operations, it is necessary to determine whether such conduct would unavoidably tend to erode the public trust and confidence in the credibility, integrity and stability of casino operations in the regulatory framework created by the Casino Control Act. Additionally, consideration of rehabilitation factors must be considered before a conclusion can be made as to whether or not the conduct in question is or is not inimical under Section 86c(4). Donna Davis v. State of New Jersey, Division of Gaming Enforcement, OAL Dkt. CCC 2008-85 (Aug. 12, 1985).

In reviewing the facts as found, respondent was 25 years old when this incident occurred. He was employed by the Golden Nugget as a locksmith for almost a year at that time. He had never been in trouble before or since this incident and, upon being indicted on charges of theft of goods and theft of services, applied for and completed a pretrial intervention program, which included payment by way of restitution to the Golden Nugget Casino Hotel in the amount of \$525. Although he attempted to find work within the casino industry, by virtue of his conduct at the Golden Nugget Casino, he was unable to do so. He found other employment so that he could provide for his wife and two children. He has not been in any trouble since the incident and has effectively been out of work in the casino industry for a two-year period. Additionally, this conduct occurred within the hotel area of the casino, and although admittedly a foolish and stupid thing to do, as was acknowledged by respondent, this was something that occurred on a somewhat regular basis within the Golden Nugget Hotel, although not to the degree of respondent's conduct.

Under all the circumstances, having reviewed the conduct of the evening, respondent's acknowledgment to security officers of the Golden Nugget and complete cooperation with the Division of Gaming Enforcement Investigator Detective Johnston, and, further, his successful completion, including restitution, of the pretrial intervention program, I **CONCLUDE** that the conduct complained of by petitioner is not inimical to the policies of the Casino Control Act and the casino industry.

Petitioner contends further that respondent does not possess the requisite good character, honesty and integrity for licensure as a casino employee and registration as a casino hotel employee. Respondent acknowledges that at the time of this incident in June 1984, that may have been so; however, respondent argues that that was two years ago and since that time, he has successfully completed the pretrial intervention program, including the payment of restitution in the amount of \$525 to the Golden Nugget Casino Hotel. Further, he has remained trouble-free since that time and, although not able to find employment within the casino industry, has obtained work as necessary and he currently supervises construction sites for a construction company which holds him in high regard. Additionally, his former supervisor at the Golden Nugget indicates that his employment, absent the conduct complained about, was exemplary.

For the reasons stated in the discussion of the issue regarding inimicality, and further stating that it is respondent's good character, honesty and integrity at this time that is at issue, I **CONCLUDE** that respondent has established by clear and convincing evidence that at this time, he possesses the requisite good character, honesty and integrity for licensure and registration.

Therefore, for all the foregoing reasons it is **ORDERED** that the petitioner's complaint seeking the revocation of respondent's casino employee license and casino hotel employee registration be and is hereby **DISMISSED**.

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

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

June 20, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

June 24, 1986  
DATE

Bernadette T. Frupp  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 24 1986  
DATE

Ronald J. Parker & S  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 New Jersey State Police Investigation Report of Richard K. Gruhler, dated July 3, 1984 (5 pages)
- P-2 Indictment of Richard Gruhler from the Atlantic County Grand Jury Number C-076-9-84-D (4 pages)
- P-3 Letter to Richard Gruhler from Stephen J. Imperiale

FOR THE RESPONDENT:

- R-1 Letter from J & M Construction Co., dated May 12, 1986
- R-2 Letter to "To Whom It May Concern" from James J. Mahoney III, dated February 17, 1986
- R-3 Letter from JJS Homes, General Contractors, to "To Whom It May Concern," dated February 17, 1986
- R-4 Superior Court of New Jersey letter to Richard Gruhler confirming participation in Pretrial Intervention Program, dated November 7, 1984 (5 pages)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-99, 85-EA-100,  
85-CSI-8  
OAL DOCKET NO. CCC 8150-85  
(CONSOLIDATED CASES)  
APPLICATION NOS. 45922-21,  
44566-21, 1085-70

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APPLICATION OF MICHAEL GRUTTADAURIA, JR.,  
FOR A CASINO EMPLOYEE LICENSE  
(JUNKET REPRESENTATIVE/SOLE OWNER OPERATOR)

AND

FINAL ORDER

APPLICATION OF MICHAEL GRUTTADAURIA, SR.,  
FOR A CASINO EMPLOYEE LICENSE  
(JUNKET REPRESENTATIVE)

AND

APPLICATION OF PAGE ONE TOURS, INC.,  
FOR A JUNKET ENTERPRISE LICENSE

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A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission) by the administrative law judge; and the Commission having considered the entire record in these consolidated cases at its public meeting of October 8, 1986,

IT IS on this <sup>17<sup>th</sup></sup> day of October 1986, ORDERED that the initial decision is affirmed and incorporated by reference; and

IT IS FURTHER ORDERED that the license applications of Michael Gruttadauria, Jr., Michael Gruttadauria, Sr., and Page One Tours, Inc., are granted substantially for the reasons stated in the initial decision.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 8150-85  
AGENCY DKT. NOS. 85-EA-99,  
85-EA-100, 85-CSI-8

**MICHAEL GRUTTADAURIA, JR.,  
MICHAEL GRUTTADAURIA, SR., AND  
PAGE ONE TOURS, INC.,**

Petitioners,

v.

**DIVISION OF GAMING ENFORCEMENT,**

Respondent.

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**Michael R. Justin, Esq.,** for petitioners (Justin, Gast & Kuhn, attorneys)

**Stephen J. Cirillo, Deputy Attorney General,** for respondent (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Record Closed: June 30, 1986

Decided: August 28, 1986

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

**STATEMENT OF THE CASE**

This matters concerns the applications of Page One Tours, Inc., for licensure as a junket enterprise, of Michael Gruttadauria, Jr., for licensure as a junket representative, and of Michael Gruttadauria, Sr., for licensure as a junket representative, sole owner and operator. The Division of Gaming Enforcement has objected to the licensure of the petitioners. The issues to be resolved in this matter are as follows:

1. Whether the petitioners, with specific reference to the nature of their association with Angelo DeMarco, Chester Palozzi and Raymond Steed, as identified in the report of the Division of Gaming Enforcement, dated April 17, 1985, have demonstrated by clear and convincing evidence that they possess the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2), 90b and 102b of the Casino Control Act.
2. Whether the petitioners, with specific reference to the nature of their association with Angelo DeMarco, Chester Palozzi and Raymond Steed, have demonstrated by clear and convincing evidence that they have sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act.

#### PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioners by letter to the Casino Control Commission, dated April 17, 1985. By letter dated December 13, 1985, the petitioners requested hearings on their applications, and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on December 20, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was held in this matter on February 6, 1986, and the hearing was originally scheduled to be held on April 28, 1986. Because the petitioners had not returned answers to interrogatories propounded by the Division of Gaming Enforcement the hearing was adjourned and rescheduled for July 8, 1986. At the request of the petitioners, the matter was then rescheduled for and heard on June 30, 1986, when that earlier date became available.

#### FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. Michael Gruttadauria, Sr., is a 55 year old resident of Rochester, New York. He has been

married for 34 years and he is employed by Kodak as a Manufacturing Department Engineering Supervisor. His son, Michael Gruttadauria, Jr., is a 30 year old resident of Fairport, New York. For the past four years, Michael Gruttadauria, Jr., has managed the operations of Passport Travel, Inc., and Page One Tours. Passport Travel pays a management fee to Page One Tours for his services.

Passport Travel is a full service travel agency operating at the retail level. Page One Tours is a wholesale tour company, which markets tour packages to retail travel companies. It was the testimony of Michael Gruttadauria, Sr., that he sought in 1971 to supplement his income by taking a position as an outside salesman for Passport Travel, which was then owned by Louis D'Ovidio and another principal. In the early 1970's, the senior Gruttadauria acquired a one-third interest in the business, and in 1983, he purchased the remaining shares of the business to become its sole owner. In 1972, Michael Gruttadauria, Sr., commenced operations as the sole proprietor of Page One Tours. Beginning in the early 1970's, Page One Tours organized junkets to casinos in Nevada.

On March 1, 1983, the Casino Control Commission granted temporary licenses to Page One Tours, and Michael Gruttadauria, Sr., permitting them to operate as a junket enterprise and junket representative. Michael Gruttadauria, Jr., was granted temporary licensure as a junket representative on June 1, 1983. These temporary licenses were renewed in 1984, but have subsequently expired. While operating under its temporary licensure, Page One Tours engaged in junket activity with the Tropicana Casino Hotel, the Claridge Casino Hotel and Resorts International Casino Hotel in Atlantic City.

Angelo DeMarco was a patron on several junkets operated by Passport Travel to casinos in Las Vegas, Nevada. Michael Gruttadauria, Sr., testified that he was contacted by Mr. DeMarco concerning these junkets and that he did not solicit Mr. DeMarco as a patron. Mr. Gruttadauria was aware that Mr. DeMarco had been an owner of the 44 Club in Rochester, New York, and he was aware that the club was reputed to be an illegal gambling establishment. Mr. Gruttadauria was also aware that the newspapers had carried articles which indicated Mr. DeMarco had some link with organized crime (See Exhibit J-1). Mr. Gruttadauria testified credibly that he never discussed with Mr. DeMarco his gambling arrests nor did he discuss with Mr. DeMarco his reported link with organized crime. It is undisputed that Angelo DeMarco, Chester Palozzi and Raymond Steed, as well as others, were charged in a United States Grand Jury

Indictment with engaging in an illegal gambling business. These defendants entered pleas of guilty to lesser offenses through a plea bargain arrangement (See Exhibits J-6, J-7, J-8 and J-14).

Mr. Gruttadauria was aware that Mr. DeMarco had been incarcerated as a result of his conviction. However, he did not believe that Mr. DeMarco was involved in organized crime. He also was not aware of Mr. DeMarco's testimony in criminal court (See Exhibits J-9 and J-10). Michael Gruttadauria, Sr., also explained how he became a co-owner of an investment property with Mr. DeMarco. With Louis D'Ovidio, Mr. Gruttadauria was a co-owner of Lomi, Inc., a real estate business. On the suggestion of Mr. D'Ovidio, Lomi, Inc., purchased a 25% interest in the Mountainside Inn, Inc., t/a the Maple Leaf Hotel. The remaining interest in the Mountainside Inn was equally held by Angelo DeMarco, Chester Palozzi and Raymond Steed. It was the credible testimony of Mr. Gruttadauria that he did not know who held the remaining ownership interest until the closing on the purchase. The Mountainside Inn has since been sold and Mr. Gruttadauria has no business or social relationship with Mr. DeMarco, Mr. Steed, or Mr. Palozzi.

In 1979, Michael Gruttadauria, Jr., upon the advice of his father, made an ownership investment in Flower City Travel, Inc., a travel agency in Rochester, New York. The other owners of the enterprise included Angelo DeMarco and Louis DeMarco. It is undisputed that this business was sold in 1983 and has ceased operation. According to Michael Gruttadauria, Jr., he was not aware of Angelo DeMarco's involvement at the time he made his original investment, and he was not aware of Mr. DeMarco's background until the Division of Gaming Enforcement objected to Mr. Gruttadauria's application for licensure. It is undisputed that Angelo DeMarco, his son, Louis DeMarco, and his daughter-in-law, Barbara DeMarco, were denied licensure by the New Jersey Casino Control Commission, based upon the reasons set forth in the letter reports of the Division of Gaming Enforcement, dated August 22, 1984 and December 13, 1984 (See Exhibits J-11, J-12 and J-13).

It was the testimony of Michael Gruttadauria, Jr., that the businesses operate daily trips to Las Vegas, Nevada. Robert P. DiNapoli, who has been a junket operator since 1967, testified on behalf of the petitioners. He has been licensed by the Casino Control Commission as a sole owner and operator of a junket enterprise. He first met Michael Gruttadauria, Sr., in 1982, when they shared a junket plane to the Riviera Casino in Las Vegas. According to Mr. DiNapoli, the coordination of the trip was easy and he

considered the business operation of the petitioners to be very professional. Mr. DiNapoli testified that the petitioners are highly regarded in the junket industry and that they have an impeccable reputation. He would not hesitate to do business with them.

Roger Wagner, the President and General Manager of the Claridge Casino and Hotel in Atlantic City, also testified on behalf of the petitioners. He first met Michael Gruttadauria, Sr., in 1970 at the Sands Casino in Las Vegas. Because of the quality of their operations, the Sands considered the petitioners to be preferred travel operators. In Mr. Wagner's opinion, the petitioners have only the best reputation in the casino industry. Dr. Vincent Tacci also testified on behalf of the petitioners. He has known the elder Gruttadauria since the 1940's and they have maintained a friendship. Dr. Tacci has been a customer on junkets arranged through Page One and on tours arranged through Passport Travel. In Dr. Tacci's opinion the Gruttadauria's are regarded as outstanding citizens and honorable members of the Rochester area community. Letters attesting to the favorable reputation of the Gruttadauria's were admitted into evidence as Exhibits P-1 to P-5. Neither Gruttadauria has a record of any criminal involvement (Exhibits P-6 to P-9).

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

#### CONCLUSIONS OF LAW

Pursuant to section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), applicants for licensure as a junket enterprise, junket representative, and junket representative, sole owner and operator, must qualify under the standards, except residency, established for qualification as an casino employee. Thus, an applicant must demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity, pursuant to sections 89b(2), 90b and 102 of the act. Pursuant to sections 89b(3), 90b and 102 of the act, applicants must demonstrate, by clear and convincing evidence, that they have sufficient ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought.

The primary area of concern in regard to the petitioners' applications for licensure is their association with Angelo DeMarco, Chester Palozzi and Raymond Steed. The Division of Gaming Enforcement contends that the petitioners' association with Angelo DeMarco, who engaged in illegal gambling and who was denied a license by the

Casino Control Commission, should result in denial of the petitioners' applications. The petitioners contend that all of their ties to DeMarco and the other individuals in question have been severed. The petitioners note that of their many patrons over the years, Mr. DeMarco is the only one who is the subject of objection. The limited association which they had with Mr. DeMarco at one time has been completely eliminated and numerous witnesses presented credible evidence that the petitioners possess a fine reputation.

The Gruttadauria's testified sincerely and candidly concerning their limited contact with Angelo DeMarco and the other individuals in question. They explained why they had only minimal knowledge concerning any illegal activities of Mr. DeMarco and it is apparent from their believable testimony that the petitioners no longer have any involvement with Angelo DeMarco, Chester Palozzi, or Raymond Steed.

Based upon the foregoing discussion and findings of fact, I **CONCLUDE** that the petitioners have sustained their burden of establishing, by clear and convincing evidence, that they possess the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90b of the Casino Control Act, as incorporated in section 102 of the act. For the same reasons, I **CONCLUDE** that the petitioners have sustained their burden of demonstrating, by clear and convincing evidence, that they have sufficient business ability and casino experience to establish the reasonable likelihood of their success and efficiency in the endeavors for which licensure is sought, within the meaning of sections 89b(3) and 90b of the Casino Control Act, as incorporated in section 102 of the act.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the applications of Page One Tours, Inc., Michael Gruttadauria, Jr., and Michael Gruttadauria, Sr., for licensure as a junket enterprise, a junket representative, and a junket representative sole owner and operator, be granted.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 28, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

AUG 29 1986  
DATE

Receipt Acknowledged:  
Jusajaid  
CASINO CONTROL COMMISSION

SEP 3 1986  
DATE

Mailed to Parties:  
Ronald L. Parke x.s  
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Joint Exhibits:

- J-1 Newspaper Articles
- J-2 Sworn Interview of Michael Gruttadauria, Sr., dated September 26, 1983
- J-3 Personal History Disclosure Form for Michael Gruttaduria, Jr.
- J-4 Business Entity Disclosure Form for Page One Tours
- J-5 Personal History Disclosure Form for Michael Gruttadauria, Sr.
- J-6 Criminal Information filed June 13, 1977, United States District Court Judgement, dated July 11, 1977
- J-8 United States District Court Warrant of Arrest for Angelo DeMarco
- J-9 United States Grand Jury Indictment
- J-10 Transcript of Testimony and Proceedings in the United States District Court, dated September 24, 1984
- J-11 Final Order of the Casino Control Commission, dated January 25, 1985
- J-12 Division of Gaming Enforcement objection letter, dated August 22, 1984
- J-13 Final Order of the Casino Control Commission, dated July 9, 1985, and Division of Gaming Enforcement objection letter, dated December 13, 1984
- J-14 United States Grand Jury Indictment filed March 19, 1975
- J-15 Answers to Interrogatories

For the petitioners:

- P-1 Letter, dated April 20, 1986
- P-2 Affidavit, dated April 25, 1986
- P-3 Affidavit, dated April 24, 1986
- P-4 Affidavit, dated April 18, 1986
- P-5 Letter dated April 22, 1986
- P-6 Monroe County Sheriff's Department Record Check
- P-7 Monroe County Sheriff's Department Record Check

P-8 Rochester Police Department Record Check

P-9 Rochester Police Department Record Check

For the respondent:

None

WITNESSES

For the petitioner:

Robert DiNapoli

Roger Wagner

Vincent Tacci

Michael Gruttadauri, Sr.

Michael Gruttadauri, Jr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 86-EA-6  
OAL DOCKET NO. CCC 1660-86  
APPLICATION NO. 60838-21

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APPLICATION OF IRIS HALL :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 3, 1986,

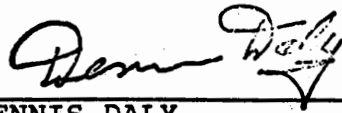
IT IS on this 30<sup>th</sup> day of September 1986, ORDERED that the initial decision is modified to include N.J.S.A. 5:12-86(g) as an additional basis for disqualification since the respondent was not prosecuted for the offense of theft in the third degree which the ALJ found disqualifying pursuant to N.J.S.A. 5:12-86(c)(1); and

IT IS FURTHER ORDERED that the application of Iris Hall for a casino employee license is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Iris Hall is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1660-86

AGENCY DKT. NO. 86-EA-6

**IRIS HALL,**

Petitioner,

v.

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,  
Respondent.**

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**Frances Sundheim, Deputy Attorney General, for respondent (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Iris Hall, petitioner, pro se**

Record Closed: June 12, 1986

Decided: July 21, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

**PROCEDURAL HISTORY**

The Division objected to the petitioner's application for licensure as a casino employee by letter to the Casino Control Commission dated January 6, 1986. The petitioner requested a hearing on March 6, 1986, and the matter was transmitted to the Office Of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on June 2, 1986, in Absecon Municipal Hall in Atlantic County, and the record was held open for an additional ten days to receive documents from both parties in aid of petitioner's case. The petitioner failed to submit same and the Division's submission corroborated the evidence produced at trial.

FACTUAL DISCUSSION

The following facts are not in dispute and I **FIND** that the petitioner received unemployment benefits in excess of \$500 during the period of November 1, 1981 through December 27, 1981, while she was simultaneously employed at the Tropicana Hotel and Casino. At that time the petitioner was licensed as a casino employee. That license expired and petitioner has applied for a new license.

DISPUTED FACTS

The Division asserts that the amount of unemployment benefits received by the petitioner was \$1064 (R-1 and Post R-1). The petitioner disputes the amount. She claims it was less than that. She was given an opportunity to obtain documentation after the hearing that the amount was less than \$1064; she failed to submit any such documentation. The Division, however, obtained corroboration of the \$1064 amount. I **FIND** the amount of unemployment benefits received by petitioner was \$1064. The exact amount is relevant because the Division seeks to aggregate the amounts received in order to constitute a crime in the third degree, i.e., in excess of \$500, thus rendering the offense a disqualification pursuant to N.J.S.A. 5:12-86c(1). While the petitioner stipulated that the amount she received exceeded \$500, she denied that she ever formed the requisite intent to be liable under the statute for a third degree offense because she was unaware she received more than \$500. It is conceivable that a person who received only \$501 in small amounts over a period of time might not realize she had received over \$500.

Based on my finding that the amount received was \$1064, representing four separate and distinct trips to the unemployment office (benefits are paid every two weeks), I **FIND** that the petitioner had the requisite intent to support a conviction under N.J.S.A. 2C:20-4, in the third degree. She knew she had illegally received more than \$500.

The theft statute reads as follows:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

In addition, N.J.S.A. 2C:20-2 makes such a theft in an amount exceeding \$500 a crime in the third degree.

I **CONCLUDE** that the Petitioner has committed an offense described in N.J.S.A. 5:12-86c(1) and is, therefore, disqualified from obtaining a casino employee license unless she can affirmatively demonstrate her rehabilitation pursuant to N.J.S.A. 5:12-90h.

#### REHABILITATION

The petitioner explained her past behavior, which included not only this crime, but also a shoplifting offense, as the result of her drug addiction over an eight-year period. She claims that the stresses of the casino industry exacerbated her drug problem.

The petitioner's drug problems continued until February 4, 1986, long after she filed this application. On that date she entered Turning Point, a drug rehabilitation center in Blackwood, New Jersey. She stayed in its detoxification unit for 25 days. On the day of her hearing she had been drug free for only 118 days.

In addition, she had been employed for only two weeks as of the hearing date. Despite the fact that the petitioner is an intelligent and educated woman of 33 who is brimming with confidence as a result of her release from drug addiction, she has barely had time to test her newly asserted immunity to drugs; and thus, she cannot be

determined to be rehabilitated in any meaningful sense of the word. While there was no testimony at the hearing concerning recidivism in drug abuse cases, I notice that periods of probation and conditional discharges for drug offenders invariably exceed 118 days. Frequently, probation and conditional charges are conditioned upon continued treatment after detoxification and sometimes with urine or blood monitoring. Unfortunately, petitioner is engaged in none of these activities and the passage of a long period of time without incident will be the only assurance that the petitioner has truly conquered her addiction. I **CONCLUDE** that the petitioner is not rehabilitated as required by the act.

#### FINANCIAL STABILITY

An additional issue is petitioner's financial stability, integrity and responsibility as required for licensure by N.J.S.A. 5:12-89b(1) and 5:12-90b and identified in the Prehearing Order.

I **CONCLUDE** that the petitioner does not have the requisite financial stability, integrity and responsibility for casino licensure. She admitted that she still owes the full amount of the judgment against her entered October 18, 1983, as a result of her 1981 unemployment benefits fraud. She is presently an AFDC client and cannot afford to repay at this time. In addition, the petitioner volunteered that she owes the Division of Motor Vehicles over \$800 in fines. The petitioner also declines to work under her casino registration for reasons that appear obscure to me although she indicated that these positions do not pay enough money. She apparently now prefers the security of AFDC while employed just as she formerly preferred the security of unemployment benefits while employed.

#### CHARACTER

The final issue raised in the Prehearing Order is whether or not the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure as required by sections 89b(2) and 90b of this Act.

Despite the fact that much of the information upon which the denial of rehabilitation is predicated was volunteered by the petitioner, until such time as her rehabilitation from drug abuse is complete, she cannot be said to possess the requisite good character, honesty and integrity for casino employee licensure.

It is precisely because drugs destroy character and integrity that legislatures have classified them as illegal substances.

I **CONCLUDE** this petitioner does not presently possess the good character, honesty and integrity required for casino licensure.

If the petitioner accomplishes the goals she has set for herself, which include remaining drug-free, the repayment of debt and securing dignified employment as a teacher, she will no doubt at that time possess the requirements for casino employee licensure.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 21 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 22, 1986  
DATE

Nicolas Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 24 1986  
DATE

Donald J. Parker / x 5  
OFFICE OF ADMINISTRATIVE LAW

EXHIBIT LIST

R-1 Certificate of Debt

P-1 Letter dated May 13, 1986

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-EA-102  
OAL DOCKET NO. CCC 4187-85  
APPLICATION NO. 52512-21

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APPLICATION OF RONALD J. HEFFERNAN  
FOR A CASINO EMPLOYEE LICENSE

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:  
:  
: FINAL ORDER  
:  
:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 8, 1986,

IT IS on this 13<sup>th</sup> day of November 1986, ORDERED that the initial decision in this matter is rejected for the following reasons:

(1) The Commission finds the applicant's statement that he was unaware of the illegal nature of his activities before he was arrested to be credible;

(2) Despite the fact that the applicant repeated his illegal conduct after his arrest, this conduct is not such as would render his licensure inimical to the policies of the Act and casino operations pursuant to section 86(c)(4). In arriving at this decision the Commission considered the criteria set forth in N.J.S.A. 5:12-90(h), in particular the applicant's age at the time of his arrests, the fact that these arrests occurred over four years ago, the applicant's

record of employment, letters of reference attesting to his good character and to his volunteer youth work, as well as the fact that he has had no other criminal involvement;

(3) The Commission finds that the applicant has demonstrated the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b); and

(4) While the Commission finds that the applicant's 1981 conviction in New York State for promoting gambling is the statutory equivalent of promoting gambling pursuant to N.J.S.A. 2C:37-2, the Commission declines to make any finding concerning the grading of this offense.

IT IS FURTHER ORDERED that the application of Ronald J. Heffernan for a casino employee license is granted.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4187-85

AGENCY DKT. NO. 85-EA-102

**RONALD J. HEFFERNAN,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT, DEPARTMENT**

**OF LAW AND PUBLIC SAFETY,**

Respondent.

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**Ronald J. Heffernan, petitioner - pro se**

**Frances L. Sundheim, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney**

Record Closed: October 8, 1985

Decided: November 22, 1985

**BEFORE RICHARD L. VOLIVA, JR., ALJ:**

STATEMENT OF THE CASE

(A) UNDISPUTED FACTS

Ronald J. Heffernan, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the applicant had committed a disqualifying criminal offense, under section 86 of the Casino Control Act (Act), and by reason of its contention that the applicant lacked the requisite good character, honesty and integrity, under section 89b(2). Although the applicant conceded his criminal record, he contended that he satisfied the rehabilitation criteria of section 90h.

PROCEDURAL HISTORY

Mr. Heffernan filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on February 29, 1984 (J-1). By letter dated June 17, 1985, the Commission advised the applicant that, based upon a report received from the Division, dated May 15, 1985, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed on June 24, 1985, the applicant requested a hearing. On July 8, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 13, 1985, before Stephen W. Thompson, Administrative Law Judge. The matter was heard and the record closed on October 8, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Heffernan is 25 years of age (J-1). He has resided in Little Ferry, New Jersey, for the past five years. He completed the 11th grade.

From 1977 to 1978, the applicant was a part-time warehouse worker for the Lord & Taylor Department Store in Carlstadt, New Jersey. He was laid off from this position.

From 1979 to July 1980 and from September 1981 to the present, the applicant has been employed as a laborer for Local No. 325 of the Cement and Demolition Laborers Union of Hudson County. The applicant has a positive employment record and is considered "... to be a hard worker, honest and fair" (P-2).

From July 1980 to January 1981, the applicant attended and successfully completed a course of instruction at the New York School of Gaming. The applicant intended to use this course of study to secure employment in Atlantic City. However, the applicant was unaware that the Commission had not licensed nor otherwise approved this school. Although the applicant completed his course of studies, he had not paid his tuition and did not receive his certificate of completion.

In late July/early August 1981, the applicant was employed as a blackjack dealer at the VIP Lounge (Lounge), 71st Street and Park Avenue, New York City, New York. This was an illegal gaming establishment. The applicant was solicited for employment by another employee, who had attended gaming school with the applicant. The applicant's knowledge of the legality of the operation was in dispute and will be discussed, infra. The establishment had three blackjack tables, one dice table and one baccarat-game. The applicant was paid \$100 per night, he did not receive tips, did not have an ownership interest in the operation and did not have a management role in the operation.

On or about August 7, 1981, the Lounge was raided, and the applicant was arrested and charged with two gambling-related criminal offenses and three alcoholic beverage violations (R-1). At this point there is no dispute that the applicant was aware that the operation was illegal. However, the applicant returned to work as a dealer when the Lounge reopened. Approximately one week thereafter and on or about September 8, 1981, the Lounge was again raided, and the applicant was again arrested and charged with similar offenses (R-1). On October 13, 1981, the applicant pled guilty to a violation of section 225.05 of the New York Criminal Statutes, promoting gambling in the second degree, which plea incorporated all other charged offenses. The applicant received a sentence of \$100 or 10 days. The fine was paid by the Lounge's owners; who also provided the applicant with counsel.

The applicant testified that he went to work at the Lounge in order to earn money to pay for his certificate from the New York School of Gaming. Although he knew the operation was illegal following his initial arrest, he returned to work because he needed the money and because he believed that he would not be issued a license in New Jersey by reason of his initial arrest.

Following his second arrest and guilty plea, the applicant returned to work for his union. He has not committed any other violations of the criminal laws. Also, the applicant has no intention to repeat his misconduct.

The applicant desires employment in the casino industry in order to improve himself. Prior to seeking employment in Atlantic City, the applicant plans to attend a licensed gaming school in order to satisfy the experiential requirements for licensure.

The applicant enjoys a positive reputation for good character, honesty and integrity, as evidenced by written submissions from Donald E. Guenther, Pastor of Saint Margaret of Cortona Church, Little Ferry (P-1); Nick P. Sita, Business Manager for Local No. 325 (P-2); Walter R. Dyer, Lieutenant of Police for the Borough of Little Ferry (P-3); and Charles C. DiPaolo, Mayor of the Borough of Little Ferry (P-4).

- All of the preceding evidence is undisputed and believable and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute was whether the applicant knew prior to his first arrest that the Lounge was an illegal gambling enterprise.

The applicant testified that he did not know the enterprise was illegal prior to his first arrest. However, this testimony appears to be in conflict with his acknowledged need to attend and complete successfully a gaming course of instruction in order to secure licensure, albeit in New Jersey. Also, the applicant knew that casino employees in New Jersey and Nevada were required to hold licenses. Simply, the applicant's disclaimer is not plausible and is not persuasive.

After consideration of the entire record, I further **FIND** that:

1. The applicant's testimony that he did not know that the Lounge was an illegal gaming enterprise was not consistent with his acknowledged need to complete a course of gaming instruction in order to secure licensure in New Jersey.
2. This testimony was not persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense, which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be

disqualified from licensure. The Division contends that the applicant's conviction in New York is statutorily equivalent to a violation of N.J.S.A. 2C:37-2, promoting gambling, which, under certain circumstances, is a disqualifying offense.

There was no dispute that the applicant's conviction in New York is statutorily equivalent to a violation of N.J.S.A. 2C:37-2. Also, it was evident that the applicant's conduct underlying his conviction included the elements of a violation of N.J.S.A. 2C:37-2. However, in dispute was the degree of the offense, under N.J.S.A. 2C:37-2b.

The applicable grading section is N.J.S.A. 2C:37-2b(2)(b), which grades an offense as third degree when a violator receives "more than \$100 in any one day of money played in such scheme or enterprise." The proofs herein establish that the applicant did not receive more than \$100 on any one day. Therefore, the criteria for a third degree offense has not been satisfied and, accordingly, the applicant's conduct constitutes a disorderly person's offense.

I **CONCLUDE** that the Division has established that the applicant's conviction in New York is a statutory equivalent of a violation of N.J.S.A. 2C:37-2, promoting gambling, to the level of a disorderly person's offense. I further **CONCLUDE** that this offense does not satisfy the disqualification criteria of section 86c(1).

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of

the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . 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."

It has been established that the applicant's conviction is the equivalent of a violation of N.J.S.A. 2C:37-2, promoting gambling, a disorderly person's offense. Accordingly, the offense is not a per se disqualifier, and the significance thereof must be otherwise assessed.

On its face, the applicant's conviction for illegal gambling activity, especially in consideration of his repetition of his misconduct, appears to be inimical to the policies of the Act. However, the inimicality of the offense must include consideration of the circumstances underlying the incident and the applicant's conduct thereafter. The applicant participated in the illegal gambling activities for profit and with the knowledge

that such activities were unlawful. It is especially significant that he repeated his misconduct. The applicant accepted full responsibility for his misconduct during the criminal proceedings, i.e., he pled guilty and satisfied the sentence imposed. Also, the applicant has not repeated his misconduct. However, his testimony during this hearing that he was at first unaware of the illegal nature of the activities is unpersuasive. In the final analysis and with emphasis placed upon the unpersuasiveness of the applicant's testimony at the hearing, it is evident that licensure would be inimical to the policies of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that licensure of the applicant would be inimical to the policies of the Act, pursuant to section 86c(4).

(C) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Heffernan was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

Although the applicant has established that his misconduct was limited in scope and duration and that he is unlikely to repeat his misconduct, the unpersuasive character of his testimony disclaiming knowledge at first of the illegal nature of his misconduct raises serious concerns. In essence, the applicant has failed to acknowledge fully the true nature of his misconduct. Therefore, significant doubts concerning the applicant's credibility exist, which are sufficient to preclude the applicant's proofs from satisfying the substantial burden of clear and convincing evidence.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2).

(D) N.J.S.A. 5:12-89b(3)

There was no dispute that the applicant did not possess the requisite experiential qualifications for licensure, under section 89b(3). However, the applicant established an intent to obtain the necessary education in the event his application was otherwise successful. The Division acquiesced in this procedure. Nevertheless, the applicant failed to carry his initial burden.

DISPOSITION

It is **ORDERED** that the application of Ronald J. Heffernan 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.

November 22, 1985  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

11-25-85  
DATE

Sri Dori  
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 27 1985  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Personal History Disclosure Form -2A, Ronald James Heffernan, filed February 29, 1984 (24 pages)
- P-1 Letter from Donald E. Guenther
- P-2 Letter from Nick P. Sita, September 5, 1985
- P-3 Letter from Walter R. Dyer, September 23, 1985
- P-4 Letter from Charles C. DiPaolo, September 6, 1985
- 
- R-1 Criminal Court of the City of New York Certificate of Disposition (2 pages) R-2 Copy of Section 225.05 of the Statutes of New York

WITNESS LIST

**FOR THE PETITIONER:**

Ronald J. Heffernan

**FOR THE RESPONDENT:**

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-241  
OAL DOCKET NO. CCC 2785-86  
REGISTRATION NO 49268-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION:  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complaint :  
V.  
Juan C. Hernandez  
Respondent :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 5, 1986,

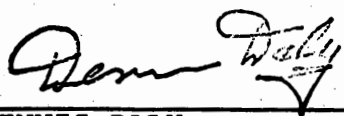
IT IS on this 15<sup>th</sup> day of December 1986, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Juan C. Hernandez is revoked substantially for the reasons state in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act Except pursuant to the provisions of N.J.S.A. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2785-86

(REMAND OF CCC 7660-85)

AGENCY DKT. NO. 85-241

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC  
SAFETY,**

Petitioner,

v.

**JUAN C. HERNANDEZ,**

Respondent.

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**Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Juan C. Hernandez, respondent, pro se**

**Juan Morales, interpreter, for the respondent**

Record Closed: August 18, 1986

Decided: September 24, 1986

**BEFORE BEATRICE S. TYLUTKI, ALJ:**

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on June 10, 1985, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The

respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on December 3, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for January 21, 1986, and on that date, the respondent failed to appear. By initial decision dated February 25, 1986, the undersigned concluded that Mr. Hernandez had abandoned his request for a hearing. By order dated April 16, 1986, the Commission determined that Mr. Hernandez had presented a credible explanation for his failure to appear at the prehearing conference and ordered the matter be remanded to the Office of Administrative Law.

After the remand, there was a prehearing conference by way of a telephone conference call on June 6, 1986. At that time, the parties agreed that the issues in this matter are:

- A. Whether the respondent is disqualified from registration based on a criminal conviction, pursuant to N.J.S.A. 5:12-86c(3).
- B. Whether respondent can establish that he has been rehabilitated, pursuant to the provisions of N.J.S.A. 5:12-91d.

At the time of the prehearing conference, it was apparent that Mr. Hernandez had a limited understanding of the English language. Mr. Acosta, an employee of the Commission, acted as an interpreter for Mr. Hernandez for the conference and informed Mr. Hernandez that it was his responsibility to bring an interpreter to the hearing in the matter. Additionally, for the prehearing conference, the Division was represented by Norma Plenty, Law Assistant.

At the hearing, Juan Morales, a friend of the respondent, acted as his interpreter and the Division was represented by Deputy Attorney General Nancy P. Scharff.

The hearing was held on July 25, 1986, at Ventnor City Hall in Ventnor, New Jersey. After Mr. Hernandez had the opportunity to submit additional documents and Ms. Scharff had the opportunity to comment thereon, the record in the matter closed on August 18, 1986.

FACTUAL FINDINGS

I FIND that the facts in this matter are not in dispute. On May 28, 1983, Mr. Hernandez was arrested and later indicted for conspiracy, a violation of N.J.S.A. 2C:5-2; burglary, a violation of N.J.S.A. 2C:18-2; and theft by unlawful taking of property with a value of less than \$500, a violation of N.J.S.A. 2C:20-3 (P-6). Thereafter, Mr. Hernandez entered a plea of guilty to the burglary and theft charges, and on September 9, 1983, he was put on probation for one year and ordered to pay \$50 to the Violent Crimes Compensation Board (P-7).

On August 3, 1984, Samuel L. Thomas, an Atlantic City police officer, saw Mr. Hernandez selling bags from a jar to persons in vehicles at an intersection in Atlantic City. As Officer Thomas approached him, Mr. Hernandez tried to dispose of the jar; however, the officer retrieved it and the material in the bags in the jar was tested and found to be cocaine. The officer also found \$162 in cash in the possession of the respondent. Officer Thomas stated that Mr. Hernandez told him that he was selling drugs in order to provide for his wife and three children. After his arrest, Mr. Hernandez was indicted for the possession of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-20a(1), and the possession of a controlled dangerous substance (cocaine) with intent to distribute, a violation of N.J.S.A. 24:21-19a(1) (P-1). Thereafter, on October 9, 1984, Mr. Hernandez entered a plea of guilty to the possession with intent to distribute charge (P-2).

On September 20, 1984, Kevin Sealman, an employee of the Atlantic City Sheriff Office, arrested Mr. Hernandez for a violation of his probation. After arresting him, Mr. Sealman searched Mr. Hernandez and found in his possession two packets, and the material therein was tested and found to be cocaine. Mr. Hernandez was indicted for the possession of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-20a(1) (P-3). Mr. Hernandez pled guilty to this charge (P-4).

The two drug convictions were combined, and Mr. Hernandez was sentenced to an indeterminate jail sentence with a maximum term of 5 years and was ordered to pay \$25 to the Violent Crimes Compensation Board (P-2, P-4).

Also, at the time of his arrest on September 20, 1984, Mr. Hernandez stated that he was working for the Boardwalk Regency Hotel and Casino (Boardwalk Regency), and Mr. Sealman found in the respondent's possession seven casino identification cards

(P-5). Three cards were issued by Boardwalk Regency, two were issued by Harrah's Marina Hotel and Casino (Harrah's Marina), and one each was issued by Tropicana Hotel and Casino (Tropicana) and Resorts Hotel and Casino (Resorts) (P-5). The respondent had worked at each of these casinos.

Mr. Hernandez testified that he obtained his first casino job as a kitchen utility worker at Resorts in 1979, and that he worked there for approximately three months. Mr. Hernandez then worked for Holiday Inn for approximately one year.

In 1981, Mr. Hernandez got a job as a kitchen utility worker at Boardwalk Regency and worked there for approximately one year and three months. Thereafter, Mr. Hernandez worked for approximately six months at Harrah's Marina and then obtained another job at Boardwalk Regency. In 1982, Mr. Hernandez worked for about three months at Tropicana before taking another job with Boardwalk Regency. According to Mr. Hernandez, each time he worked for a casino, he was issued a new identification card, and he was never requested to return the card when he left the job. Since he was not sure what to do with the cards and since he could neither read nor write English, Mr. Hernandez retained them and carried them in his wallet. However, Mr. Hernandez stated that he never used any card after he left the job. Since he worked for Boardwalk Regency on three separate occasions, Mr. Hernandez had three cards from that casino. As to the two cards issued by Harrah's Marina, Mr. Hernandez said that one was an identification card and the other was for laundry (P-5).

Mr. Hernandez stated that he and his family came to the United States from Puerto Rico when he was five years old. Mr. Hernandez attended school through the sixth grade in Atlantic City, and thereafter worked for a while as a blueberry picker with his father.

At the time of the hearing, Mr. Hernandez stated that he was 26 years old, was paying child support for his three children, and that he had a job with the Atlantic County Supported Work Program. In a letter, Gene B. Solomon, job developer for the Supported Work Program, confirmed that Mr. Hernandez was working as a laborer on various county projects, and stated that the respondent's job would terminate on September 10, 1986 (R-2).

Mr. Hernandez is presently on parole which is scheduled to terminate on July 27, 1989 (R-1). On behalf of the respondent, Maria Negrón, a parole

officer, stated that Mr. Hernandez has responded well to supervision and is making an effort to adjust into the community (R-1).

On his own behalf, Mr. Hernandez stated that he has learned a lesson and that he no longer deals with illegal drugs.

In closing, Deputy Attorney General Scharff stated that Mr. Hernandez's conviction for the possession of a controlled dangerous drug with intent to distribute is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3), and she argued that based on his convictions and the violation of probation, Mr. Hernandez has not shown his rehabilitation, pursuant to the standards set forth in N.J.S.A. 5:12-91b.

#### CONCLUSION OF LAW

Based on the facts presented, I **CONCLUDE** that the Division has established a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3).

Although a number of casino identification cards were found in Mr. Hernandez's possession, I accept his explanation as to why he had the cards. There was no representation that Mr. Hernandez had violated any statute or regulation by not returning these identification cards to his employers upon the termination of his services.

Therefore, the only remaining issue is whether the respondent has shown by clear and convincing evidence his rehabilitation. N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining or retaining a casino hotel employee registration:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;

- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In 1984, Mr. Hernandez was involved with illegal drugs, convicted on two occasions, and only a short time has passed since Mr. Hernandez's release from prison. He will be on parole until 1989. Although I do not doubt that Mr. Hernandez now recognizes the serious consequences of his offenses, I **CONCLUDE** that the respondent has not shown his rehabilitation pursuant to the standards in N.J.S.A. 5:12-91d.

DISPOSITION

Therefore, I **ORDER** that the casino hotel employee registration of Juan Hernandez be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 24, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9-25-86  
DATE

Bernadette J. Fryer  
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 29 1986  
DATE

Ronald J. Parke  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS ADMITTED INTO EVIDENCE

For the petitioner:

- P-1 Indictment No. 1173-8-84-B, filed against Juan Hernandez
- P-2 The disposition of Indictment No. 1173-8-84-B
- P-3 Indictment No. 1376-10-84-B, filed against Juan Hernandez
- P-4 The disposition of Indictment No. 1376-10-84-B
- P-5 Seven casino identification cards in the name of Juan Hernandez
- P-6 Indictment No. 6-711-83-B, filed against Juan Hernandez
- P-7 The disposition of Indictment No. 6-711-83-B

For the respondent:

- R-1 A letter from Maria Negrón to the Division of Gaming Enforcement, dated July 2, 1986, and a cover letter from Nancy P. Scharff to Juan Hernandez, dated July 21, 1986
- R-2 A letter from Gene B. Solomon to Juan Hernandez, dated June 16, 1986 (received by the Office of Administrative Law on August 11, 1986)

WITNESSES

For the petitioner:

Samuel Thomas  
Kevin Sealman  
Juan C. Hernandez

For the respondent:

Juan C. Hernandez

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-123  
OAL DOCKET NO. CCC 2748-86  
REGISTRATION NO. 44104-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
JOHN L. IRELAND, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of November 5, 1986,

IT IS on this 17<sup>th</sup> day of November 1986, ORDERED that the initial decision of the Office of Administrative Law is adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement for revocation of the casino hotel employee registration held by John L. Ireland is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2748-86

AGENCY DKT. NO. 85-123

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**JOHN L. IRELAND,**

Respondent.

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**William E. Mountford**, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**John L. Ireland**, respondent, pro se

Record Closed: August 12, 1986

Decided: September 19, 1986

**BEFORE BEATRICE S. TYLUTKI, ALJ:**

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission on March 27, 1985, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent, John L. Ireland, requested a hearing and the matter was transmitted on April 21, 1986, to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference was held on June 6, 1986, by way of a telephone conference call, and at that time the parties agreed that the issue in this matter is:

Whether the respondent's alleged criminal activities would render his continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g.

The hearing took place on August 12, 1986, and the record in the matter closed on that date.

FACTUAL FINDINGS

Mr. Ireland was born on June 11, 1963. He had major surgery and radium treatments for a brain tumor when he was ten years old. After participating in a training program in Pleasantville, New Jersey, he obtained employment in September 1982, as a utility steward in a kitchen at the Golden Nugget Hotel and Casino (Golden Nugget). As of the date of the hearing, Mr. Ireland was employed in the same position by Golden Nugget and he represented that the casino is satisfied with his work performance.

On December 30, 1984, after he finished working, Mr. Ireland decided to wait for his paycheck, and went into the employees' locker room to go to the bathroom. Mr. Ireland stated that he saw a black man, who he did not know, in the locker room. After he left the locker room, Mr. Ireland was stopped by Detective Gary Foster of the State Police. Detective Foster searched Mr. Ireland and found a plastic bag containing a small greenish vegetation which was later established to be marijuana and a marijuana cigarette. Mr. Ireland was arrested and a complaint was filed against him for the possession of a controlled dangerous substance consisting of less than 25 grams of marijuana, a violation of N.J.S.A. 24:21-20a(4) (P-1).

In his report, Detective Foster stated that he observed the black man give Mr. Ireland the small plastic bag of marijuana and another small object (P-1). Also in his report, Detective Foster indicated that Mr. Ireland stated that he did not know the black man's name or position at the casino and that Mr. Ireland agreed to provide the State Police with information on drug trafficking at the Golden Nugget (P-1).

At the hearing, Mr. Ireland denied receiving anything from a black man in the locker room at the Golden Nugget on December 30, 1984, and insisted that he did not purchase the marijuana at the casino. He stated that he had brought the marijuana to work on that date. In addition, Mr. Ireland stated that Detective Foster and another State policeman tried to coerce him to get information regarding drug activities at the Golden Nugget. According to Mr. Ireland, he was upset about the fact that he was arrested and further upset about the pressure the police officers placed on him to cooperate. Mr. Ireland indicated that he told the police officers that he did not have any information to give them regarding drug use at the casino.

After the December 30, 1984 incident, Mr. Ireland was given a conditional discharge and was required to submit to a blood test for drugs every two months for a six-month period. After he successfully complied with the terms of the conditional release, the complaint against the respondent was dismissed on July 1, 1985.

According to Mr. Ireland, he had used marijuana periodically prior to his December 30, 1984 arrest and has not used any drugs since that date. Mr. Ireland stated that he is aware that he did something wrong, that he learned his lesson, and that he will not use any illegal drugs in the future. Mr. Ireland stated that he needs his job.

On behalf of his son, the respondent's father, Robert Lee Ireland, Sr. testified that his son, to the best of his knowledge, has not used any drugs since his arrest on December 30, 1984. Mr. Ireland, Sr. stated that his son had a lot of training and help to secure his casino job and that the job is important to the respondent.

I **FIND** that the facts as stated above are not in dispute except for the question of whether Mr. Ireland purchased the marijuana at the casino. Detective Foster's police report was admitted into evidence (P-1); however, the police officer did not testify at the hearing. At the hearing, I had the opportunity to observe Mr. Ireland, and I **FIND** him to be sincere and honest witness and I believe his testimony that he did not purchase the marijuana at the Golden Nugget.

CONCLUSIONS OF LAW

In closing, Deputy Attorney General William Mountford argued that the Division had shown that Mr. Ireland was guilty of the possession of less than 25 grams of

marijuana, a violation of N.J.S.A. 24:21-20a(4), and that it is the Commission's policy that the possession of illegal drugs by a casino employee on the premises of a casino is an inimical offense pursuant to N.J.S.A. 5:12-86c(4) and 5:12-86g.

It has been established that in reaching a determination as to whether a license or registration of a person would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4), it is necessary to consider the alleged criminal offense, as well as the factors normally considered when deciding the issue of rehabilitation, pursuant to either N.J.S.A. 5:12-90h or 5:12-91b. See, Davis v. Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (Aug. 12, 1985), modified, Casino Control Commission (Dec. 27, 1985).

Based on the facts in this matter, I **CONCLUDE** that the Division has shown that Mr. Ireland was guilty of the offense of the possession of less than 25 grams of marijuana even though there was no criminal conviction, pursuant to N.J.S.A. 5:12-86g. However, I also **CONCLUDE** that the respondent's action is not an inimical offense pursuant to N.J.S.A. 5:12-86c(4). Mr. Ireland was 21 years old at the time of the December 30, 1984 arrest, which was an isolated incident. Mr. Ireland has persuaded me that he has not used any drugs since that date and that he has a sincere desire to avoid illegal drugs and to continue his employment in the casino industry.

#### DEPOSITION

Therefore, I **ORDER** that the casino employee registration of John L. Ireland **NOT BE REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 19, 1986  
DATE

Beatrice S. Tyluth  
BEATRICE S. TYLUTH, ALJ

Receipt Acknowledged:

September 23, 1986  
DATE

Bernadette T. Fryer  
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 24 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

OAL DKT. NO. CCC 2748-86

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

P-1 New Jersey State Police Investigation Report signed by Detective Gary Foster, dated December 30, 1984; arrest report for John L. Ireland prepared by Detective Foster, dated December 30, 1984; Supplemental Report by Detective Foster, dated December 30, 1984, and the Complaint filed against John L. Ireland and the disposition as to the complaint.

**FOR THE RESPONDENT:**

None

**WITNESSES**

**FOR THE PETITIONER:**

John L. Ireland

**FOR THE RESPONDENT:**

John L. Ireland  
Robert Lee Ireland, Sr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-59  
OAL DOCKET NO. CCC 0086-86 AND  
CCC 2009-85 (ON REMAND)  
APPLICATION NO. 49555-21  
REGISTRATION NO. 13875-40

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APPLICATION OF CURTICE E. JACKSON

FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 30, 1986,

IT IS on this 11<sup>th</sup> day of September 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof, and for the applicant's failure to establish by clear and convincing evidence his qualifications for licensure pursuant to N.J.S.A. 5:12-80(a), 89(b)(2), 90(b); and

IT IS FURTHER ORDERED that Curtice E. Jackson is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Curtice E. Jackson from retaining his casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0086-86  
(CCC 2009-85 - On Remand)  
AGENCY DKT. NO. 85-EA-59

**CURTICE E. JACKSON,**

Petitioner,

v.

**DIVISION OF GAMING**

**ENFORCEMENT,**

Respondent.

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**Curtice E. Jackson, petitioner, pro se**

**Joanne Cocchiola, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: May 22, 1986

Decided: June 25, 1986

**BEFORE SOLOMON A. METZGER, ALJ:**

This matter arises out of petitioner's application for licensure as a casino hotel employee, pursuant to N.J.S.A. 5:12-90. Respondent filed objections with the Casino Control Commission, based on material which it believes undermines petitioner in his burden of establishing that he is a person of good character, honesty and integrity. N.J.S.A. 5:12-89b(2). Petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Certain basic facts are undisputed. Petitioner was arrested on April 2, 1972, by the Philadelphia Police Department and charged with assault and battery on a police

officer, comparable to N.J.S.A. 2C:12-1b; resisting arrest, comparable to N.J.S.A. 2C:29-2; disorderly conduct, comparable to N.J.S.A. 2C:33-29; and interfering with a police officer, comparable to N.J.S.A. 2C:29-1. Petitioner was found not guilty of these charges.

Petitioner was arrested on February 5, 1977, by the Philadelphia Police Department and charged with two counts of possession of controlled dangerous substances, comparable to N.J.S.A. 24:21-20(a)1, a(4). He was admitted to pre-trial intervention, known in Pennsylvania as accelerated rehabilitation disposition (ARD).

On May 20, 1980, petitioner was arrested by the Atlantic City police and was thereafter indicted on two counts of aggravated assault in the second degree, N.J.S.A. 2C:12-1b(1); two counts of aggravated assault, in the fourth degree, N.J.S.A. 2C:12-1b(3); possession of a handgun without a permit, N.J.S.A. 2C:39-5b; possession of a handgun for unlawful purposes, N.J.S.A. 2C:39-4, and possession of nunchucks or karate sticks under circumstances not manifestly appropriate for their lawful use, N.J.S.A. 2C:39-5d. The arrest arose out of an incident which occurred on April 29, 1985. Except for the last charge, all the counts relate to that incident. When petitioner was apprehended on May 20, 1985, he was carrying the karate sticks. He was found guilty of possession of a handgun without a permit, possession of karate sticks without lawful purpose and both counts of fourth degree aggravated assault. The remaining counts were dismissed. He was sentenced to 18 months probation, 45 days imprisonment and a fine of \$100 to the Violent Crimes Compensation Board.

On December 19, 1982, petitioner was arrested by the Atlantic City police and charged with disorderly conduct, in contravention of N.J.S.A. 2C:33-2; resisting arrest, in contravention of N.J.S.A. 2C:29-2; and aggravated assault on a police officer, in contravention of N.J.S.A. 2C:12-1b. Thereafter, petitioner was indicted for violation of N.J.S.A. 2C:12-1b(5), aggravated assault, at which time the remaining charges were dismissed. On March 10, 1983, petitioner was found guilty of this offense. On June 17, 1983, petitioner's motion for a new trial was granted and on July 25, 1983, the charge was dismissed following a second trial without verdict.

On January 14, 1985, petitioner was arrested by the Philadelphia police on a charge of auto theft. These charges were dismissed.

Respondent presented testimony and documents concerning some of these events. Officer Carl Fink of the Philadelphia police testified concerning the arrest of February 5, 1977. He had received a radio call concerning a man with a gun. Upon arrival at the scene, he approached petitioner, who fit the description he had been given, and frisked him. Officer Fink found six packets of marijuana and one packet of methamphetamine. To his knowledge, no gun was found. A laboratory analysis report admitted into evidence reflects the conclusion that the material found in petitioner's possession was marijuana and methamphetamine.

Though no officer testified with respect to the incident in 1980, a police report, indictment and judgment of conviction were submitted in evidence. These indicate that on April 29, 1980, petitioner had been involved in an altercation at a bar, during which a handgun which he had been using to bludgeon an adversary went off striking two uninvolved patrons.

Officer Charles Weber of the Atlantic City Police Department testified concerning the incident of February 19, 1982. He and his partner were called to the scene of a domestic dispute concerning custody of a car. He testified that petitioner had the car keys but a woman was claiming ownership of the car. When his partner sought to take the keys from petitioner, he testified that petitioner slapped his hand. A fight developed. Petitioner punched Officer Weber in the face, a crowd formed, other officers arrived, and a larger brawl ensued. Officer Weber testified at both trials.

Detective Thomas McGovern of the Philadelphia police testified concerning the 1985 stolen car allegation. The United Cab Company of Philadelphia had leased a taxi cab to Kevin Jackson, petitioner's brother, for one day, Saturday, January 12, 1985. The car was to be returned on Sunday. The cab company then telephoned police on Monday stating that they had received a call from Kevin indicating that petitioner took the cab Saturday night and did not plan to return it. Kevin also gave a statement to this effect. Petitioner was arrested on Monday, January 14, 1985, driving the cab in the area of Broad and Olney Streets in Philadelphia, near a major SEPTA terminal. The charges were dismissed.

Petitioner testified briefly with respect to each of the charges. Although he indicated that he didn't really remember the 1972 incident very well, as far as he recalled his mother was present and as an altercation developed, she was being hit by police officers. That is when he became involved. With respect to the incident in 1977, he acknowledged that he had six bags of marijuana, but denied possession of methamphetamine. He testified that he had no weapon during the incident in 1980, and that he was only convicted of carrying karate sticks. He acknowledged that he may have hit Officer Weber during the altercation in 1982, but that the fight involved a number of people and he, as well, was being beaten. Finally, he explained the 1985 taxi cab incident. He testified that he and his brother lease cabs on occasion for a day or two from United Cab. When they do so they drive around the clock, to achieve maximum benefit from the arrangement. They often hold onto the cab longer than originally intended and this situation was no different. When the police stopped him he had just discharged a passenger and was bringing the cab in. Petitioner offered no explanation why his brother reported the vehicle stolen.

Petitioner also testified that he is 32 years old, married and has one child. He has been unable to hold a steady job in recent years because of a continuing drug problem but believes that he is now more stable and wants to make a clean start.

This is the substance of the record. It is petitioner's burden to establish by clear and convincing evidence that he is a person of good character, honesty and integrity. N.J.S.A. 5:12-89b(2). This has not been accomplished.

Petitioner was found not guilty on all charges stemming from the arrest in 1972 and no further evidence was produced by respondent on this point. The incident in 1982 is clouded and uncertain. Though Officer Weber testified that petitioner hit him during the course of a brawl, it is not really clear how this all came about. Finally, the allegations of auto theft in 1985 appear to have been a misunderstanding. Petitioner and his brother had rented cabs before, and when he was apprehended he was driving in an area of heavy commuter traffic. He testified that he had just discharged a passenger. Each of these charges were dismissed in court and even under a preponderance of the evidence standard, they have not been established.

The charges in 1977 resulted in petitioner's accepting pre-trial intervention and reflects some involvement with drugs. The 1980 charges are most serious. Petitioner was convicted of recklessly causing bodily injury to two people and unlawful possession of weapons. Though he testified that he had no handgun during the incident in the bar, this is entirely contrary to the police report and judgment of conviction. By his own admission, petitioner has been unable to hold a steady job because of a drug problem. Thus, while he may most recently have taken a step toward rehabilitation, there are no affirmative indicia of this in the record. In the absence of any counterbalancing evidence, the 1980 incident looms large.

Based on the foregoing, it is my conclusion that petitioner has failed to establish by clear and convincing evidence that he is a person of good character, honesty and integrity, and 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.

DATE

*6/25/86*

*[Signature]*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

*June 26, 1986*

*[Signature]*  
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

*JUN 27 1986*

*[Signature]*  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Officer Carl Fink  
Officer Charles Weber  
Detective Thomas McGovern  
Curtice E. Jackson

EXHIBITS

For respondent:

- R-1 Seizure Analysis Report
- R-2 Extract of Criminal Record
- R-3 Investigation Report with attachments
- R-4 Indictment No. I-919-79-M-4
- R-5 Judgment of Conviction and Order for Commitment
- R-6 Indictment No. 1-14-83-B
- R-7 Atlantic County Superior Court Criminal Record
- R-8 Investigation Report
- R-9 Arrest Report
- R-10 Affidavit

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-406  
OAL DOCKET NO. CCC 2487-85  
REGISTRATION NO. 16532-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW  
AND PUBLIC SAFETY, DIVISION OF GAMING  
ENFORCEMENT,

Complainant,

v.

BERNARD JONES,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 20, 1985,

IT IS on this 18<sup>th</sup> day of November 1986, ORDERED that the initial decision is modified as follows:

1. The bases for the respondent's disqualification are:

- (a) His New York conviction for an offense on September 22, 1970, which is comparable to N.J.S.A. 2C:37-3a(2), a statutory disqualifying offense under N.J.S.A. 5:12-86(c)(1); and

- (b) His New York conviction for possession of gambling records on December 8, 1976, which is, under the circumstances, a disqualifying offense under N.J.S.A. 5:12-86 (c)(4).
2. In view of the respondent's four convictions for possession of gambling records subsequent to the disqualifying conviction on September 22, 1970, and his unsatisfactory employment record since 1980, the respondent has failed to demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-91(d).

IT IS FURTHER ORDERED that the casino hotel employee registration held by Bernard Jones is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Bernard Jones is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR



BY: \_\_\_\_\_

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2487-85

AGENCY DKT. NO. 84-406

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC  
SAFETY,**

Petitioner,

v.

**BERNARD JONES,**

Respondent.

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Joanne Cocchiola, Deputy Attorney General, for petitioner (Irwin I. Kimmelman,  
Attorney General of New Jersey, attorney)

Bernard Jones, respondent, pro se

Record Closed: August 2, 1985

Decided: August 15, 1985

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Division of Gaming Enforcement (Division), Department of Law and Public Safety, seeks revocation of the respondent's Casino Hotel Employee Registration No. 16532-40. The Division alleged that Mr. Jones had committed various gambling offenses in the state of New York and that Mr. Jones's continued registration would be inimical to the policy of the Casino Control Act within the meaning of section 86c(4) as incorporated by section 91b of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on December 4, 1984. By letter dated April 23, 1985, the respondent requested a hearing. On April 30, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 10, 1985, and the matter was scheduled for a hearing on August 2, 1985. A hearing was conducted at the Pleasantville Municipal Building, Pleasantville, New Jersey, on August 2, 1985.

FINDINGS OF FACT

Mr. Jones is 41 years of age and has lived in the state of New Jersey for the past five years with the exception of a nine-month absence to visit his ailing mother in Fernadina, Florida. Prior to 1980, Mr. Jones resided in the state of New York. He currently resides in Atlantic City, New Jersey.

On September 22, 1970, the respondent was arrested and charged in Suffolk County, New York, with possession of gambling records, second degree (P-1).

On November 16, 1970, the respondent was arrested and charged in Suffolk County, New York, with possession of gambling records, second degree (P-2).

On December 11, 1970, the Suffolk County Police Department arrested respondent on a bench warrant issued for his failure to appear in Suffolk County Court to answer the September 22, 1970 charge (P-3). On March 4, 1971, the respondent pled guilty and was sentenced to 30 days in the Suffolk County Jail (P-5).

On March 4, 1971, the Suffolk County Police Department arrested respondent on a bench warrant issued for his failure to appear at the Suffolk County Court to answer the November 16, 1970 charge (P-4). On that date, respondent was sentenced to a concurrent 30 day jail sentence (P-5).

On March 31, 1971, the respondent was arrested and charged with possession of dangerous drugs (P-6). The charge was dismissed.

On October 10, 1972, the respondent was arrested and charged by the Suffolk County Police Department with possession of gambling records, second degree and with promoting gambling, second degree. On May 4, 1973, the promoting gambling charge was dismissed and respondent received a \$600 fine for possession of gambling records (P-7).

On March 13, 1975, respondent was arrested and charged by the Suffolk County Police Department with promoting gambling, first degree and with possession of gambling records, second degree. The promoting gambling charge was dismissed and on December 8, 1976, a \$750 fine and three years probation was imposed on respondent for the possession of gambling records charge (P-8).

On September 2, 1976, the respondent was arrested and charged in Suffolk County, New York, with promoting gambling, second degree and possession of gambling records, second degree. On January 26, 1977, the promoting gambling charge was dismissed and the possession of gambling records charge was reduced to harassment. Respondent was fined \$350 on the harassment charge (P-9).

On October 1, 1976, the respondent was arrested and charged in Suffolk County, New York, with possession of gambling records, second degree. On November 9, 1976, the charge was dismissed (P-10).

The respondent testified as to the circumstances underlying his record. Mr. Jones felt that "running numbers" was a way to earn a living without harming anyone. Since he was not "doing that much business" it was hardly worth the effort. He moved to New Jersey in order to obtain a fresh start. Respondent was extremely vague about the dates of employment but recalls that he worked as an attendant in the emergency room of Atlantic City Medical Center for approximately two years (approximately January 1981 to January 1983). In addition, he worked at an intermediate care facility but did not recall where it was. During 1980, he worked at Bally's Casino Hotel as a coat checker for approximately two months from which he was fired. Respondent also worked as a parking attendant for Myers Parking at the Bally's Casino Hotel for approximately one year in 1983-84. In July 1984, respondent left for Florida to help his sick mother. In March 1985, respondent returned to New Jersey. However, it appears that no concerted effort has been made on the part of respondent to secure employment since his return. In response to the deputy attorney general's question concerning any current means of support, respondent first stated that he received unemployment benefits. Upon further

questioning, Mr. Jones revealed that he had not yet applied for unemployment benefits but was receiving help from his sister and friend. Respondent testified that since moving to New Jersey, he has had no involvement whatsoever with any gambling enterprise.

The respondent's sister, Sylvia Chandler, testified that since he moved to New Jersey in early 1980, Mr. Jones has not participated in illicit gambling activities. She feels that the move to New Jersey was beneficial since it provided a change in environment.

The respondent's friend, Missie Beale, testified that Mr. Jones is an excellent worker, having observed him at the Atlantic City Medical Center in 1982.

All the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-86c(4)

N.J.S.A. 5:12-91b provides that subsequent to the registration of a casino hotel employee, the Commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria set forth in N.J.S.A. 5:12-86. N.J.S.A. 5:12-86c(4) provides that a registrant who commits an offense that would be inimical to the policy of the act may have his registration revoked, suspended, limited or otherwise restricted. The criteria for evaluating inimicality are similar to the factors to be considered with regard to rehabilitation i.e., the circumstances of each case must be evaluated by taking into account the nature and seriousness of offense; the circumstances under which the offense occurred; the date of the offense; the age of the registrant when the offense was committed; whether the offense was an isolated or repeated incident and any social conditions which may have contributed to the offense.

The following factors are positive concerning respondent in considering the question of inimicality:

1. Mr. Jones admitted his criminal behavior.

2. There has been no other evidence of criminal behavior since 1976.

On the other hand, regarding the issue of inimicality, the following negative factors must be assessed:

1. From 1970 to and including 1976, respondent was arrested approximately seven times for possession of gambling records resulting in four convictions.
2. The crimes committed were serious and in contravention to the policy of the Casino Control Act. There is no evidence of any social conditions which might mitigate against the seriousness of the offenses.
3. The length of time during which these crimes were committed i.e. approximately six years.
4. Respondent does not feel that his convictions for possession of gambling records were particularly "serious."
5. Respondent was 26 to 32 years of age when these crimes were committed, certainly not a youthful offender.
6. The offenses were not isolated, but rather show a course of conduct over a lengthy period of time.

In assessing "inimicality," I could possibly dismiss respondent's past criminal conduct based upon the passage of time. However, Mr. Jones was not an impressive witness. By his own admission he was ill-prepared. The vagueness displayed throughout his testimony was unsettling. In his favor, Mr. Jones had the foresight to present two witnesses who testified as to Mr. Jones's "rehabilitation." Quite frankly, this decision is a troublesome one. On one hand, I believe that Mr. Jones no longer engages in illicit gambling activities. On the other hand, Mr. Jones has not demonstrated to my satisfaction by clear and convincing evidence his "rehabilitation." His inability to recall dates and places of employment and his general indifference leave me to CONCLUDE that Mr. Jones's continued registration would be inimical to the policy of the Act. Participation in casino operations as a registrant is a revocable privilege, not a right

(N.J.S.A. 5:12-1b(8)). If Mr. Jones had demonstrated current useful and productive behavior, this decision probably would have been different.

(B) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's registration. Given the fact that the aggravating factors outweigh any mitigating factors and given the fact that respondent's lack of candor and indifference does not demonstrate to my satisfaction "rehabilitation," the respondent's registration must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the Hotel Employee Registration (Registration No. 16532-40) held by Bernard Jones be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

8-15-85  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-16-85  
DATE

*Mary Ann Bonczyk*  
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 20, 1985  
DATE

*Charles J. Rege*  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESS LIST

For the petitioner:

Agent John Zamrok

For the respondent:

Sylvia Chandler

Missie Beale

Bernard Jones

DOCUMENTS IN EVIDENCE

- P-1 Police Department County of Suffolk, Offense Report, dated September 22, 1970
- P-2 Police Department, County of Suffolk, Offense Report, dated November 16, 1970
- P-3 Police Department, County of Suffolk, Arrest Report, dated December 11, 1970
- P-4 Police Department, County of Suffolk, Arrest Report, dated March 4, 1971
- P-5 Transcript of Record, dated June 12, 1985, from the District Court of the County of Suffolk, New York
- P-6 Police Department, County of Suffolk, Offense Report, dated March 31, 1971
- P-7 Police Department, County of Suffolk, Offense Report, dated October 9, 1972
- P-8 Police Department, County of Suffolk, Offense Report, dated March 13, 1975
- P-9 Police Department, County of Suffolk, Arrest Report, dated September 2, 1976
- P-10 Police Department, County of Suffolk, Arrest Report, dated October 1, 1976
- P-11 Transcript of Record, Suffolk County District Court
- P-12 United States Department of Justice, Federal Bureau of Investigation, transcript of record
- P-13 New York statutes

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 83-223  
OAL DOCKET NO. 7372-85  
LICENSE NO. 02715-21

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STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

Complainant,

AMENDED  
FINAL ORDER

v.

JOSEPH H. KOZIERACHI,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 13, 1986,

IT IS on this 29<sup>th</sup> day of August 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Joseph H. Kozierachi is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Commission's order dated July 22, 1983, suspending the casino employee license of Joseph H. Kozierachi is vacated.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7372-85

AGENCY DKT. NO. 83-223

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**JOSEPH KOZIERACHI,**

Respondent.

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**William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**John Fognano, Esq., for respondent (Mario J. D'Alfonso, attorney)**

Record Closed: May 12, 1986

Decided: July 1, 1986

BEFORE **JOSEPH F. FIDLER, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on July 8, 1983, seeking revocation of the respondent's casino employee license, or some other sanction, pursuant to sections 86c and 86g, 90 and 129 of the Casino Control Act (BN.J.S.A. 5:12-1 et seq.), based upon the respondent's arrests on April 14, 1983, for unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5b and terroristic threats, in violation of N.J.S.A. 2C:12-3. On July 22, 1983, the Casino Control Commission suspended the respondent's casino employee license, pending the final disposition of this matter. The issues to be determined in this matter are as follows:

1. Whether the respondent has been convicted of or has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure or some other sanction, pursuant to sections 90 and 129 of the act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

By letter dated November 5, 1985, the respondent requested a hearing on the complaint filed by the Division of Gaming Enforcement. On November 19, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 20, 1985, at which time the matter was set down for hearing on January 31, 1986.

At the request of counsel for the respondent, the matter was adjourned prior to the January 31, 1986, hearing date because counsel had a criminal court conflict and because the respondent needed additional time to secure medical records and doctor's reports. The matter was then rescheduled for hearing on April 21, 1986, but was also adjourned from that date because counsel for the respondent again had a conflict with a matter in criminal court. The hearing was then rescheduled for and held on May 12, 1986.

#### FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The respondent is a 33 year old resident of Pennsauken, New Jersey. He holds casino employee license no. 02715-21, issued by the Casino Control Commission on April 20, 1979, and subsequently renewed. The respondent's employment in the legalized gaming

industry began in May 1979, when he was hired by Resorts International Hotel and Casino. The last capacity in which the respondent served at Resorts was as a floor person in craps and blackjack.

On February 17, 1983, the respondent began a medical leave of absence from Resorts International. According to the respondent, he had suffered from hypertension for quite some time. Beginning in October 1982, his hypertension worsened and he experience severe headaches on a daily basis. The effect of these headaches was so great that, according to the respondent, he could neither think straight nor see straight and he felt as if his head would explode (See medical reports admitted into evidence as Exhibits R-1 through R-4).

The incidents which formed the basis of the complaint of the Division of Gaming Enforcement occurred on April 14, 1983. On that day, the respondent visited his physician and received a dosage of prescription medication. According to the respondent, he was taking a variety of prescription drugs for his headaches and hypertension, and he normally experienced side effects of extreme grogginess and a feeling that he just did not care about anything (See Exhibits R-5 through R-7).

After receiving his medicine on April 14, 1983, the respondent went home and rested. He then went to Resorts International that evening, for the purpose of turning in a physician's note concerning his need for an extended medical leave. At about 8:00 p.m., a co-worker who had known the respondent for a number of years, Linda Cunningham, was in the scheduling office at Resorts International, just off the casino floor. It was the testimony of Ms. Cunningham that she noticed the respondent on a stairway, and she asked him how he was. Although she had not seen him for awhile, she had not known that he was on a medical leave.

According to Ms. Cunningham, the respondent made some reply to her inquiry. Then, he pulled out a handgun from his jacket and said, "I am going to kill that motherfucker, Jack Johnson." Ms. Cunningham then left immediately to alert her supervisor, Steve Buck, to this situation. She did not see the respondent again following this encounter.

It is undisputed that the respondent did not come into contact with Casino Manager Johnson following the conversation with Ms. Cunningham. The security staff at

Resorts International contacted New Jersey State Police Detective William J. Smith, who was then assigned to the Casino Gaming Bureau of the Division of Gaming Enforcement. Testifying at the hearing, Detective Smith stated that he learned from Casino Shift Manager Buck the circumstances of the respondent's contact with Ms. Cunningham. The detective then spoke with Casino Manager Johnson, who stated that he could not recall the respondent and did not know why he would have made such a threat. Surveillance surrounding Mr. Johnson was established and Detective Smith then checked with the casino scheduling officer, where he learned the respondent was on a medical leave for hypertension and depression. Checking with the casino personnel office, Detective Smith learned that the respondent received his mail at an address in Galloway Township.

It was the testimony of Detective Smith that he contacted the Galloway Township Police Department and learned that the respondent was in police custody as a result of another incident occurring that same night. Patrolman Norman Meyers of the Galloway Township Police Department testified that he was traveling on Route 30 in the township a little after 8:00 p.m. on April 14, 1983, when he received a radio report concerning an assault with a weapon. The report had indicated that the subject in question had been stopped at a red light when he pointed a gun at a motorist in the next lane. The subject was reported to have been driving a vehicle described as a two door 1979 Ford with license plate no. 933 KHX.

Patrolman Myers testified that he spotted this vehicle and directed it to pull to the side of the road. The patrolman approached and identified himself as a police officer. The vehicle was driven by the respondent, who was frisked by the officer. This pat down revealed the respondent was carrying an ammunition clip for a Smith and Wesson 9 millimeter automatic revolver. The weapon itself was found in plain view on the passenger's side of the vehicle.

It was the testimony of Patrolman Meyers that the respondent was taken to police headquarters and advised of his rights. He signed a consent to open two briefcases which had been removed from the trunk of his car. One of the cases contained \$11,300 in cash, as well as some personal papers of the respondent. The other case contained several handguns and fifteen rounds of hollow point ammunition. The respondent also consented to a search of his home. This search lead to the seizure of nine rifles and one handgun.

Detective Smith was present during the search of the respondent's home. Later that night, Detective Smith obtained a voluntary statement from the respondent (Exhibit P-5). In this statement, the respondent described going to Resorts to turn in a doctor's note to extend his medical leave of absence. He acknowledged that he spoke to Linda Cunningham. The respondent's statement describes what happened next as follows:

... and then I took a gun out of my pocket and said that I was going to shoot the Casino Manager, in which I did not have any intentions of doing at all, I was upset about the change over which has occurred in the past six to eight months. I am being treated for high blood pressure, hypertension, and I am on medication for treatment of high blood pressure. I will also be seeing a neurologist, for CAT scan and brain scan EKG.

Detective Smith charged the respondent in an Atlantic City Municipal Court complaint with terroristic threats, contrary to N.J.S.A. 2C:12-3, and unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5b (Exhibit P-1). The respondent was also charged on a Mulica Township Municipal Court complaint with unlawful possession of a handgun. These incidents involving the respondent on April 14, 1983, led to an eight count indictment being entered against him by the Atlantic County Grand Jury (Exhibit P-2). Included in the indictment were five counts charging the respondent with unlawful possession of certain firearms without first having obtained the requisite permit, contrary to N.J.S.A. 2C:39-5(b). The respondent was also charged with possession of 15 hollow point bullets, contrary to N.J.S.A. 2C:39-3(f), theft by receiving stolen property (a .38 caliber Smith & Wesson handgun), contrary to N.J.S.A. 2C:20-7, and aggravated assault, for having pointed a firearm at another motorist, under circumstances manifesting extreme indifference to the value of human life, contrary to N.J.S.A. 2C:12-1b(4).

Following entry of the indictment against the respondent, the municipal court charges were dismissed. The Atlantic City Prosecutor made the following notation on the Atlantic City Municipal Court complaint:

A review of this file indicates that the charge of terroristic threat cannot be supported on the facts of this matter, and it is, accordingly, dismissed. Charge number 2 (unlawful possession of a handgun) has already been charged against this defendant and is now embodied in an indictment against this defendant and, accordingly, this charge is dismissed (Exhibit P-1).

On June 13, 1983, the respondent entered a plea of not guilty to all counts of the indictment. However, on March 13, 1984, he retracted his plea of not guilty and entered a plea of guilty to five counts of possession of a handgun without a permit, contrary to N.J.S.A. 2C:39-5b. The remaining counts of aggravated assault, possession of a prohibited weapon, and theft by receiving stolen property were dismissed. On April 6, 1984, the judgment of conviction was entered against the respondent (Exhibit P-3). He was sentenced on count six of the indictment to probation for a period of 18 months, with a like term of probation on counts 2, 3, 4, and 5 to run concurrently with each other and with count six. He was ordered to pay a penalty of \$25 on each count to the Violent Crimes Compensation Board. In addition, it was ordered that the respondent forfeit a 1979 Ford Thunderbird, \$4000 and two handguns to Atlantic County. Other weapons seized from the respondent were to be returned to their proper owners.

Superior Court Judge Manuel H. Greenberg imposed the sentence against the respondent in accordance with a plea bargain agreement, stating, "defendant would appear to be in need of and may benefit from probationary supervision (Exhibit P-3). Judge Greenberg also noted two mitigating factors:

- (1) The defendant's conduct neither caused nor threatened serious harm, and
- (2) The defendant did not contemplate that his conduct would cause or threaten serious harm.

Testifying on his own behalf, the respondent stated that his mind is pretty much a blank concerning the time period from April 1983 through March 1984. He did remember, however, that he was carrying \$11,000 in cash in a brief case on April 14, 1984. He explained that he carried his savings with him because he does not trust banks. He also remembers having some weapons with him, although he does not remember being arrested or having his house searched. The respondent testified credibly that he was not aware that any of the weapons had been stolen. He explained that several weapons were registered to his father or to his roommate, while several more were not registered. According to the respondent, he possessed the weapons because he is a gun collector. It was his testimony that he does not own any guns at the present time.

The respondent returned to work at Resorts International for approximately three weeks in July 1983. He testified that he was feeling well during that time period.

However, his license was suspended by the Casino Control Commission on July 22, 1983, pending the final disposition of this matter. According to the respondent, his health again deteriorated at that time. In September 1985, the respondent underwent surgery for removal of his gallbladder (Exhibit R-8). Since that surgery he has experienced problems with his back and numbness in his fingers. He is not able to do physical work which involves bending or lifting. However, it is no longer necessary for the respondent to take any prescription drugs. Now, he takes only an over-the-counter medication for pain.

For all but a short while during the time of his suspension, the respondent has been unemployed. On May 8, 1985, the respondent filed a voluntary petition for chapter 7 bankruptcy (Exhibit R-9). However, it is the respondent's belief that he will have a job in the legalized gaming industry if his license is reinstated. The respondent stressed that he satisfactorily completed his probation, including compliance with all forfeiture agreements. Because of his improvement, the Atlantic County Probation Department applied for and received an order granting an early termination of the respondent's probation (Exhibit P-4).

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the act authorizes the revocation of licensure of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license.

Pursuant to sections 90e, 86c(4) and 129 of the Casino Control Act, the Casino Control Commission may revoke the license of any licensee disqualified on the basis of his conviction of an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was initially charged with terroristic threats and unlawful possession of a handgun, contrary to N.J.S.A. 2C:12-3 and N.J.S.A. 2C:39-5(b). The Atlantic City Prosecutor determined that the charge of terroristic threats could not be supported on the facts of this matter and that charge was dismissed. N.J.S.A. 2C:12-3b provides:

A person is guilty of a crime of the third degree if he threatens to kill another with purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it would be carried out.

It is undisputed that the respondent stated to Linda Cunningham that he was going to shoot the Casino Manager, Jack Johnson. However, it is also undisputed that the respondent never communicated this threat directly to Mr. Johnson. Thus, it would not have been reasonable for Mr. Johnson to have believed the immediacy of the threat and the likelihood that it would be carried out. Accordingly, I **CONCLUDE** that the respondent has not committed the offense of terroristic threats, within the meaning of N.J.S.A. 2C:12-3b.

The respondent was subsequently indicted for aggravated assault, contrary to N.J.S.A. 2C:12-1b(4), based upon the allegation of a motorist that the respondent had pointed a firearm at him while stopped at a red light. Pursuant to N.J.S.A. 2C:12-1b(4), a person is guilty of aggravated assault of the fourth degree if he:

Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f, at or in the direction of another, whether or not the actor believes it to be loaded....

The count of the indictment charging the respondent with aggravated assault was dismissed as part of his plea bargain agreement. The judgement of conviction on five counts of possession of a handgun without a permit, contrary to N.J.S.A. 2C:39-5b, includes the sentencing judge's determination that the respondent did not contemplate that his conduct would cause or threaten serious harm. The credible evidence in the record does not demonstrate that the respondent knowingly pointed a firearm at or in the direction of another under circumstances manifesting an extreme indifference to the value of human life. Accordingly, I **CONCLUDE** that the respondent has not committed the offense of aggravated assault, within the meaning of N.J.S.A. 2C:12-1b(4).

The respondent was also charged in one count of the indictment with theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7. It is undisputed that the respondent had in his possession a handgun which was reported to have been stolen in 1977. This charge was dismissed pursuant to the plea bargain agreement. N.J.S.A. 2C:20-7a provides that a person is guilty of theft if he knowingly receives or brings into this state movable property of another knowing that it has been stolen, or believing that it is probably stolen. The respondent testified credibly that he no idea this weapon had been stolen. There is no evidence in the record which indicates to the contrary. Accordingly, I **CONCLUDE** that the respondent has not committed the offense of receiving stolen property, contrary to N.J.S.A. 2C:20-7.

The respondent was also charged in the indictment with one count of possession of a prohibited weapon (15 hollow point bullets), in violation of N.J.S.A. 2C:39-3f. Patrolman Meyers testified credibly that he found 15 rounds of hollow point ammunition in one of the cases taken from the respondent's trunk on April 14, 1983. The respondent did not deny that he possessed this ammunition, nor did he offer any evidence to establish that this possession fell within any of the exceptions to the prohibition against possessing hollow nose bullets, a crime of the fourth degree. Accordingly, I **CONCLUDE** that the respondent has committed the offense of possession of a prohibited weapon, within the meaning of N.J.S.A. 2C:39-3f.

The respondent entered a plea of guilty to five counts of unlawful possession of a handgun without a permit, contrary to N.J.S.A. 2C:39-5b. Accordingly, I **CONCLUDE** that the reepondent has committed the offense of unlawful possession of a handgun without a permit, which is a crime of the third degree. In order to determine whether the respondent's continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the act, it is necessary to consider the nature and circumstances of the respondent's offenses which he committed on April 14, 1983. It is also necessary to examine his conduct since that time. The respondent, who was thirty years old, was heavily medicated as a result of a chronic physical condition requiring medical leave from his employment at Resorts International Hotel and Casino. An avid gun collector, the respondent carried a handgun with him to Resorts on April 14, 1983, and displayed the weapon to a fellow employee. While doing this he told the co-worker that he intended to shoot the casino manager. This frightening conduct appears to have been a consequence of the respondent's heavy medication for his debilitating hypertension and depression.

The respondent has overcome his medical problems to the extent that he no longer requires prescription medication. However, he does still experience pain and he is unable to engage in the physical activity of lifting or bending as a result of his gallbladder operation in September 1985. He has experienced a long period of unemployment as a result of his license suspension and his physical disability. As a result, he has filed a voluntary petition for bankruptcy. The respondent satisfactorily completed the terms of his probation, including compliance with the forfeiture agreements. In addition, he testified credibly that he no longer possesses his gun collection.

There can be no question that the respondent committed a serious offense when he unlawfully possessed a handgun on the casino premises. This offense was compounded by his assertion that he intended to shoot the casino manager. Naturally, this frightened his co-worker a great deal. However, the surrounding circumstances demonstrate that the respondent had no real intention of so acting. With full consideration given to these surrounding circumstances and the respondent's progress since April 1983, the respondent's renewed participation in the legalized gaming industry should not justifiably undermine the public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I **CONCLUDE** that the respondent has not committed offenses which demonstrate that his continued licensure would be inimical to the policy of the Casino Control Act and casino operations within the meaning of N.J.S.A. 5:12-86c(4) and 86g of the act. Based upon the foregoing, I further **CONCLUDE** that the respondent has not engaged in conduct which so adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the Casino Control Act, so as to require revocation of licensure, pursuant to section 129 of the act.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Joseph Kozierachi be **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 1, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 2, 1986  
DATE

Melores Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 8 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Complaint dated April 14, 1983
- P-2 Indictment, dated May 26, 1983
- P-3 Judgment of conviction, dated April 6, 1984
- P-4 Termination of probabtion and order of forfeiture
- P-5 Statement, dated April 14, 1983

For the respondent:

- R-1 Letter, dated October 13, 1983
- R-2 Letter, dated April 29, 1983
- R-3 Letter, dated August 29, 1983
- R-4 Letter, dated September 19, 1983
- R-5 Product information, Physician's Desk Reference
- R-6 Product information, Physician's Desk Reference
- R-7 Product information, Physician's Desk Reference
- R-8 Surgical Pathology Tissue Report
- R-9 Voluntary Bankruptcy Petition
- R-10 Progress and Conduct Report, dated April 17, 1985

WITNESSES

For the petitioner:

Linda Cunningham

Norman Meyers

William J. Smith

For the respondent:

Joseph Kozierachi

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-416  
OAL DOCKET NO. CCC 3465-85  
REGISTRATION NO. 48313-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
RENEE Y. LARUE :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and Renee Y. LaRue having filed exceptions to the initial decision on April 7, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this 11<sup>th</sup> day of JUNE 1986, ORDERED that the initial decision is modified as follows:

The respondent is disqualified for the reasons stated by the ALJ, however, that disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and the respondent is therefore permitted to retain a casino hotel employee registration.

IT IS FURTHER ORDERED that the respondent is prohibited from applying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Renee Y. LaRue, the Division of Gaming Enforcement, the Office of Administrative Law, and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 3465-85

AGENCY DKT. NO. 84-416

**DEPARTMENT OF LAW & PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**RENEE Y. LA RUE,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**Lorraine Gormley, Esq.,** for respondent (Cape-Atlantic Legal Services, Paul Mohair, Director)

Record Closed: February 25, 1986

Decided: March 6, 1986

**BEFORE STEPHEN W. THOMPSON, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Renee Y. LaRue, respondent, the holder of casino hotel employee registration no. 48313-40. The Division alleged that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal conduct, for which the Division seeks the imposition of a penalty, pursuant to Section 129 of the Act. The respondent asserts that she has been rehabilitated pursuant to Section 91d of the Act.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on December 7, 1984. After several unsuccessful attempts to notify respondent of the complaint, respondent presumably received notice of the complaint on or about April 12, 1985. On April 12, 1985, respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 15, 1985, and the matter was scheduled for hearing on December 13, 1985. Respondent's attorney requested an adjournment and the matter was rescheduled for February 7, 1986. By letter dated February 6, 1986, both petitioner and respondent requested a continuance until February 25, 1986. The hearing was conducted on February 25, 1986, at the Borough of Buena Municipal Building, Minotola, New Jersey.

FINDINGS OF FACT

From the testimony and the documentary evidence, I **FIND** the following to be uncontested facts:

1. Respondent, Renee Y. LaRue, is a 29-year-old waitress at the Carnegie Delicatessen and Restaurant within the Sands Casino Hotel.
2. Her employment as a waitress with the Carnegie Delicatessen and Restaurant does not require a hotel employee registration.
3. Respondent's Aid to Families with Dependent Children (AFDC) grant began in January 1978 for her daughter and herself and continued through her period of employment.
4. Respondent was employed by the Farm Workers' Corporation from October 1979 through March 1981.
5. Respondent received New Jersey Department of Labor Unemployment Benefits from April 20, 1981 through May 31, 1982.

6. In addition to her income from employment, respondent received a \$256 monthly AFDC grant and \$93 in food stamp benefits.
7. On February 29, 1984, the respondent was indicted for theft by deception, third degree, welfare fraud, by the Camden County Grand Jury.
8. On June 1, 1984, respondent entered a plea of guilty to the indictment. Respondent was sentenced to a five-year period of probation, was ordered to make restitution in the amount of \$8,871.70 at the rate of \$50 per month, was ordered to pay a \$25 violent crime penalty and was ordered to perform 250 hours of community service per year for five years.
9. Respondent was employed as a hostess at the Tropicana Hotel and Casino for approximately one year in 1982. Although respondent received several letters of commendation, she was terminated from her employment for lateness.
10. Respondent will receive an associate degree in business administration from Camden County Community College in May 1986.
11. Respondent is an active member of the United Faith Christian Church, Sicklerville, New Jersey. She teaches Bible studies, is a member of the choir and, on occasion, cleans the church.
12. Services performed for the United Faith Christian Church are to be credited as community service. However, as of February 25, 1986, no documentation to that effect has been provided to the Camden County Probation Department.
13. Respondent's probation was terminated by Atlantic County for consistently failing to report to the Probation Department. The Camden County Probation Department allows telephonic reporting and there have been no problems in Camden County.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) as incorporated in Section 91b of the Act mandates that a person who has been convicted of any offense which is enumerated in the Section be disqualified from licensure. The Division contends that respondent's conviction on June 1, 1984, of a violation of N.J.S.A. 2C:20-4, third degree, theft by deception, is a statutory disqualifier under Section 86c(1) of the Act.

Respondent concedes that she was convicted of a violation of N.J.A.C. 2C:20-4, theft by deception, and that she was statutorily disqualified from maintaining her hotel employee registration. However, respondent claims that she has been rehabilitated from her criminal conduct.

I **CONCLUDE** that the certified judgment and conviction, dated June 1, 1984, along with respondent's admission has established, by a preponderance of the credible evidence, that the respondent is statutorily disqualified from being a registrant.

(B) N.J.S.A. 5:12-91e

The respondent claims that the disqualification criteria for her casino hotel employee registration should be waived pursuant to N.J.S.A. 5:12-91e. However, respondent has not demonstrated any compelling or extraordinary circumstances that would persuade me to recommend that the disqualification criteria be waived.

(C) N.J.S.A. 5:12-91d

A registrant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This Section sets forth the following eight specific criteria to be evaluated when considering rehabilitation:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

First, Ms. LaRue is employed as a waitress by the Carnegie Delicatessen and Restaurant, within the Sands Casino Hotel. As such, she is not required to maintain a hotel employee's registration. She has no responsibility for any gaming activities and would have limited contact with patrons of the casino. In addition, her duties as a waitress prohibit the handling of money.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:20-4, third degree, theft by deception, on June 1, 1984. The theft involved a substantial amount of money (\$8,871.70), received over an approximately three-year period. Theft by deception, third degree, is a statutory disqualifier under Section 86c(1) of the Act. The large amount of money combined with the lengthy period of time involved in the theft exacerbate the seriousness of the offense.

Third, the respondent contends that serious financial problems contributed to the circumstances under which the offense occurred.

Fourth, the respondent committed the offense between November 1979 and May 1982. On June 1, 1984, respondent was ordered to pay restitution at the rate of \$50 per month and was placed on probation for a period of five years. Respondent was to perform 250 hours of community service for each year of the five-year probationary period. Respondent's probation will most likely continue for three more years.

Fifth, the offense commenced when respondent was approximately 25 years of age. It is unlikely that her misconduct was due to immaturity.

Sixth, the respondent's misconduct involved welfare fraud over a period of three years. It was not an isolated incident.

Seventh, the respondent is a single mother, raising a 14-year-old daughter. Respondent does not receive any support payments.

Eighth, the respondent is currently attending Atlantic County Community College, Glassboro College, and Camden County Community College. Respondent will receive her associate degree in business administration from Camden County College in May 1986. Ms. LaRue is planning to obtain her secondary education degree from Glassboro College. In addition, respondent has received a nurse's assistant certificate from Philadelphia Training Center in 1976 and obtained a real estate certificate in 1980. Ms. LaRue is also active in the United Faith Christian Church teaching Bible studies, singing in the choir and on occasion, cleaning the church. It is estimated that she spends approximately ten hours per week at the church in these endeavors. Ms. LaRue contends that her community service requirement will be fulfilled by performing services for the church. Respondent presented a letter from the Reverend Walter McDaniel, United Faith Christian Church (formerly Sicklerville Christian Church) (R-1), letters from Vincent Alegret, general manager, Carnegie Delicatessen and Restaurant, Peter Averhoff, director, food and beverage, Tropicana Hotel and Casino (R-4), and from Jeannine Frisby-LaRue, respondent's aunt (R-5).

It is apparent that respondent has made an excellent start towards rehabilitation. However, several factors persuade me, at least at this juncture, that respondent has not demonstrated, by clear and convincing evidence, her rehabilitation:

1. Respondent was terminated by the Atlantic County Probation Department for consistently failing to report to her probation officer. Subsequently, her probation was transferred to Camden County where she is allowed to telephone her probation officer each month. There do not appear to be any problems with her probation in Camden County.

2. Respondent has failed to document her community service work to the Camden County Probation Department as of February 25, 1986. This involves a period of almost two years.
3. Restitution of approximately \$1,000 has been paid. However, there is a substantial balance remaining. In addition, respondent made a \$300 payment on February 1986. Until that time, she was approximately six months behind in her restitution payments.
4. There is over three years of probation remaining to complete respondent's sentence.

Ms. LaRue is a bright, articulate person who has demonstrated a passion for education and her church. She appears to be very ambitious. Respondent has made substantial progress toward rehabilitation, but given the above, I am not persuaded that she has demonstrated, by clear and convincing evidence, her rehabilitation. Therefore, I **CONCLUDE** that the respondent has not demonstrated, by clear and convincing evidence, her rehabilitation pursuant to N.J.S.A. 5:12-91d.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanction which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration. Several substantial questions remain concerning Ms. LaRue's purported rehabilitation. At this juncture, I **CONCLUDE** that the respondent's registration must be revoked. However, if Ms. LaRue makes continued progress toward restitution and when her period of probation has been substantially completed, she might be a candidate for early reapplication for her registration.

ORDER OF DISPOSITION

It is **ORDERED** that the hotel employee registration no. 48313-40, held by Renee Y. LaRue, be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

3-6-86  
DATE

Stephen W. Thompson  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

3-7-86  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 11 1986  
DATE

Ronald J. Parker / s  
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESS LIST

For the petitioner: None  
For the respondent: Renee Y. LaRue

EXHIBIT LIST

- P-1 Report of criminal investigation, dated June 28, 1982, from the Camden County Prosecutor's office
- P-2 Superior Court of New Jersey, Law Division, Camden County, criminal indictment no. I-0687-02-84, November 1983 term
- P-3 Certified Judgment of Conviction, dated June 1, 1984
- R-1 Letter, dated February 21, 1986, from Reverend Walter A. McDaniel, Pastor, United Faith Christian Church (formerly Sicklerville Christian Church)
- R-2 Receipt from the Camden County Probation Department indicating restitution payments
- R-3 Receipt from the Camden County Probation Department indicating restitution payments
- R-4 Various letters attesting to Ms. LaRue's abilities
- R-5 Letter dated February 23, 1986, from Jeannine Frisby-LaRue, respondent's aunt-in-law

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-127  
OAL DOCKET NO. CCC 3608-86  
LICENSE NO. 02002-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complainant, :  
V. :  
SHARON LEHMAN, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 1, 1986,

IT IS on this 17<sup>th</sup> day of October 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Sharon Lehman is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration,

qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3608-86

AGENCY DKT. NO. 84-127

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,**

Petitioner,

v.

**SHARON LEHMAN,**

Respondent.

---

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Sharon Lehman, respondent, pro se

Record Closed: August 19, 1986

Record Decided: August 20, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF CASE

The Division of Gaming Enforcement (Division) seeks revocation of respondent Sharon Lehman's casino employee license (No.02002-21) pursuant to Section 129 of the Casino Control Act (Act). The Division alleges that Ms. Lehman committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, and a violation of N.J.S.A. 2C:2-6, complicity, and as a result thereof is statutorily disqualified from licensure, pursuant to Section 86c(1) of the Act. In addition, the Division contends that Ms. Lehman lacks the requisite good character, honesty and integrity for licensure, pursuant to Section 89b(2). Respondent asserts rehabilitation, pursuant to Section 90h, and she argues that she possesses the requisite good character, honesty, and integrity.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 27, 1984. An Order suspending respondent's casino employee license was issued by the Commission on May 17, 1984. Respondent requested a hearing on May 18, 1986, and the matter was transmitted to the Office of Administrative Law on May 29, 1986, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 17, 1986, and the matter was scheduled for a hearing on August 5, 1986. The matter was heard on the scheduled date at the Atlantic County Civil Courthouse, Atlantic City, New Jersey. The Division requested that the record remain open until August 19, 1986, in order to enable it to obtain a certified copy of the Judgment of Conviction. The record closed on August 19, 1986.

FINDINGS OF FACT

Sharon Lehman, while employed as a slot mechanic at Harrah's Marina Casino on March 19, 1984, was observed opening several slot machines and leaving behind coins in the slot tray after having tested the machines. A man, who was later identified as Gary Veach, would then play those particular machines in which coins had been left by respondent.

On March 26, 1984, the respondent was again observed opening slot machines, testing them, and leaving the coins in the machine's trays. Mr. Veach would then play those particular machines and would pick up the coins that had been left behind by respondent.

According to the New Jersey State Police supplementary investigation report (P-1):

(Gary) Veach admitted that on several occasions for approximately the last month-and-a-half [sic], Sharon Lehman and he had been conspiring and taking money from slot machines at Harah's [sic] Casino in the amount of at least \$500.00.

Veach goes on to state that he never gave Lehman money but did give her Methamphetamine on several occasions.

On March 31, 1984, the respondent was arrested by Detective Daniel Kelly, New Jersey State Police Casino Investigation Bureau, and was charged with: conspiracy to commit theft, in violation of N.J.S.A. 2C:5-2 (count 1); theft by unlawful taking of movable property, in violation of N.J.S.A. 2C:20-3, and complicity, in violation of N.J.S.A. 2C:2-6 (count 2). Ms. Lehman was subsequently indicted on both counts.

On January 31, 1986 respondent pled guilty to theft of movable property, complicity, and was sentenced to one-year probation, one day in the County Jail (credit for time served), was fined \$500.00 and \$25.00 for the Violent Crime Compensation Board. She was further ordered to enroll in a drug rehabilitation program. Count one was dismissed at sentencing.

Respondent denies any involvement with the criminal acts. She asserts that Harrah's Marina Casino was experiencing a shortage of qualified slot attendants in March 1984 as a result of the opening of Trump Plaza Casino Hotel. As a result thereof, slot mechanics were ordered to perform slot attendant functions in addition to their own responsibilities. Ms. Lehman states that on March 26, 1986, she was sent to make a payout on a malfunctioning machine and concedes that on the surveillance video tape, "I look guilty." It should be noted that the surveillance video tape was not presented at the hearing. Ms. Lehman's version just does not fit with reality. She admits to knowing Gary Veach as a preferred player but denies any criminal involvement with him. Ms. Lehman admits that Gary Veach once requested that she deliver a matchbook to her supervisor. Although Ms. Lehman suspected that the book contained drugs, she acquiesced. Ms. Lehman casually condones casino drug usage as an "every-day occurrence." In addition, Ms. Lehman feels that she had incompetent counsel at her plea and sentencing.

Each element of respondent's testimony, taken separately, sounds plausible. However, the totality of respondent's dissertation defies credibility. Ms. Lehman asserts her innocence but has failed to present any supporting evidence to that effect. Granted, there are a variety of reasons why one would plead guilty to a criminal offense. While it is possible that Ms. Lehman felt pressured into accepting the plea agreement, she certainly had the opportunity to weigh its advantages and disadvantages. Since respondent voluntarily chose to accept the plea agreement she must suffer the consequences of her act. Although respondent was advised of the criteria for rehabilitation at the prehearing conference, no witnesses or character references were presented, with the exception of a termination notice (R-1).

After reviewing both the testimony of Sharon Lehman and the documents in evidence and after adopting the certified Judgment of Conviction (P-2), I FIND that Sharon Lehman did commit an act of theft of movable property, third degree.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is, "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against a license held by the person, "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division argues that respondent's conduct constitutes a crime of the third degree. The certified Judgment of Conviction, while silent as to dollar amount, states unequivocally "third degree." Therefore, I CONCLUDE that the respondent committed a violation of N.J.S.A. 2C:20-3, third degree, and that she is statutorily disqualified from casino licensure, pursuant to N.J.S.A. 5:12-86c(1). I must reject respondent's testimony as incredible.

(B) N.J.S.A. 5:12-89b(2)

Under Section 89b(2) of the Act, Ms. Lehman was required to demonstrate, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an 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 casino employee licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk regency Casino License Application, 180 N.J. Super. 324

(App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corp. at 2.

The casual acceptance by the respondent of the casino drug counterculture reflects negatively upon the integrity required for her to maintain licensure. Although Ms. Lehman is probably a nice person, her testimony just cannot be reconciled with that of reality. The respondent's explanation of the circumstances underlying her misconduct was just not persuasive. Accordingly, it is clear that the respondent has failed to maintain the requisite degree of good character, honesty, and integrity.

I CONCLUDE that the respondent has not established by clear and convincing evidence, that she possesses the requisite degree of good character, honesty, and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

(C) N.J.S.A. 5:12-90h

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

At the prehearing conference, Ms. Lehman was advised of the eight specific rehabilitative criteria that had to be addressed at the hearing. Respondent failed to present any evidence of rehabilitation. There can be no doubt that the commission of a theft offense by a licensed employee of a casino creates a real peril in regard to the public confidence in the casino industry and the perceived integrity of gaming operations. In addition, respondent's continued declaration of innocence leads me to **CONCLUDE** that respondent cannot effectively demonstrate rehabilitation until she comes to terms with her criminal involvement. I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

**(D) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's casino license. Given the fact that the respondent cannot demonstrate her rehabilitation from her misconduct and there being no mitigating factors, the respondent's casino license must be revoked. I so **CONCLUDE**.

**ORDER OF DISPOSITION**

It is **ORDERED** that the casino employee license (license number 02002-21) held by Sharon Lehman be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8-20-86  
DATE

*Stephen W. Thompson*  
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8/21/86  
DATE

*Bernadette J. Frisco*  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1986  
DATE

*Charles J. Lopez*  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS

For the Petitioner:

P-1 State Police Report dated August 5, 1986

P-2 Certification of Judgment of Conviction

For the Respondent:

R-1 Termination letter of May 12, 1986

WITNESSES

Petitioner:

None

Respondent:

Sharon Lehman

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 86-EA-193  
OAL DOCKET NO. CCC 1822-86  
APPLICATION NO. 52901-21  
REGISTRATION NO. 41667-40

---

APPLICATION OF MADELINE LOPEZ :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 15, 1986,

IT IS on this 30<sup>th</sup> day of October 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Madeline Lopez for a casino employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Madeline Lopez is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8, and

IT IS FURTHER ORDERED that this action shall not prevent Madeline Lopez from retaining her casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR



BY: \_\_\_\_\_

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1822-86

AGENCY DKT. NO. 85-EA-193

**MADELINE LOPEZ,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC SAFETY,**

Respondent.

---

**Madeline Lopez, petitioner, pro se**

**Joanne C. Ciancimino, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: July 17, 1986

Decided: September 2, 1986

**BEFORE RICHARD L. VOLIVA, JR., ALJ:**

**STATEMENT OF THE CASE**

Madeline Lopez, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the petitioner had failed to disclose information material to licensure, in violation of section 86b of the Casino Control Act (Act), and that the petitioner lacked the requisite good character, honesty and integrity, because of her failures to disclose and because of her criminal record history, pursuant to section 90b.

PROCEDURAL HISTORY

Ms. Lopez filed her Personal History Disclosure Form-2A (PHDF-2A) with the Commission on March 15, 1984 (J-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated November 4, 1985, there was a "substantial possibility" that her application would be denied and she had a right to a hearing. By letter filed on March 11, 1986, the petitioner requested a hearing. On March 17, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 24, 1986. The matter was heard on July 17, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Lopez is 27 years of age (J-1). She was born in Puerto Rico and has resided in New Jersey since 1971. The petitioner is divorced and is the parent of three minor children who are in her custody and care.

In 1979, the petitioner received a casino hotel employee license (no. 13488-40) from the Commission. Ultimately, this license lapsed.

In 1979, the petitioner was employed by Resorts International Hotel, Inc. (Resorts) as a busperson for a few weeks. The petitioner was fired because of an argument with a coworker.

On January 6, 1979, the petitioner was arrested by the Egg Harbor Township Police Department and was charged with violations of N.J.S.A. 2A:96-4, contributing to the delinquency of minors; N.J.S.A. 2A:139-1, possession of stolen property; and N.J.S.A. 2A:113-8, threatening to take a life, concerning an incident which occurred on the same date at a Sears Department Store (R-2, R-3 and R-4). On February 28, 1979, the petitioner was indicted by an Atlantic County grand jury for violations of N.J.S.A. 2A:139-1, possession of stolen property, and two counts of N.J.S.A. 2A:96-4, contributing to the delinquency of minors (R-5). On May 25, 1979, the petitioner retracted her plea of not guilty and pled guilty to a violation of N.J.S.A. 2A:139-1, and one count of a violation

of N.J.S.A. 2A:96-4. On June 21, 1979, the petitioner was sentenced to a term of eight months, suspended except for 14 days previously served. The circumstances underlying the incident were in dispute.

From May 8, 1980 until June 13, 1980, the petitioner was employed by the Boardwalk Regency Corporation (BRC) as a kitchen utility worker. She was fired for cause; however, the circumstances underlying the incident were in dispute.

From June 30, 1980 to February 5, 1981, and again from March 2, 1981 until March 22, 1981, the petitioner was employed by Bally's Park Place Casino Hotel (Park Place) as a waitress. She was fired for excessive absenteeism.

From May 20 to June 10, 1981, the petitioner was employed by GNAC Corp. (Golden Nugget) as a housekeeper. Her employment was terminated for unsatisfactory performance.

From September 15, 1981 to April 30, 1982, the petitioner was employed by the Hotel and Restaurant Employees and Bartenders International Union Local 54 (Local 54) as a clerk/secretary. Her employment was terminated for cause; however, the underlying circumstances were in dispute.

From May 19, 1981 until December 1983, the petitioner was again employed by Resorts as a waitress. The circumstances under which the petitioner left this employment were in dispute.

In May 1982, the petitioner received casino employee registration no. 41667-40 from the Commission. The Division has initiated no action against this registration.

On May 13, 1983, the petitioner was arrested by the Atlantic City Police Department, and was charged with a violation of N.J.S.A. 2C:12-1, aggravated assault (two counts). On April 12, 1983, the Atlantic County Prosecutor's Office remanded the matter to the Atlantic City Municipal Court on the amended charges of violations of N.J.S.A. 2C:12-1a(1), simple assault, a disorderly persons offense, and N.J.S.A. 2C:33-4a, harassment (R-7). Ultimately, the complaint was dismissed because the complainant did not appear. The circumstances underlying the incident were in dispute.

On June 6, 1983, the petitioner was arrested by the Ventnor City Police Department, and was charged with a violation of N.J.S.A. 2C:20-11, shoplifting, concerning an incident which occurred at a Bradlee's Department Store (R-8 and R-10). On September 6, 1983, the charge was dismissed (R-10). The circumstances underlying the incident were in dispute.

In early 1984, the petitioner received approval from the Atlantic County Division of Employment and Training to take a course of instruction in order to qualify for licensure as a casino employee, the tuition for which would be paid under the Job Training Partnership Act (JTPA), which was the successor to the CETA program. The petitioner understood that if she did not qualify for licensure, the County would not pay for the course. In May 1984, the petitioner successfully completed a craps dealer course of instruction at the Casino Career Institute.

Shortly after the course commenced, the County provided the petitioner with a PHDF-2A. The County filed the application with the Commission because it paid for the tuition and the license application fee. The petitioner completed the application at home. She read and understood the instructions, and was aware that if the application form were not completed accurately, it could result in the denial of her license. The completed PHDF-2A was then reviewed with the petitioner by Ruth Moses, a job training specialist, i.e., counselor, with the County (J-1). Ms. Moses testified that if the County is of the opinion that a person with a criminal record history would possibly be denied licensure, it attempts to steer the person into an area that is not casino-related. In response to question number 14, the petitioner did not disclose her employment with and terminations by Park Place and the Golden Nugget in 1981, as well as her termination from employment by Resorts in 1983 (J-1). The reasons for this failure to disclose were in dispute. Also, the petitioner responded to question no. 16 in the negative; i.e., she failed to disclose any of the occasions on which she was arrested and charged with criminal misconduct. The petitioner testified that although she was aware of her obligation to disclose her criminal record history and knew that nondisclosure could negatively affect her application, she did not disclose because she was embarrassed to tell Ms. Moses of the record. The PHDF-2A was filed with the Commission on March 15, 1984 (J-1).

From May 18, 1984 until April 23, 1985, the petitioner was employed by Greate Bay Hotel and Casino, Inc. (Sands), as a food server. Although the circumstances underlying the incident were in dispute, Sands' records reflect that the petitioner was fired for insubordination.

On April 18, 1985, Division Agent Thomas Hollinger conducted a telephonic interview of the petitioner. In response to question no. 16, the petitioner denied that she had ever been arrested or charged with criminal misconduct. However, upon confrontation with the details of the incidents, she admitted her record. Further, her reason for not disclosing her criminal record history was embarrassment. At no time did the petitioner indicate that she had failed to disclose on her PHDF-2A because she would have been embarrassed to inform Ms. Moses.

From September 1, 1985 until June 6, 1986, the petitioner was employed by Harrah's Atlantic City, Inc. (Harrah's) as a busperson. Although the circumstances were in dispute, the petitioner was fired from this position.

The petitioner is currently unemployed.

All the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

**(B) DISPUTED FACTS**

In dispute were the circumstances underlying the three incidents which resulted in the initiation of criminal proceedings against the petitioner, the circumstances underlying her terminations from employment and the reasons for her failure to disclose her terminations from employment on her PHDF-2A.

The petitioner described the incident of January 6, 1979, in Egg Harbor Township. She was on her way to a party with Angel Ramos. They stopped at a Sears Department Store in order to make a purchase. They met several juveniles outside of the store who were known to the petitioner. The juveniles asked for a ride. The petitioner made no purchase in the store. The juveniles' shopping bags were placed in the trunk of the petitioner's car, which was driven by Mr. Ramos. After being stopped by the police, the petitioner learned that the juveniles had stolen the merchandise. The petitioner pled

guilty as part of a plea bargain agreement which provided that she would not be incarcerated. The petitioner's explanation of the events at the store were substantially similar to that which she provided to Agent Hollinger during the telephonic interview.

A review of the investigation report prepared by the police reveals that the investigating officers observed the juveniles running toward the petitioner's car while being chased by store security. Some of the juveniles were apprehended before they entered the vehicle. The police then chased the vehicle through the snow in an extremely circuitous route. Ultimately, the vehicle was searched and stolen merchandise was found in the trunk.

A resolution of the conflict in the versions of the incident is extremely difficult because the petitioner's explanation was sketchy and the investigation report was not the product of live testimony and was not subject to cross-examination. However, the petitioner's explanation of her conduct was not remotely consistent with the unbiased and direct observations of the investigating officers. Given that the petitioner was arrested, charged, indicted and pled guilty to very serious offenses, and despite her explanation for the entry of her plea, all of which corroborate the investigation report to a significant degree, I am not persuaded to accept the petitioner's assertions of innocence. Rather, I am persuaded that the petitioner's guilty plea accurately reflects her conduct during the incident.

The petitioner also described the incident of March 13, 1983. The petitioner and her baby-sitter had a dispute regarding payment to the baby-sitter. The baby-sitter demanded payment immediately and the petitioner advised her that she would have to wait. A fight ensued, during which the petitioner burned herself with hot water and the baby-sitter grabbed a kitchen knife. Eventually, the baby-sitter ran into the bathroom and climbed out of the window. Thereafter, the petitioner went to work. The explanation provided by the petitioner to Agent Hollinger during the telephonic interview was substantially similar, with the addition that the baby-sitter was cut by the knife during the continuing fight.

The investigation report, which consists solely of statements made by the baby-sitter, suggests that the petitioner attempted to throw hot water on the baby-sitter and cut the baby-sitter with a knife (R-6).

Given that the baby-sitter failed to appear at the scheduled trial, that the prosecutor's office did not indict and downgraded the charges substantially and that the matter was dismissed, I am persuaded to accept the petitioner's testimony concerning the incident.

The petitioner also described the incident of June 6, 1983, at a Bradlee's Department Store in Ventnor. The petitioner was grocery shopping with a daughter. After checking out her food purchases, the petitioner instructed her daughter to wait in the front of the store with the food while the petitioner looked for another item of merchandise. When the petitioner returned to the front with the merchandise, she saw the food but did not see her daughter. She immediately began to look for her daughter and after finding her, she left the store without paying for the additional merchandise. The petitioner attributed the incident to a misunderstanding caused by her concern for her daughter.

Agent Hollinger testified that during the telephonic interview, the petitioner conceded that she intended to take the additional merchandise without paying for it. The petitioner disputed this testimony.

In addition, the Division produced a statement made by a store representative to the effect that the petitioner was observed taking merchandise from the store without paying for it (R-9). However, this statement does not contain a detailed description of the incident.

There is no clear means by which to resolve the conflict concerning this incident. The only reliable indicator is that the charges against the petitioner were dismissed. Accordingly, it appears that whatever occurred was of minimal significance.

After consideration of the entire record in this matter, I further **FIND** that:

1. Concerning the incident of January 6, 1979, in Egg Harbor Township, the petitioner's version of the incident was not corroborated by any other evidence and was not persuasive.

2. The direct observations made by the unbiased investigating officers as set forth in the investigation report were corroborated by the petitioner's conviction.
3. The petitioner's misconduct during the incident is accurately reflected by her guilty plea.
4. Concerning the incident of March 13, 1983, in Atlantic City, the petitioner's version of the incident is accepted by reason of the baby-sitter's failure to appear for the scheduled trial, the prosecutor did not indict and downgraded the charges, and the charges were ultimately dismissed.
5. Concerning the incident of June 6, 1983, in Ventnor, it is not possible to determine accurately the petitioner's conduct.
6. The petitioner's conduct during the incident is of minimal significance.

The petitioner also described the circumstances underlying her various terminations from employment.

Concerning her termination from BRC on June 13, 1980, the petitioner testified that a male employee had bothered her; however, because the manager would not help her, the petitioner threw a rope at him. Agent Hollinger testified that during the telephonic interview, the petitioner explained that she had a fight with a coworker.

Concerning her termination from employment at Park Place on March 22, 1981, which was due to excessive absenteeism, the petitioner explained that her absences were due to providing care for her children.

Concerning her dismissal by the Golden Nugget on June 10, 1981, the petitioner provided no explanation. However, Agent Hollinger testified that the petitioner stated that she was dismissed because she did not work fast enough.

Concerning her dismissal by Local 54 on April 30, 1982, the petitioner testified that this action was discriminatory. More specifically, she was the only Hispanic

employee in the office and, as a consequence, many Hispanics stopped to speak with her. She claimed that her supervisors did not like this and fired her. Her grievance was unsuccessful.

Concerning the petitioner's dismissal by Resorts on December 9, 1983, the petitioner claimed that she resigned. Agent Hollinger testified that Resorts' records reflect that the petitioner was fired after she walked off the job.

Concerning the termination of her employment from the Sands on April 23, 1985, the petitioner testified that her supervisor was upset and wrote her up without explanation. The petitioner thought it was a joke and tore up the disciplinary action. After her supervisor left the hotel, another employee advised the petitioner that she was fired. Agent Hollinger testified that the petitioner's explanation during the telephonic interview was that she was terminated for insubordination.

The petitioner also described the circumstances underlying her termination by Harrah's on June 6, 1986. The petitioner was assigned as a banquet server to a banquet for management at the Smithville Inn. She became bored and began to play volleyball with the banquet participants. She was instructed to stop participation in the game. Following the completion of her work shift the next day, she was fired.

Prior to making a finding, it is necessary to assess Ms. Lopez's credibility. Initially, her position in this matter must be recognized. As an applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. Although much of the petitioner's exculpatory testimony was not refuted, it revealed for each occasion that there was an incident or conduct which precipitated her dismissal. Given that the petitioner was dismissed for cause from each of the eight jobs she has held since 1979, I am not persuaded to accept her claims of innocence. Rather, the negative consistency of her employment record raises serious concerns which were not satisfactorily explained.

I further **FIND** that:

7. The petitioner's exculpatory explanations of the circumstances underlying her various dismissals from employment were not persuasive.

8. The petitioner was dismissed for cause from each of her eight positions of employment held since 1979. This pattern of conduct raises serious concerns.

The petitioner also testified that she had failed to disclose her terminations from employment at Park Place on March 22, 1981, the Golden Nugget on June 10, 1981, and Resorts on December 9, 1983, on her PHDF-2A and during the telephonic interview, because she forgot the incidents.

Given the number of terminations from employment and the fact that the petitioner did disclose some terminations on her PHDF-2A, the petitioner's explanation appears at first to be credible. However, in light of the petitioner's intentional non-disclosure of her criminal record history on both her PHDF-2A and during the telephonic interview, her explanation that she simply "forgot" to disclose some of her terminations is subject to serious doubt and is not persuasive.

I further **FIND:**

9. The petitioner's explanation that she forgot to disclose several of her employment terminations on her PHDF-2A and during the telephonic interview was not persuasive.

#### DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History

Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission, 78-EA-8 (Jan. 30, 1980), at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (January 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 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 is clear that the petitioner understood fully her obligation to disclose her criminal record history as well as terminations from employment on both her PHDF-2A and in response to questions posed by the agent during the telephonic interview; however, she did not. Further, her failure to disclose her criminal record history was knowing and intentional. In addition, the petitioner's explanations of the reasons for her failure to disclose her employment terminations were unconvincing. Embarrassment is not excusable. Therefore, the failures to disclose must serve to disqualify her from licensure.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner is disqualified from licensure by operation of section 86b.

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Lopez was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish her qualifications for licensure under sections 89b(2) and 90b. William Gonzales at 8. Therefore, the conclusion that Ms. Lopez failed to disclose her criminal record history in violation of

section 86b automatically precludes her from meeting her burden under section 89b(2). Further, an applicant's willingness to disclose fully her criminal record history is the most direct and reliable means of testing her good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if she does, in fact, possess good character, honesty and integrity.

In addition, the petitioner's criminal record history and employment record raise serious negative concerns which were not explained. The petitioner's presentation contains very little that is positive and is not sufficient to overcome the substantial negative evidence.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, her good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

**DISPOSITION**

It is **ORDERED** that the application of Madeline Lopez for licensure as a casino employee (craps dealer) be **DENIED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 2, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

Sept 3, 1986  
DATE

Delores Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 5 1986  
DATE

John Lopez  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission - Personal History Disclosure Form-2A, Madeline Lopez, filed on March 15, 1984 (25 pages)
- R-1 Egg Harbor Township Police Department - Investigation Report, January 6, 1979; Supplementary Investigation Report, January 6, 1979 (5 pages)
- R-2 Egg Harbor Township Police Department - Arrest Report, January 6, 1979
- R-3 State of New Jersey v. Madeline Amaro, Municipal Court of the Township of Egg Harbor, Dkt. No. C-04886, 7, Complaint, January 6, 1979
- R-4 State of New Jersey v. Madeline Amaro, Municipal Court of the Township of Egg Harbor, Dkt. No. C-04888, Complaint, January 6, 1979
- R-5 State of New Jersey v. Madeline Amaro, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Dkt. No. 484-78-J, Indictment, filed on February 26, 1979; Judgment, June 21, 1979 (8 pages)
- R-6 Atlantic City Police Department - Investigation Report, March 13, 1983
- R-7 County of Atlantic, Office of the Prosecutor - Status of Complaint, no. WJ76685, April 12, 1983
- R-8 Ventnor City Police Department - Arrest Report, June 6, 1983
- R-9 Ventnor City Police Department - Voluntary Statement of Gwen Tullio, June 6, 1983 (2 pages)
- R-10 State of New Jersey v. Madeline Lopez, Municipal Court of the City of Ventnor, Dkt. No. C-2216, Complaint, June 6, 1983, and Disposition, August 16, 1983

WITNESS LIST

For the petitioner:

Madeline Lopez

For the respondent:

Thomas Hollinger

Madeline Lopez

Ruth Moses

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-196  
OAL DOCKET NO. CCC 85-86  
APPLICATION NO. 29830-21  
REGISTRATION NO. 20420-40

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APPLICATION OF MICHAEL A. MACK :  
FOR RENEWAL OF HIS CASINO EMPLOYEE : FINAL ORDER  
LICENSE :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions on June 26, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of July 16, 1986,

IT IS on this *1st* day of October 1986, ORDERED that the initial decision is modified as follows:

(1) The ALJ's determination that the respondent's conduct in receiving unemployment benefits while employed in the casino industry is not an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4) and -86(g) is deleted on the grounds that it is unnecessary to consider the respondent's disqualification under section 86(c)(4) since theft by deception in the third degree in violation of N.J.S.A. 2C:20-4 is one of the disqualifying offenses listed in N.J.S.A. 5:12-86(c)(1). Notwithstanding this statutory disqualification, however, the ALJ found, and the Commission concurs, that the respondent adequately demonstrated his rehabilitation pursuant to section 90(h).

(2) The statement of issues listed on page four of the initial decision is corrected to cite section 86(c)(4) instead of section 89(b)(2) in issue two and sections 89(b)(2), and 90(b) instead of section 89(c)(4) in issue three.

IT IS FURTHER ORDERED that the application of Michael A. Mack for renewal of his casino employee license is granted substantially for the reasons stated in the initial decision as modified above, which is incorporated herein by reference and made a part hereof; and

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 85-86

AGENCY DKT. NO. 85-EA-196

**MICHAEL A. MACK,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC**

**SAFETY,**

Respondent.

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**Michael A. Mack, petitioner, pro se**

**Joanne Cocchiola, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Record Closed: April 29, 1986

Decided: June 9, 1986

**BEFORE RALPH J. TOLOMEO, ALJ:**

**STATEMENT OF THE CASE**

On October 25, 1985, the Division of Gaming Enforcement, respondent, filed a letter with the Casino Control Commission (Commission) recommending that the Commission deny the renewal application of petitioner for his casino employee license. In its letter, the Division alleged that petitioner received unemployment benefits totaling \$3,190 while he was gainfully employed by the Golden Nugget Hotel and Casino. Petitioner requested a hearing and the Commission forwarded the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14B-1 and N.J.S.A. 52:14F-1 et seq.

Upon receipt of the matter on January 3, 1986, the Office of Administrative Law scheduled the case for a prehearing conference which, at petitioner's request, was conducted telephonically on February 18, 1986. Thereafter, the matter was scheduled for hearing for April 21, 1986, at the Atlantic City Court House, Atlantic City, New Jersey. On that date, the parties appeared and a hearing was conducted; however, the record remained open until April 29, 1986, at petitioner's request so he could submit additional evidence. On that date the record closed.

FACTS

The relevant and material facts in this matter are not in dispute. Testimony was offered by Agent Patrick Hickey of the Division of Gaming Enforcement and petitioner, who testified on his own behalf. Documents were submitted by both parties.

Having reviewed the testimony and the documents submitted, I **FIND** the following as Fact. In December 1980, petitioner was 22 years of age and unemployed. He was receiving unemployment benefits in the amount of \$110 per week. At the time, he was living with his girlfriend and their young son. In December 1980, petitioner obtained employment at the Golden Nugget Hotel gift shop. Petitioner received his casino hotel registration from the Commission in August 1980. Upon obtaining employment with the Golden Nugget Hotel and Casino in December 1980, petitioner did not notify the Division of Unemployment and Disability Insurance of his employment and, as a result, continued to receive weekly benefits in the amount of \$110 from December 29, 1980 through the week ending July 13, 1981, for a total overpayment of \$3,190. In July 1981, petitioner advised the Division of Unemployment and Disability Insurance that he was employed by the Golden Nugget Hotel and Casino and his unemployment benefits were terminated.

In August 1981, petitioner obtained his casino employee license and, upon obtaining the same, after the successful completion of dealer's school, commenced employment with the Golden Nugget Hotel & Casino as a boxman/dealer.

Under date of January 5, 1983, petitioner was notified by the Division of Unemployment and Disability Insurance of overpayments in the amount of \$3,190 plus a fine in the amount of \$580 was due and owing by petitioner to the Division of Unemployment and Disability Insurance (R-3 Evidence). Thereafter, the Division of Unemployment and Disability Insurance filed a Certificate of Debt in the Superior Court

of New Jersey which was docketed as a judgment on April 25, 1983 (R-1 Evidence). Petitioner made payments on the indebtedness as follows: \$30 on January 21, 1983; \$25 on February 8, 1983; \$30 on May 10, 1983; \$102.82 on August 29, 1984 (State Income Tax refund withheld); \$100 on August 1, 1985.

Petitioner was contacted by Agent Hickey in July 1985, when Agent Hickey's investigation of petitioner's license renewal application was assigned to him. At that time, petitioner stated that he had made a mistake in receiving the unemployment benefits and he was going to repay the money. Thereafter, in October 1985, Agent Hickey again spoke with petitioner regarding payments to the Division of Unemployment and Disability Insurance toward the indebtedness. Thereafter, in November 1985, petitioner borrowed the money to pay the balance owing to the Division of Unemployment and Disability Insurance (R-4, P-1 Evidence). It is acknowledged that the benefits received, plus penalty and interest, have been paid by petitioner to Division of Unemployment and Disability Insurance. It is further acknowledged by the parties that no criminal charge has been filed against petitioner at this time.

Petitioner testified on his own behalf and stated that he admits that he made a mistake and it wasn't a very smart thing to do. Petitioner further testified that he has never been in any kind of trouble in his life and that he has repaid the monies in full which include penalties and fines. When he applied for unemployment benefits, he had been laid off from a previous job sometime in the fall of 1980, and when he began working at the Golden Nugget, knew that he was suppose to notify the Unemployment Office if he obtained a job. At the time he notified them of employment in July 1981, he recognized that he had made a mistake and testified at the hearing that something like this would never happen again.

Petitioner further testified that at the present time he was well regarded in his position with the Golden Nugget and, in his opinion, he has done all that he could to live a good life and stay out of trouble. At the present time, he plans to marry and continues to provide for two children on a voluntary basis.

#### ISSUES

Under the facts presented by respondent and acknowledged by petitioner, respondent argues that:

- (1) Petitioner has committed the offense of theft by deception in excess of \$500 under N.J.S.A. 2C:20-4, a third-degree offense, which is a statutory disqualifier under N.J.S.A. 5:12-86c, as unprosecuted conduct under N.J.S.A. 5:12-86g of the Casino Control Act.
- (2) The offense indicates that continued licensure of petitioner is inimical to the policies of the Casino Control Act due to the fact that casino employment was involved tangentially, pursuant to the provisions of section 89b(2) of the Casino Control Act.
- (3) Based on the conduct as established, petitioner lacks the good character, honesty and integrity which is required of a casino employee pursuant to the provisions of section 89c(4) of the Casino Control Act.
- (4) Petitioner has not established his rehabilitation by clear and convincing evidence pursuant to N.J.S.A. 5:12-90h.

Petitioner argues that although he has committed the act alleged, he was under a lot of pressure to provide for his family and maintain his debt obligations in addition to having to pay \$1,000 to attend dealer's school at the time he knowingly continued to receive unemployment benefits while employed. Notwithstanding those obligations, petitioner argues that he has certainly rehabilitated himself since July 1981 by paying the amount of the obligation, and that his actions clearly demonstrate this. Friends and employment associates think highly of him, as demonstrated by letters of recommendation (P-3 through P-5). Lastly, petitioner argues that he has, by clear and convincing evidence, established his good character, honesty and integrity and, therefore, he should have his renewal application approved.

#### LEGAL ANALYSIS AND DISCUSSION

N.J.S.A. 5:12-86 states:

The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria: . . .

- (c) The conviction of the applicant or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which could be under New

Jersey Law at the time of the application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice" P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degree); . . .

N.J.S.A. 5:12-86g provides:

The commission by the applicant or any person who is required to be qualified under this act as a condition of the 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; . . .

In the instant matter, the Division has alleged that petitioner has committed a violation of N.J.S.A. 2C:20-4, theft by deception. The Division further contends that the amount of the theft is in excess of \$500 and, therefore, is a crime of the third degree, a statutory disqualifier under the act, although unprosecuted. Based on the facts presented and petitioner's acknowledgment of the same, knowing that he purposely deceived the Division of Unemployment Compensation when he failed to report his employment and continued to receive benefits from the period of December 1980 through July 1981, in the total amount of \$3,190, I **FIND** that the Division has established that respondent's conduct constitutes a statutory disqualifying offense by a preponderance of the credible evidence.

N.J.S.A. 5:12-90, entitled "Licensing of Casino Employees," provides, under subsection e:

The Commission shall deny a casino employee license to all applicants who are disqualified on the basis of the criteria contained in Section 86 of the act.

Further, section h provides:

Notwithstanding the provisions of subsection e of this section, no applicant shall be denied a casino employee license on the basis of

a conviction of any of the offenses enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the Commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of persons who have or have had the applicant under their supervision.

In this case, petitioner has the burden of establishing his rehabilitation by clear and convincing evidence. Applying the factors for consideration to the facts as found, petitioner committed this offense when he was 22 years of age at a time when he obtained employment as a casino hotel employee registrant at a rate of \$4.00 per hour. He had not been nor was he thereafter in any other trouble. His testimony indicates that at the time he committed the offense, he had certain obligations and responsibilities and, having been laid off from work previously, utilized the monies obtained from unemployment for such purposes, including tuition for dealer's school. When it became apparent he would be elevated to working in the casino as a dealer and would obtain his casino employee license, he voluntarily discontinued further receipt of unemployment benefits. Thereafter, when contacted by the Division of Unemployment, he made arrangements to repay the monies fraudulently obtained along with fines imposed. Although his payments were nominal and sporadic until Agent Hickey contacted him regarding the judgment disclosed by his investigation, petitioner nonetheless borrowed the money to repay the entire indebtedness which was satisfied in November 1985. During the period August 1981 to the present, petitioner has been gainfully employed by the Golden Nugget Hotel Casino

as a dealer/boxman. He has submitted letters and telegrams from acquaintances and business associates which commend his employment and are complimentary regarding his character.

Although the Division argues that respondent did not repay the indebtedness owed the Division of Unemployment Insurance until contacted by Agent Hickey in July and October 1985, nonetheless, petitioner has repaid the indebtedness and all fines and costs attributable thereto.

Applying all of the factors and further considering petitioner's demeanor and attitude regarding the offense, I **CONCLUDE** that respondent has established his rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-86c(4) provides that licensure shall be denied to applicant for the commission of:

"any other offense which indicates that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations. . ."

In this matter, Division argues that petitioner committed a statutory disqualifying offense while employed by the Golden Nugget Hotel Casino as a casino hotel registrant and, therefore, this conduct should be considered inimical to the provisions of the Casino Control Act and the casino industry. As stated in In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission, decided February 20, 1979:

Whether an offense is inimical to the Act to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is inimical to the Act or gaming, it would appear to encompass those offenses which, when viewed in light of all circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. (Id. at 15.)

It has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis. Application of Donna M. Davis for a Casino Key Employee License, OAL DKT. NO. CCC 2008-85, August 12, 1985. Having previously determined that petitioner has established his rehabilitation by clear and convincing evidence, a review of respondent's conduct in relation to the Casino Act and casino operations is necessary. Concededly, petitioner obtained over \$3,000 wrongfully while he was employed in the Golden Nugget Casino Hotel gift shop as a casino hotel registrant. When it appeared to him that he would be promoted and able to obtain a casino employee license, he terminated his criminal activity. Since becoming employed as a dealer/boxman in August 1981, he has not been in any trouble and apparently has done a good job, as stated in his recent evaluation at Golden Nugget and comments of people who know him both socially and through employment. Under all the circumstances, I **CONCLUDE** that petitioner's conduct in receiving unemployment benefits while employed in a gift shop at a casino under circumstances is not inimical to the Casino Control Act and the casino industry.

Lastly, the Division argues that petitioner, by his conduct, does not have the requisite reputation for good character, honesty and integrity required pursuant to N.J.S.A. 5:12-90b, which requires an applicant for a casino employee license to produce sufficient information and assurances to meet the qualification criteria contained in subsection b of section 89 of the Act, which provides that each applicant must produce 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. In its letter recommending the denial of petitioner's casino employee license, the Division alleges that petitioner's conduct of obtaining unemployment benefits while employed negatively impacts upon his reputation for good character, honesty and integrity. In reviewing this matter for the issues of rehabilitation and inimicality, the facts indicate that this was an offense that occurred in 1981, approximately five years ago. It appears that at the time of the offense, petitioner did not possess the requisite good character, honesty and integrity necessary for a casino employee license. However, at the time he was a casino hotel employee registrant and, over the last five years, has repaid his obligation and has been continuously employed by the Golden Nugget Hotel and Casino, which considers him a valuable employee. All submissions on his behalf from acquaintances, supervisors and coworkers indicate that he is highly regarded. He has been in no trouble prior to this incident nor since this time and has repaid his obligation to the Division of Unemployment and Disability Insurance. Under all the circumstances, I

**CONCLUDE** that petitioner has, by clear and convincing evidence, established his reputation for good character, honesty and integrity at this time.

ORDER

Therefore, it is hereby **ORDERED** that, for all the reasons stated above, petitioner's application for renewal of his casino employee license be **APPROVED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 9, 1986  
DATE

Ralph J. Tolomeo  
RALPH J. TOLOMELO, ALJ

Receipt Acknowledged:

June 10, 1986  
DATE

Kelores Zapp  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 11 1986  
DATE

Charles Ruggie  
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Warrant for Satisfaction to the Clerk of the Superior Court of New Jersey, for Michael Mack, dated February 27, 1986
- P-2 Golden Nugget's Evaluation of Michael Mack
- P-3 Letter to Office of Administrative Law from Demeitrice L. Allen, dated April 24, 1986
- P-4 Letter to Michael A. Mack from Golden Nugget, dated November 14, 1985
- P-5 Western Union Mailgram to the Honorable Ralph Tolomeo, dated April 26, 1986

FOR THE RESPONDENT:

- R-1 Certificate of Debt against Michael Mack in the amount of \$3,715.00
- R-2 Letter to Michael A. Mack from Henry Golembiewski, Supervisor, dated June 11, 1985
- R-3 Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification because of willful misrepresentation, against Michael Mack
- R-4 Letter to Michael A. Mack from George J. Graziano, Chief, Bureau of Benefit Payment Control, dated November 8, 1985

\_\_\_\_\_  
STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
MARINA ASSOCIATES, :  
Respondent. :  
\_\_\_\_\_

This matter having been opened to the Casino Control Commission (Commission) upon the filing of an initial decision incorporating a stipulation of settlement; and the parties having orally amended the stipulation of settlement by correcting paragraph 16 to refer to specimen number 8 rather than specimen number 7; and the Commission having considered the entire record of these proceedings at its public meeting of November 26, 1986,

IT IS on this 5<sup>th</sup> day of December 1986, ORDERED that the initial decision incorporating a stipulation of settlement, as amended, is adopted; and

IT IS FURTHER ORDERED that Marina Associates pay a civil penalty of \$2500 as provided in the stipulation of settlement, as amended, which is incorporated herein by reference; and

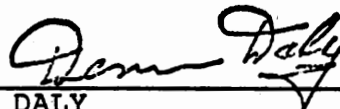
IT IS FURTHER ORDERED that said civil penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that the respondent conduct a seminar for alcoholic beverage supervisory personnel regarding the proper procedures for the saving and storage of alcoholic beverage inventories in compliance with the Casino Control Act and the Alcoholic Beverage Control Act; and

IT IS FURTHER ORDERED that the respondent submit to the Casino Control Commission an amendment to its internal control submission which provides detailed procedures to maintain quality control of its alcoholic beverage inventory.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_



DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 4453-86

AGENCY DKT. NO. 86-185

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,

Petitioner,

v.

MARINA ASSOCIATES,

Respondent.

---

Wendy A. Way, Deputy Attorney General, for the petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

James E. Butler, General Counsel, for the respondent

Record Closed: October 8, 1986

Decided: October 10, 1986

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by the respondent, Marina Associates (Marina). The Division of Gaming Enforcement (Division) alleges that Marina engaged in illegal bottling and possessed bottles of wine which were certified "not genuine" and as a result thereof, Marina was not within the terms and conditions of its Casino Hotel Alcoholic Beverage (C.H.A.B.) license. Marina denies the allegations.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 16, 1986. Marina filed an Answer to the complaint on or about June 11, 1986. On July 2, 1986, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in Atlantic City, New Jersey on August 29, 1986, and the matter was scheduled for hearing on October 8, 1986.

Prior to the hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the Atlantic City Office of Administrative Law on October 8, 1986. The record closed on that date.

FINDINGS OF FACT AND CONCLUSION

The Division and Marina have prepared an extensive stipulation of facts (paragraphs 1-22, Stipulation of Settlement) which is attached hereto and made a part of this initial decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The parties have agreed to a settlement as evidenced by their representative's signatures.
2. The settlement fully comports with applicable law.

Therefore, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the parties comply with the terms of the settlement agreement and that these proceedings be concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

10-10-86  
DATE

Stephen W. Thompson  
**STEPHEN W. THOMPSON, ALJ**

Receipt Acknowledged:

October 14, 1986  
DATE

Bernadette P. Frigo  
**CASINO CONTROL COMMISSION**

Mailed to Parties:

OCT 16 1986  
DATE

Ronald J. Parker x.5.  
**OFFICE OF ADMINISTRATIVE LAW**

ks

DOCUMENTS IN EVIDENCE

None

STATE  
OFFICE  
OCT 3 11 25 AM

W. CARY EDWARDS  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the State of New Jersey  
Richard J. Hughes Justice Complex  
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By: Wendy Way  
Deputy Attorney General  
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STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO.: 86-185  
OAL DOCKET NO.: CCC 04453-86

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND :  
PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, :  
 :  
Plaintiff, :  
 :  
vs. :  
 :  
MARINA ASSOCIATES, :  
 :  
 :  
Respondent. :

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STIPULATION  
OF  
SETTLEMENT

PLEASE TAKE NOTICE that the above captioned matter has been discussed by and between the Parties involved, W. Cary Edwards, Attorney General of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Way, Deputy Attorney General, and James E. Butler, Esquire, Attorney for Respondent, Marina Associates, and pursuant to said discussions the terms of settlement have been agreed upon by the Parties; the following facts have been agreed upon and stipulated:

1. Respondent, Marina Associates (hereinafter called "Marina") is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at 1725 Brigantine Boulevard in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Marina is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Marina effective on November 24, 1981, renewed on November 24, 1982 and November 24, 1983, reissued on May 26, 1984, and has been renewed annually on that date. Marina has been conducting its casino hotel operations pursuant to said license continually to date since that time and including all times referenced hereunder.

3. Marina is the holder of, and operates pursuant to, a Certificate of Operation effective December 11, 1980, at which time Marina was the holder of a temporary casino permit. Said Certificate of Operation entitles Marina to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the rules and regulations promulgated thereunder.

4. By resolution dated May 26, 1986, the Commission renewed respondent's casino hotel alcoholic beverage (C.H.A.B.) license for the operational year.

5. Pursuant to its casino hotel alcoholic beverage (C.H.A.B.) license, Marina is permitted to serve patrons of its casino hotel alcoholic beverages as well as store alcoholic

beverages in certain areas authorized for such storage on its casino hotel facility.

6. On July 9, 1985, the Division of Gaming Enforcement (hereinafter called the "Division") conducted an on-site inspection of Marina's casino hotel facility.

7. Said inspection resulted in the Division's discovery of seventeen (17) bottles (750 ml each) labeled Rex Hill 1984 Oregon Pinot Noir Blanc placed in two cartons in the Easy Bar Pump Room. This pump room is located on the second floor of the casino hotel facility and authorized for the storage of alcoholic beverages pursuant to N.J.S.A. 5:12-103(g) (7).

8. Each of the seventeen (17) bottles found in the pump room appeared to the Division's agent to have been refilled to the brim and recorked.

9. Further inspection resulted in the Division's discovery of two (2) bottles (750 ml each) labeled Corvo Salaparuto Wine which had been placed in the Main Liquor Storage Room. This storage room is authorized for the storage of alcoholic beverages pursuant to N.J.S.A. 5:12-103(g) (7).

10. Both of the bottles found in the storage room appeared to the Division's agent to have been opened and had their corks pushed into each bottle.

11. Prior to leaving the Marina facility, an agent of the Division sealed and impounded the aforementioned nineteen (19) bottles, executed a receipt therefor and prepared an acknowledgement form which set forth the Division's findings. A copy of the receipt is attached hereto and made part hereof as

Exhibit A, and a copy of the acknowledgement form is attached hereto and made part hereof as Exhibit B.

12. On or about August 28, 1985, the nineteen (19) bottles hereinbefore described along with three (3) sealed, unused bottles of alcoholic beverages of the same brands were transported to the New Jersey State Police Laboratory located in the City of West Trenton, County of Mercer and State of New Jersey.

13. The Division requested that said laboratory analyze the contents of the twenty-two (22) bottles of alcoholic beverages. A copy of the Division's Request for Examination of Evidence is attached hereto and made a part hereof as Exhibit C.

14. The contents of the aforedescribed twenty two (22) bottles were tested and analyzed at the aforementioned laboratory.

15. The results of the examination of evidence requested by the Division is set forth in the Report of the New Jersey State Police Laboratory, attached hereto and made a part hereof as Exhibit D.

16. Said report states that, of the nineteen (19) bottles impounded by the Division from the Marina facility, three (3) bottles (Specimen #s 1, 7 and 14) were "overfilled" and four (4) bottles (Specimen #s 3, 15, 18 and 19) were "not genuine."

17. The Division has consulted with the Forensic Chemist who conducted the examination of evidence. Said chemist has advised the Division that the determination of "not genuine" is attributed to natural causes such as evaporation and spoilage and the determination of "overfilled" is attributed to the consequences of illegal bottling and not adulteration with any foreign or harmful substance nor any dilution.

18. N.J.S.A. 5:12-103(f)(2) states:

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and when applicable, the regulations promulgated pursuant to this Act.

19. N.J.A.C. 19:50-1.6(u)(2) states:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:

2. Bears a label which does not truly describe its contents...

20. N.J.S.A. 5:12-103(d) reads as follows:

Except as otherwise provided in this section, the provisions of Title 33 of the Revised Statutes and the rules, regulations and bulletins promulgated by the director of the Division of Alcoholic Beverage Control shall apply to a Casino Hotel and Casino Hotel Alcoholic Beverage Licensee licensed under this act.

21. N.J.S.A. 33:1-2(a) states in pertinent part:

It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of a license, or as otherwise expressly authorized, under this chapter...

22. N.J.A.C. 13:2-23.23(a)(2) provides:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverages manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:

2. Bears a label which does not truly describe its contents...

THEREFORE, The Parties hereby make application to the Honorable Walter N. Read, Chairman, Casino Control Commission, and the Honorable Richard Thompson, A.L.J., Office of the Administrative Law, for permission to supplement the record with the following Stipulation of Settlement for consideration by the Office of Administrative Law in its Initial Decision and by the Casino Control Commission as a final resolution of the above captioned matter:

WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, the Division contends and Marina admits that Marina's possession of the three (3) bottles of wine which were determined in laboratory testing to have been "overfilled" constitutes illegal bottling prohibited by N.J.S.A. 33:1-2(a) and N.J.A.C. 13:2-23.23(a) as incorporated by reference into N.J.S.A. 5:12-103(d) as well as N.J.A.C. 19:50-1.6(u); and

WHEREAS, the Division contends and Marina admits that Marina's possession of the four (4) bottles of wine which were determined in laboratory testing to have been "not genuine" constitutes a violation of N.J.A.C. 19:50-1.6(u)(2) and N.J.A.C. 13:2-23.23(a)(2) as incorporated by reference into N.J.S.A. 5:12-103(d) inasmuch as said bottles bore a label which did not truly describe their contents; and

WHEREAS, the Division contends and Marina admits that Marina's possession of the three (3) bottles of wine which were determined in laboratory testing to have been "overfilled" and the four (4) bottles of wine which were determined in laboratory testing to have been "not genuine" was not within the terms and conditions of its C.H.A.B. licensure in violation of N.J.S.A. 5:12-103(f)(2).

NOW THEREFORE, be it resolved that upon approval of this Stipulation of Settlement by the Office of Administrative Law and the Casino Control Commission, Marina agrees to pay the sum of two thousand five hundred dollars (\$2,500.00) as a civil penalty.

Furthermore, in order to ensure that the contents of its alcoholic beverage inventory is genuine and that such instances of "not genuine" alcoholic beverage content not recur, Respondent shall:

1. Conduct a seminar on the proper procedures for the service and storage of alcoholic beverage inventories which comply with the statutes, rules and regulations of the Casino Control Act and Title 33;

2. Require the attendance of Beverage supervisory personnel to attend the aforescribed seminars; and

3. Submit, as a permanent amendment to its internal controls submission relative to alcoholic beverages, detailed procedures to maintain quality control of alcoholic beverage inventories.

Upon payment of the monetary penalty, completion of the seminars and approval by the Commission of the amendments to Marina's internal control submission, the matter shall be deemed fully and adjudicated and resolved.

Respectfully submitted,

W. CARY EDWARDS  
Attorney General of New Jersey  
Attorney for the State of New Jersey

Dated: 10/3/86

By: Wendy Way  
Wendy Way  
Deputy Attorney General

Dated: 10-2-1986

By: James E. Butler Esq.  
James E. Butler, Esquire  
Attorney for Respondent,  
Marina Associates

jk/A090486/10

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-53  
OAL DOCKET NO. CCC 2300-86  
LICENSE NO. 47775-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

FINAL ORDER

v. :

HOWARD C. McLAUGHLIN, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and an initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 19, 1986,

IT IS on this 10<sup>th</sup> of December 1986, ORDERED that the administrative law judge's conclusion that the respondent has adequately demonstrated his rehabilitation and his recommendation that the Division's complaint be dismissed is rejected, as stated on the record of the November 17, 1986, Commission meeting, for the following reasons:

- (1) It is apparent that the ALJ equated recovery from substance abuse with rehabilitation under section 90(h). However, such evidence of rehabilitation is but one of eight factors

enumerated in section 90(h) which must be addressed before the issue of rehabilitation for licensing purposes can be decided.

- (2) The respondent's conviction for possession of CDS with intent to distribute, as stipulated by the respondent and found by the ALJ, is a disqualifying offense under section 86(c)(3). The circumstances of the offense involved actual distribution of CDS to two casino employee licensees on the premises of a casino hotel; that the offense occurred in January 1985; the respondent was then 29 years of age and admittedly had a prior drug and alcohol abuse problem that was, as the ALJ found, "of long duration and shocking magnitude" (Init. dec. at 2); the respondent has subsequently completed an extensive drug rehabilitation program and is a member and officer of a Narcotics Anonymous (NA) group and attends NA and AA group meetings on a daily basis; he is presently employed in the State of Florida where he also attends college and is on the dean's list; finally, the respondent performs community service by speaking about drugs and alcohol abuse at jails and correction facilities and desires to perform similar services for addicted casino licensees which is why, he states, that he desires to retain his casino employee license.
- (3) While the respondent's efforts to overcome his substance and alcohol addictions and his willingness to help others currently experiencing similar problems are truly commendable, the disqualifying offense is too serious and too recent to permit a finding of suitability for licensure at this time. Therefore he is disqualified by reason of section 86(c)(3) and not sufficiently rehabilitated pursuant to section 90(h).
- (4) The ALJ erred in not addressing the issue of the respondent's good character, honesty and integrity as required by section 90(b). For essentially the same rationale expressed on the rehabilitation issue, the respondent does

not presently possess the good character,  
honesty and integrity required by the Act.

IT IS FURTHER ORDERED that the casino employee  
license held by Howard C. McLaughlin is revoked; and

IT IS FURTHER ORDERED that this disqualification  
is waived pursuant to N.J.S.A. 5:12-91(e) to permit the  
respondent to obtain a casino hotel employee  
registration should he find that such a credential  
would aid him in offering counseling services to casino  
employees; and

IT IS FURTHER ORDERED that the respondent is  
prohibited from reapplying for or obtaining any other  
license, qualification or approval under the Casino  
Control Act except pursuant to the provisions of  
N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2300-86

AGENCY DKT. NO. 85-53

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**HOWARD C. MC LAUGHLIN,  
Respondent.**

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**William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Donald G. Targan, Esq., for respondent (Targan, Higbee & Faia, attorneys)**

Record Closed: August 18, 1986

Decided: October 1, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

**STATEMENT OF THE CASE**

The Division filed a complaint with the Casino Control Commission on February 22, 1985 seeking revocation of the respondent's casino gaming license because he was caught doing cocaine with friends in a bathroom stall at Resorts International Hotel/Casino on January 31, 1985. At the same time he possessed cocaine with the intent to distribute it. He filed a request for hearing with the Commission and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on August 18, 1986.

STIPULATED FACTS

The respondent stipulated that he possessed cocaine with the intent to distribute it on January 3, 1985 and that this act was a disqualifying offense. In fact the respondent in his testimony revealed a drug habit of long duration and shocking magnitude. He testified that he drank daily and smoked marijuana daily with occasional use of THC. On weekends he would stay awake for the entire 48 hours, drinking and using any and all drugs that he could find. These weekends soon extended themselves to entire weeks of drinking and drug use. He used the proceeds of an insurance settlement of approximately \$10,000 to purchase cocaine. He was using up the last few grams when he was arrested.

I **CONCLUDE** that the respondent committed an offense which disqualifies him from casino licensure pursuant to section 86c of the Casino Control Act, to wit: possession of cocaine with the intent to distribute contrary to N.J.S.A. 24:21-19.

REHABILITATION

The respondent discussed his cross addiction with a physician and shortly after his arrest he went to a treatment center in Florida where he stayed from January 12, 1985 until March 2, 1985. On May 4, 1985, he entered Ridgewood, a halfway house for addicted persons. On August 18, 1986, the day of this hearing, the respondent was still residing at the Ridgewood halfway house in Florida.

The respondent is a member and officer of the Parkway Group, a Narcotics Anonymous (NA) group in Florida. He is a member of the Public Information Committee for the Orlando area. He attends either an NA group meeting or an AA group meeting every single day of the week and has done so for over a year and one-half. He has had suitable employment in Florida although he is primarily a college student in season. He is on the Deans List at Valencia College.

He performs community service by speaking about drugs and alcohol abuse in Florida jails and correctional facilities. He wants his casino license back so that he can make himself available to other addicted licensees as a resource person and missionary for NA and AA groups. He hopes eventually to become a Certified Abuse Counsellor.

The respondent has not completed his period of probation; he is still and may always remains a recovering addict and alcoholic. He may be required to attend NA and AA meetings for the rest of his life in order to remain drug and alcohol free.

Nevertheless, based on the extraordinary distance already traveled by the respondent, I **CONCLUDE** that he is rehabilitated and **ORDER** that the Division's complaint be **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 1, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

October 2, 1986  
DATE

Receipt Acknowledged:  
Richard Zupps  
CASINO CONTROL COMMISSION

OCT 6 1986  
DATE

Mailed to Parties:  
Ronald J. Parker x. 5  
OFFICE OF ADMINISTRATIVE LAW

sc

WITNESS LIST

Timothy Schultz  
Howard C. McLaughlin  
Howard C. McLaughlin, Sr.

EXHIBIT LIST

- DGE-1 Three-page report prepared by Resorts International security people
- DGE-2 One-page Atlantic City Police Department Investigation report, arrest report, criminal complaint, the request for examination of evidence and the laboratory report
- DGE-3 Indictment by the Atlantic County grand jury, dated February 26, 1985, consisting of two counts
- 
- R-1 Letter from White Deer Treatment Center, dated February 20, 1985
- R-2 Letter, dated July 22, 1985, from the Therapeutic Intervention Center, Dr. Frederick A. Earle
- R-3 Letter, dated July 28, 1985, from the Koala Center
- R-4 Two letters from Ridgewood House, dated July 30, 1985
- R-5 Letter from Dr. Earle, dated August 14, 1986
- R-6 Letter from Howard Junior High School, dated April 11, 1986
- R-7 Letter from Ridgewood House, dated April 25, 1986
- R-8 Letter, dated August 6, 1986, fro the Ridgewood House
- R-9 Letter from C & F Dry Wall, dated August 12, 1986
- R-10 Grade report, dean's honor list, Valencia Community College
- R-11 Document from Narcotics Anonymous

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-146  
OAL DOCKET NO. CCC 6911-85  
LICENSE NO. 49055-21  
REGISTRATION NO. 19842-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
STEVEN M. MILBERG, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and an initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 16, 1986,

IT IS on this 23<sup>rd</sup> day of July 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6911-85

AGENCY DKT. NO. 85-146

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC,  
SAFETY,**

Petitioner,

v.

**STEVEN M. MILBERG,**

Respondent.

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**Paul Vagianos**, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**Steven M. Milberg**, respondent, pro se

Record Closed: April 16, 1986

Decided: June 2, 1986

**BEFORE JOSEPH F. FIDLER, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on April 11, 1985, seeking judgement revoking the respondent's casino employee license and casino hotel employee registration, or some other sanction, pursuant to sections 86c and 86g, 90, 91 and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's indictment on February 28, 1984, for possession of a controlled dangerous substance and possession with intent to distribute, contrary to N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1). The issues to be determined in this matter are as follows:

1. Whether the respondent, with specific reference to the aforementioned indictment, has committed an offense which would constitute an automatic disqualifier from licensure, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(3) and 86g of the Casino Control Act, thereby requiring revocation of licensure and registration, pursuant to sections 90e, 91b and 129 of the act.
2. Whether the respondent has been convicted of or committed an offense which would indicate that his continued licensure and registration would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of his licensure and registration, or some other sanction, pursuant to sections 90e, 91b and 129 of the act.
3. Whether the respondent has engaged in conduct which adversely effects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.
4. Whether the respondent, notwithstanding his conviction or commission of and otherwise automatically disqualify offense, has affirmatively established his rehabilitation, by clear and convincing evidence, within the meaning of sections 90h and 91d of the act.

#### PROCEDURAL HISTORY

By letter dated October 8, 1985, the respondent requested a hearing on the revocation complaint filed by the Division of Gaming Enforcement. On October 3, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on December 18, 1985, at which time the matter was set down for hearing on February 28, 1986.

The matter was adjourned prior to the hearing date of February 28, 1986, so that the respondent could attempt to retain the services of an attorney. The matter was rescheduled for and heard on April 16, 1986, at which time the respondent represented himself.

FINDINGS OF FACT

The respondent is a 24 year old resident of Atlantic City, New Jersey. He holds casino employee license number 49055-21 and casino hotel employee registration number 19842-40, issued by the Casino Control Commission. At the time of the hearing in this matter, the respondent had been unemployed for three months and was receiving unemployment compensation.

Prior to his unemployment, the respondent was employed by the Atlantis Casino Hotel as a cashier on the casino floor. He held this position for nine months prior to being terminated for insubordination. His previous casino employment includes a position at Bally's Casino Hotel as a change person which he held for three months. He left that employment to work as a cashier at Harrah's Casino Hotel, where he was employed for thirteen months. According to the respondent, he left his employment at Harrah's because he needed to move to Philadelphia, Pennsylvania, because of his father's illness. Letters from acquaintances of the respondent attesting to his good character and trustworthiness were admitted into evidence as Exhibits R-1 and R-2.

The incident which has given rise to the complaint of the Division of Gaming Enforcement occurred on February 5, 1984. On that date, Officer Frank J. Davidson of the Atlantic City Police Department, acting upon information from an unnamed source, stopped the respondent who was walking on the street and patted him down. It is undisputed that the respondent was found to have a plastic bag in his waistband which contained 34 orange and blue capsules which the officer recognized to be the controlled dangerous substance tuinal, a barbiturate. The respondent was arrested by Officer Davidson and transported to the Atlantic City Police Department Detective Bureau, where he was charged with possession of a controlled dangerous substance (Exhibits P-1 and P-2), contrary to N.J.S.A. 24:21-20a(1).

On February 28, 1984, the Atlantic County Grand Jury indicted the respondent for possession of a controlled dangerous substance and also for possession of controlled

dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). A copy of this indictment was admitted into evidence as Exhibit P-3. The respondent originally entered a plea of not guilty to the indictment and a notice of motion to suppress evidence was filed on his behalf. However, this motion was withdrawn and on June 11, 1984, the respondent entered a plea of guilty to the charge of possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). On August 3, 1984, the respondent was granted a conditional discharge for a period of one year on the plea of guilty to possession of a controlled dangerous substance, with the remaining charge of possession of a controlled dangerous substance with intent to distribute to be dismissed (Exhibit P-4). It is undisputed that the respondent complied with the terms of his conditional discharge which included submitting to quarterly urinalysis to certify a drug free status. The respondent was also required to avoid further criminal involvement. It is undisputed that the respondent satisfactorily complied with the terms of his conditional discharge (Exhibit R-3). It is also undisputed that the respondent had never been arrested prior to February 5, 1984, and has never been arrested since.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

The factual dispute in this matter concerns whether the respondent possessed the 34 tuinal capsules on February 5, 1984, with the intent to distribute them. Officer Davidson testified at the hearing that he searched for and stopped the respondent on the street because the officer had been informed by "an irate citizen" that the respondent had tried to sell him some pills. Officer Davidson elaborated that the citizen was actually a boyfriend of a girl who was with the respondent. According to the officer, there was no mention of price, but the "irate citizen" stated that the respondent had sold some pills to the girlfriend.

Officer Davidson testified that he found the respondent walking with a female on Trenton Terrace in Atlantic City. After notifying the police department communications room, the officer patted down the respondent and discovered the 34 capsules. However, the investigation report (Exhibit P-2) filed by the officer indicates that the location of the incident was Harrisburg and Sunset Avenues in Atlantic City. The investigation report makes no mention of the respondent walking with a female.

It was established at the hearing that Officer Davidson has made many drug arrests involving controlled dangerous substances in capsule form. Of the 25 to 45 arrests conducted by the officer which involved CDS in capsule form, approximately a dozen involved the substance tuinal. According to the officer, if the subject of an arrest possessed just a few tuinal capsules, he would only be charged with possession of a controlled substance. In the officer's opinion, if a person had at least 10 tuinal capsules in his possession, the officer would charge him with possession of controlled dangerous substance with intent to distribute. Despite this opinion offered at the hearing, it must be noted that the officer charged the respondent only with possession of a controlled dangerous substance. The charge of possession with intent to distribute was later presented by the Atlantic County Grand Jury.

Since Officer Davidson had testified at the hearing that the respondent had been walking with a female at the time of his arrest, he was asked whether the female was also arrested. The officer testified that the female was patted down and nothing was found on her person. Consequently, she was not arrested.

Testifying on his own behalf, the respondent stated that he was by himself when he was stopped by Officer Davidson, and the arrest took place at Harrisburg and Sunset Avenues, and not on Trenton Terrace, as stated by Officer Davidson. The respondent admitted that he had 34 tuinal capsules in his possession when he was stopped by the officer. It was his opinion that he could have challenged the legality of his arrest, and avoided a conviction, but he acknowledged that he pled guilty to the charge of possession of a controlled dangerous substance. On the basis of this plea, the respondent was afforded an opportunity for a conditional discharge.

It was the testimony of the respondent that he had 34 tuinal capsules in his possession on February 5, 1984, for his own personal use. He admitted that he had been taking them and other drugs for the preceding six to eight months. He had begun taking the drugs because he thought it was "cool," but he kept taking them because he had become addicted. His use of the tuinal was two to three capsules per day, on the average of three times per week. According to the respondent, he stopped his use of drugs following his arrest.

The respondent emphatically denied that he had ever sold any drugs. He explained that he had 34 tuinal capsules in his possession when he was arrested because

he had just returned to his neighborhood after purchasing them. The respondent's denial of any intent to distribute the tuinal was candid and believable. While Officer Davidson's opinion that possession of 34 tuinal capsules is the equivalent of an intent to distribute them was sincere, this opinion is entitled to less weight than the respondent's credible denial. Accordingly, I further FIND that the respondent did not possess 34 capsules of the controlled dangerous substance tuinal on February 5, 1984, with the intention to distribute them.

#### 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 operation as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the act authorizes the revocation of the credentials of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license or casino hotel employee registration.

Pursuant to sections 90e, 91b, 86c(3) and (4), and 129 of the Casino Control Act, the Casino Control Commission may revoke the licensure of any licensee and the registration of any registrant disqualified on the basis of his conviction of any offense which constitutes an automatic disqualifier, or which would indicate that continued licensure or registration would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the act, these credentials may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was indicted for possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1) and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). It is undisputed that the respondent pled guilty to the count of the indictment charging him with possession of a controlled dangerous substance, and he was granted a conditional discharge. In accordance with the terms of his guilty plea and satisfactory completion of his probation, the first count of the indictment, which charges him with possession of a controlled dangerous substance with intent to distribute, was dismissed. Based upon the foregoing discussion and findings of disputed and undisputed fact, I CONCLUDE that the

respondent has not committed the offense of possession of a controlled dangerous substance with intent to distribute. Therefore, I further **CONCLUDE** that he has not committed an automatic disqualifier from licensure, within the meaning of section 86c(3) of the act.

The respondent's possession of a controlled dangerous substance occurred over two years ago. As noted, he satisfactorily complied with the terms of his conditional discharge. In addition, he has no record of arrests either before or after the February 1984 arrest for possession. Based upon the foregoing, it does not appear that the respondent's continued participation in the legalized gaming industry would justifiably undermine the public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has not committed or been convicted of an offense which would indicate that his continued licensure and registration would be inimical to the policy of the Casino Control Act, within the meaning of sections 86c(4) and 86g of the act.

The credible evidence in the record demonstrates that the respondent enjoys a reputation for good character, honesty and integrity. He candidly acknowledged that he was terminated from his position with the Atlantis Casino Hotel for insubordination. No other evidence was presented concerning this termination, and it does not appear to be related to the respondent's qualifications for licensure. Accordingly, I further **CONCLUDE** that the respondent has not engaged in conduct which so adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the act, so as to require revocation of his casino employee license, pursuant to section 129 of the act. Finally, it is unnecessary for the respondent to affirmatively establish his rehabilitation, within the meaning of sections 90h and 91b of the act, because I have not concluded that he has committed or been convicted of an automatically disqualifying offense.

#### ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Steven M. Milberg be dismissed.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in

this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 2, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 4, 1986  
DATE

Michael Zapp  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 5 1986  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Complaint
- P-2 Investigation Report
- P-3 Indictment
- P-4 Record of Proceedings

For the respondent:

- R-1 Letter from Mary C. Fitzpatrick
- R-2 Letter from Darlene Belcher
- R-3 Application for order granting termination of probation

WITNESSES

For the petitioner:

Frank J. Davidson

For the respondent:

Steven M. Milberg

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-346  
OAL DOCKET NO. CCC 6711-85  
REGISTRATION NO. 55997-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, :

Complainant, :

FINAL ORDER

V. :

ADA MUNOZ, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 30, 1986,

IT IS on this 8<sup>th</sup> day of August 1986, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Ada Munoz is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Ada Munoz is not eligible to apply for any license, registration, qualification or approval

under the Casino Control Act, 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).

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 6711-85

AGENCY DKT. NO. 85-346

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**ADA MUNOZ,**

Respondent.

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**Frances L. Sundheim, Deputy Attorney General, for the petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Mark E. Roddy, Esq., for the respondent (Goldenberg, Mackler & Sayegh, attorneys)**

Record Closed: April 18, 1986

Decided: May 29, 1986

**BEFORE BEATRICE S. TYLUTKI, ALJ:**

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission on August 8, 1985, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent, Ada Munoz, requested a hearing and the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

A prehearing conference was held by way of a telephone conference call on January 21, 1986, at which time the parties agreed that the issues in this matter are:

- A. Whether the respondent is disqualified from registration based on a certain criminal conviction, pursuant to N.J.S.A. 5:12-86c(1).
- B. Whether the respondent can establish that she has been rehabilitated, pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing took place on April 7, 1986, at the Hammonton Municipal Court in Hammonton, New Jersey.

During the hearing, Mark E. Roddy, Esq., on behalf of the respondent, objected to the testimony of Detective Edward K. Petrini and Detective Sergeant Joaquin Martinez regarding the events leading to Ms. Munoz's indictment and conviction on the basis that he had stipulated that the respondent had been convicted of a second-degree bribery offense, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). I allowed the testimony because, pursuant to N.J.S.A. 5:12-91d, the circumstances surrounding the criminal conviction are to be considered in making a determination regarding rehabilitation.

Also, Mr. Roddy argued that the Division was estopped from proceeding against the registration of the respondent since the facts relating to her conviction were fully disclosed in the Personal History Disclosure Form - 4 that she submitted as part of her application for a casino hotel registration. Deputy Attorney General Francis I. Sundheim, on behalf of the Division, disagreed and stated that casino hotel registrations are issued automatically and are thereafter investigated by the Division. I granted Mr. Roddy's request for an opportunity to submit a legal memorandum to support his argument. By memorandum, Mr. Roddy admitted that the Division's position, as stated by Ms. Sundheim, was consistent with the provisions of the Casino Control Act.

After the receipt of additional documents, as well as Mr. Roddy's legal memorandum, the record in the matter closed on April 18, 1986.

FACTUAL FINDINGS

Based on the testimony and exhibits admitted into evidence, I **FIND** that the facts in this matter are not in dispute.

Detective Petrini, employed in the major fraud unit of the Atlantic County Prosecutor's Office, testified that in July 1983, Anna Candelaria, associated with the Latin Organization of Atlantic City, gave information to the Prosecutor's Office regarding corruption in the municipal government of Atlantic City. Ms. Candelaria alleged that Ms. Munoz, who was employed by Atlantic City to assist Spanish-speaking persons with problems associated with public housing, was soliciting money from members of the Spanish-speaking community in order to facilitate their acquisition of public housing in Atlantic City. Also, Ms. Candelaria stated that the persons who allegedly paid said monies would probably not supply any information since they were hesitant about talking to government officials.

The Atlantic County Prosecutor's Office decided to initiate an undercover operation to see if Ms. Munoz would solicit a bribe from an undercover agent and the office obtained the assistance of a Spanish-speaking policeman, Detective Martinez of the Vineland Police Department. Detective Martinez, using the alias of Antonio Artez, went to see the couple who owned Calmado Grocery store in Atlantic City, who were friends of Ms. Munoz. Detective Martinez represented to the couple that he was an out-of-town resident who was looking for a job and housing for his family in Atlantic City. The couple suggested that he contact Ms. Munoz. When Detective Martinez met with Ms. Munoz, she told him to go to Pat's office (Pat was later identified as Pat Neblett-Redd, the tenant selection supervisor for the Atlantic City Housing Authority) and fill out a public housing application. Ms. Munoz further advised him to use a fictitious Atlantic City address in the application, and not to mention money to Pat when he filled out the application form. While he was in Pat's office, Detective Martinez was told by Pat that her office was processing housing applications that had been filed in the 1970's.

Thereafter, Detective Martinez went back to see Ms. Munoz and during their conversation, she suggested that he could give Pat a "tip" through her and she suggested the amount of \$200. Detective Martinez gave Ms. Munoz \$60 on account and said he would return with the remaining money. When he returned to pay the balance, Detective

Martinez asked whether a larger sum would facilitate the process and Ms. Munoz agreed that it would help and referred to a person who had paid about \$4,000. At that time, Detective Martinez gave Ms. Munoz an additional sum of \$340, and she told him that the money would be given to Pat but she would keep \$150 for herself.

Immediately after Sergeant Martinez left her office, Ms. Munoz was arrested. The respondent admitted that she took \$400 from the person she knew as Mr. Artiz, but denied receiving any money from any other persons.

In September 1983, Ms. Munoz was indicted for bribery in official matters, a violation of N.J.S.A. 2C:27-2b, bribery in performing official duties, a violation of N.J.S.A. 2C:27-2d, solicitation of gifts by public servants, a violation of N.J.S.A. 2C:27-6a, and official misconduct in acts relating to office, a violation of N.J.S.A. 2C:30-2a (P-2).

The respondent pled guilty to a violation of N.J.S.A. 2C:27-2d, a second-degree bribery offense, and she was sentenced to prison for five years (P-2). The respondent spent seven months at the Correctional Institution For Women at Clinton, New Jersey. While she was incarcerated, Ms. Munoz worked in the kitchen and was elected to be the prisoner's representative for the presentation of grievances to the prison officials. After her release, Ms. Munoz spent some time at a halfway house in Camden.

Ms. Munoz's parole officer, Carlos Resto, in a letter dated March 14, 1986, stated that the respondent has been on parole since July 9, 1985, and that she has responded well to parole supervision and is currently on quarterly status, which demonstrates her serious and honest effort to readjust to society (R-4).

After her release from prison, Ms. Munoz worked for about six months at the Hammonton Senior Citizen Center, and she applied for a registration as a casino hotel employee. Ms. Munoz was given a registration, and for approximately two months she worked as a hotel housekeeper at the Sands Hotel and Casino before she obtained a position as a public area attendant at Tropicana Hotel and Casino (Tropicana).

At the time of the hearing, Ms. Munoz was working for Tropicana and had been selected to clean the dressing rooms of celebrities because she is considered to be a competent employee who can be trusted not to steal any of the valuables left in these dressing rooms. As for her employment at Tropicana, two of her supervisors, Eleanor Rossi, public area and casino supervisor, and Ann M. Bliss, public area assistant manager, wrote letters stating that Ms. Munoz is a competent and trustworthy employee who has on two occasions been nominated for Employee of the Month (R-2, R-3).

On her own behalf, Ms. Munoz, who is still on parole, admitted that she had done something wrong and that she had learned a hard lesson as a result of her action. The 1983 bribery conviction is the only criminal charge ever filed against Ms. Munoz.

Also on behalf of the respondent, Dorothy Smith wrote a letter stating that she is a friend of Ms. Munoz, and indicated that Ms. Munoz is a nice person who is willing to help others in need (R-5).

#### CONCLUSIONS OF LAW

On behalf of the respondent, Mr. Roddy argued that she had been punished sufficiently for her criminal conduct and that she has proven her rehabilitation. Mr. Roddy noted that Ms. Munoz has had several positions since her release from prison and is considered to be a superior employee by her present employer.

On behalf of the Division, Ms. Sundheim stated that Ms. Munoz committed a serious offense which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). Ms. Sundheim argued that since Ms. Munoz has been out of prison for less than one year, she has not shown by clear and convincing evidence that she has been rehabilitated pursuant to the standards set forth in N.J.S.A. 5:12-91d.

Since there is no dispute that Ms. Munoz's 1983 bribery conviction is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), the only issue in this matter is whether or not the respondent has shown by clear and convincing evidence her rehabilitation.

N.J.S.A. 5:12-91d sets forth the following criteria to be considered in determining whether or not a person has shown rehabilitation for purposes of obtaining or retaining a casino hotel employee registration:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

At the time of the 1983 incident, Ms. Munoz was a mature person employed by Atlantic City to assist Spanish-speaking persons and she used her position to obtain money from Detective Martinez, who represented himself to be the type of person she was employed to assist. Although I recognize that at the time of her arrest, Ms. Munoz alleged that she had never received money from any other person, I consider this statement questionable in light of the facts presented during the hearing. Based on the facts, I **CONCLUDE** that Ms. Munoz has not shown by clear and convincing evidence her rehabilitation pursuant to N.J.S.A. 5:12-91d. Although I recognize that Ms. Munoz has made an affirmative showing of rehabilitation, this evidence is not persuasive in view of the seriousness of the offense involved and the short period of time since her release from prison.

#### DISPOSITION

Therefore, it is **ORDERED** that the casino hotel employee registration of Ada Munoz be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 29, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

5-30-86  
DATE

Adores Zepko  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 2 1986  
DATE

Ronald J. Parky/s.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

**EXHIBITS ADMITTED INTO EVIDENCE:**

**FOR THE PETITIONER:**

- P-1 Letter from Frances I. Sundheim to Harry A. Goldenberg, dated March 20, 1986
- P-2 Indictment filed against Ada Munoz and the disposition on the indictment
- P-3 Supplemental reports prepared by Edward K. Petrini, dated July 20, 1983, August 17, 1983, August 18, 1983, August 19, 1983, August 24, 1983, August 25, 1983
- P-4 Miscellaneous Incident Reports prepared by Joaquin A. Martinez, dated July 28, 1983, August 3, 1983, August 16, 1983, August 17, 1983, August 18, 1983, August 19, 1983, August 24, 1983 and August 25, 1983

**FOR THE RESPONDENT:**

- R-1 Personal History Disclosure Form - 4 for Ada Munoz, received by the Casino Control Commission on July 31, 1984
- R-2 Letter from Eleanor Rossi (received by Office of Administrative Law by mail on April 14, 1986)
- R-3 Letter from Anna M. Bliss, dated March 4, 1986 (received by Office of Administrative Law by mail on April 14, 1986)
- R-4 Letter from Carlos Resto, dated March 14, 1986 (received by Office of Administrative Law by mail on April 14, 1986)
- R-5 Letter from Dorothy Smith (received by Office of Administrative Law by mail on April 14, 1986)

**WITNESSES**

**FOR THE PETITIONER:**

Edward K. Petrini  
Joaquin Martinez

**FOR THE RESPONDENT:**

Ada Munoz

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, :

Complainant, :

v. : FINAL ORDER

ANTHONY NIGLIO, :

Respondent. :

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 18, 1986,

IT IS on this 24<sup>th</sup> day of September 1986, ORDERED that the initial decision is modified as follows:

The respondent's conduct in January 1985 constitutes the offense of possession of controlled dangerous substance with intent to distribute, a listed offense under N.J.S.A. 5:12-86(c)(3), which, although not prosecuted to a conviction, requires his disqualification pursuant to section 86(g) rather than section 90(e) as cited by the ALJ.

IT IS FURTHER ORDERED that the casino employee license held by Anthony Niglio is revoked substantially for the

reasons stated in the initial decision as modified which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Anthony Niglio is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Anthony Niglio, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 5840-85

AGENCY DKT. NO. 85-304

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**ANTHONY NIGLIO,**

Respondent.

---

**John Sheehy, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney  
General of New Jersey, attorney)**

**Edward P. Kozmor, Esq., for respondent**

Record Closed: March 7, 1986

Decided: April 7, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on July 2, 1985, seeking to revoke the respondent's casino employee license because he is alleged to have possessed marijuana with the intent to distribute the same. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing order issued December 5, 1985, and the matter was heard on March 7, 1986, in Atlantic City.

The prehearing order identified the issues as follows:

- A. Pursuant to section 86(g) of the Casino Control Act, can the Division establish that the respondent committed an act enumerated in section 86(c) of the Act?
- B. Is the respondent's continued licensure inimical to the Act or casino operations?
- C. Is the respondent rehabilitated?
- D. Does the respondent possess the requisite good character, honesty and integrity for continued licensure?

At the hearing the parties stipulated to the admission of the following documentary evidence:

- P-1 Ocean City Police Reports, Consent, Accusation, LR-28 and certification
- P-2 Atlantic City Police Report
- P-3 Psychotherapist letter
- P-4 Carl Navarrete letter
- P-5 Donald Crocket letter
- P-6 David Duncan letter
- P-7 Laboratory report
- P-8 Evaluation

The respondent acknowledged the relevance and probity of the police reports, contested none of the facts stated therein and further stipulated that he was convicted of possession of marijuana over 25 grams and was sentenced in accordance with the negotiated plea agreement set forth in full on the LR-28. As a result of these stipulations, the Division presented no testimonial evidence. The respondent gave evidence and presented witnesses on the issue of whether or not he possessed marijuana with the intent to distribute, his rehabilitation if a statutory disqualifier was found, or inimicability if not. He also presented testimony on the issue of good character, honesty and integrity.

THE DOCUMENTARY EVIDENCE

The police reports reveal that on January 5, 1985, the Ocean City police responded to a domestic call and discovered the respondent in possession of 1742 grams of marijuana, together with seeds, plastic bags, a scale, other drug paraphernalia and \$5,475 in cash. The respondent told the police in response to questions about sales that ". . . he did but that it was only to friends of his that he knew." He negotiated a plea to an accusation charging him with possession of marijuana over 25 grams. He forfeited the \$5,475 to the state pursuant to the contraband statute, paid a fine of \$1,000 and was placed on probation, whereupon the state dismissed a complaint charging him with possession with intent and dismissed charges against his wife. The balance of the documentary evidence relates to character and treatment.

THE TESTIMONIAL EVIDENCE

The respondent testified that he had marital difficulties which occasioned his use of marijuana and cocaine. He obtained a conditional discharge for cocaine possession in Atlantic City after an arrest on March 9, 1980. He admitted that he was a heavy marijuana user until his arrest on January 5, 1985. He said he purchased five pounds of marijuana in December 1984 for his own use. He said he possessed scales and baggies in order to monitor his use of marijuana. He claimed he limited himself to an ounce a week. He claimed he did not sell the marijuana to casino employees. He said that on two occasions he had parties in which persons he barely knew contributed to the cost of the marijuana smoked. He analogized this to a "keg party." A "speakeasy" would have been a more apt analogy. When queried about the \$5,475 he forfeited to the State as a result of his plea agreement, he said it was not drug money but his life savings which he kept on his person in order to avoid paying it to his ex-wife for child support. When examined about this, he said that he originally paid no support because there was no agreement. He also indicated that he did not want the money in the bank because his ex-wife had had access to a prior bank account.

Based on the police reports and the respondent's testimony, I **FIND** that the respondent violated N.J.S.A. 24:21-19a(1) in that he possessed marijuana with the intent to distribute the same, which is a crime enumerated in N.J.S.A. 5:12-86c(3).

I **CONCLUDE** that the respondent is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-90e unless he can affirmatively demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90h.

GOOD CHARACTER, HONESTY and INTEGRITY

The respondent testified that he possessed good character, honesty and integrity. However, I did not believe his version of the events leading to his arrest. His explanation that he only used the scale and baggies found in his apartment to monitor his own use of marijuana was not credible. His explanation that he only conducted two "keg parties" for friends was not credible. During cross examination he could not promptly name the persons who attended the so-called "keg parties." He hedged on the names, did not know the last names and finally took refuge in the statement that they were "persons he met in bars." If that is true, then he sold to anyone who had the money. If it is not true, then he is covering up either the extent of his sales or protecting persons who were his customers.

I also did not believe the respondent's assertion that the \$5,475 he forfeited to the State was not drug money. Not only is he bound by the plea agreement but his explanation was weak and ill-advised. Even if his explanation was to be believed, it adversely affects his honesty, good character and integrity. His explanation was that he was concealing the money so it would not be seized for child support. The respondent further testified that for some time after his separation he did not pay child support because there was no "agreement." Despite the fact that the respondent is a superior casino employee, I **CONCLUDE** that he does not possess the requisite honesty, integrity and good character required for casino licensure.

REHABILITATION

The respondent produced an impressive array of witnesses who testified that he was a superior casino employee — knowledgeable, respected and hardworking. They further testified that his reputation for honesty, integrity and good character was beyond reproach. In addition, his brother testified that in the past few months the respondent has come a long way. They were formerly estranged but now the respondent has concentrated on rehabilitating himself and he and his brother are seeking real estate investments together.

In addition, the documentary evidence contains a letter from the respondent's therapist, who sees the respondent as making positive steps in his rehabilitation.

The rehabilitation statute requires findings in the following areas and I **FIND** as follows:

1. The respondent is a dealer and box person.
2. The offense is serious, involving the sale of marijuana.
3. The offense occurred as a result of the respondent's heavy use of marijuana. He sold marijuana in order to finance his habit and in order to make money.
4. This offense occurred in January 1985.
5. The respondent was born on March 15, 1952.
6. The offense was a continuing one.
7. The respondent was unhappily married and attributes his drug use to this.
8. The respondent has voluntarily sought counselling for his drug problem. His supervisors unanimously recommend him for continued licensure.

I **CONCLUDE** that the respondent has not affirmatively demonstrated his rehabilitation. Until January of last year he was a drug dealer. The manner in which he minimized the involvement was not only untruthful but offensive.

I **ORDER** that his casino employee license be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 7 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

4/8/86  
DATE

Ruth Stout  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 10 1986  
DATE

Ronald L. Parks  
OFFICE OF ADMINISTRATIVE LAW

bc/ee

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-450  
LICENSE NO. 13114-21  
OAL DOCKET NO. CCC 7977-85

STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v.

FINAL ORDER

CHARLES D. NOEL :

Respondent :

This matter having been transmitted to the Office of Administrative Law for a hearing; and the parties having submitted a proposed stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against Charles D. Noel for a violation of N.J.S.A. 5:12-100(n); and an initial decision having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 25, 1986,

IT IS on this 15<sup>th</sup> day of July 1986, ORDERED that the initial decision of the OAL, which incorporates the proposed stipulation of settlement, is affirmed and adopted; and

IT IS FURTHER ORDERED that Charles D. Noel pay a civil penalty in the amount of \$350, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Charles D. Noel's casino employee license is suspended for seven days, with seven days credit given for the suspension previously imposed by the Atlantis Hotel/Casino;

IT IS FURTHER ORDERED that copies of this final order be served upon Charles D. Noel, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. CCC 7977-85

AGENCY DKT. NO. 85-450

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,**

Petitioner,

v.

**CHARLES D. NOEL,**  
Respondent.

---

**William E. Mountford, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Charles D. Noel, respondent, pro se**

Record Closed: May 6, 1986

Decided: May 9, 1986

**BEFORE BEATRICE S. TYLUTKI, ALJ:**

This matter involves the complaint filed by the Division of Gaming Enforcement with the Casino Control Commission on November 14, 1985, seeking the revocation of the respondent's license as a casino employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by way of a telephone conference call

on February 3, 1986, and the hearing was scheduled for February 25, 1986. On the scheduled hearing date, the parties reached a settlement in the matter.

The parties have agreed to a settlement and have prepared a stipulation indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the terms of settlement and I **FIND:**

- (1) The parties have voluntarily agreed to the settlement as evidenced by their signatures or that of their representatives.
- (2) The settlement fully disposes of all issues in controversy.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that proceedings be concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 9, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

5-12-86  
DATE

Alfonso Lopez  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 13 1986  
DATE

Charles Lopez  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE:

None

# STIPULATION / SETTLEMENT

Ret # 33

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for  
Richard J. Hughes Justice Complex  
CN-047  
Trenton, New Jersey 08625

By: WILLIAM E. MOUNTFORD, JR.  
Deputy Attorney General  
(609) 292-8883

SUPERIOR COURT OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO.

STATE OF NEW JERSEY, DEPARTMENT  
OF LAW AND PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

Plaintiff,

v.

Charles Noel

Respondent.

Civil Action

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by William E. Mountford, Jr., Deputy Attorney General, and CHARLES NOEL, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Respondent presently holds casino employee license no. B114-21 issued by the Casino Control Commission on FEBRUARY 2, 1980.

(2) WHEREAS on or about <sup>SEPTEMBER</sup> ~~DECEMBER~~ 9, 1985, Respondent, CHARLES D. NOEL, was observed gaming in the TRUMP CASTLE Hotel/Casino, in violation of N.J.S.A. 5:12-100(n).

(3) WHEREAS on or about <sup>SEPTEMBER</sup> ~~DECEMBER~~ 9, 1985, Respondent, CHARLES D. NOEL, was employed by Atlantis Hotel/Casino as a DEALER / BOXPERSON.

(4) WHEREAS Respondent, CHARLES D. NOEL, is ~~not~~ presently employed by <sup>ON INDEFINITE SUSPENSION</sup> ~~any licensed~~ The Atlantic Hotel/Casino <sup>in</sup> ~~as a~~ THE ATLANTIC CITY GAMING INDUSTRY.

(5) Attached hereto and made a part hereof is an investigation report dated SEPTEMBER 19, 1985, by an agent of the Division of Gaming Enforcement relating to the events which occurred on or about SEPTEMBER 9, 1985.

(6) WHEREAS it is admitted that the aforementioned conduct as described in paragraphs 2-5 <sup>through</sup> supra, did, in fact, occur.

(7) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the aforementioned statutory and regulatory provision in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between parties hereto that:

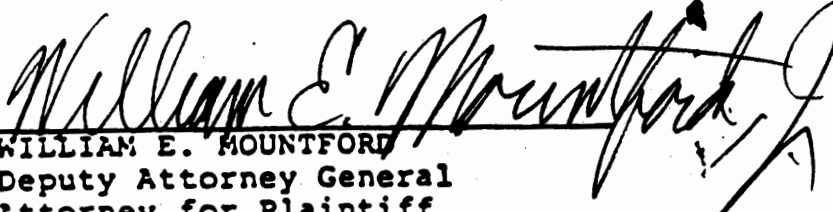
1. The facts stated herein, supra, are true and did; in fact, occur.

2. The casino employee license of respondent shall be suspended ~~for seven working days with credit for seven working days suspension~~ ~~for a period of five (5) days.~~ *By the Atlantic Hotel Casino. CDN*

3. Respondent shall be fined a civil penalty of \$350. *PAYMENT TO BE MADE IN TERMS AGREED UPON BY THE CASINO CONTROL COMMISSION.*

4. This settlement shall be a full and final settlement for the aforementioned violation of N.J.S.A. 5:12-100(n), subject to the approval and acceptance of the Casino Control Commission.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

  
WILLIAM E. MOUNTFORD  
Deputy Attorney General  
Attorney for Plaintiff

C Dana Noel

MEMORANDUM

TO CAPTAIN FRANK ROLLER  
FROM DSG A.C. Gatto #2444  
SUBJECT Licensed Casino Dealer Charles Dana Noel, #13114-21  
Gambling at Trump Castle Casino  
DATE September 19, 1985

On September 9, 1985, the undersigned was contacted by Senior Casino Control Commission Inspector Frank Burbridge from the Trump Castle Casino. Burbridge advised that there was a subject gambling at a craps table that he thought might be a licensed casino dealer from Caesars Boardwalk Regency Casino.

After responding to the Trump Castle Casino, Senior Inspector Burbridge pointed to a subject playing at a craps table. The undersigned approached the subject as he was learning the table, and after showing proper identification, asked him if he was a casino dealer. At first he denied being a dealer and then stated that he was a licensed dealer but not working. After he was told that Senior Casino Control Commission Inspector Frank Burbridge identified him as an actively employed dealer, the subject identified himself as Dana Noel of 424 Madison Avenue, Atlantic City, New Jersey. He said that he is employed at the Atlantis Casino as a craps dealer. He also admitted to playing the game of craps at the Trump Castle Casino on this date.

Video tapes regarding the incident of Dana Noel playing craps were retained as evidence at the Cardiff DGE Evidence Safe.

Video tapes were made by Trump Castle Surveillance Operator Russell Cook, #17350-21.

A.C.G.

bt  
E101085/54

EXHIBIT  
/

# Atlantis Casino Hotel

## EMPLOYEE CONFERENCE/WARNING NOTICE

Complete all applicable data and forward to Employee Relations within 7 days of incident.

Previous Warnings: verbal conferences \_\_\_\_\_ Dates \_\_\_\_\_ written warnings \_\_\_\_\_ Dates \_\_\_\_\_ suspensions \_\_\_\_\_ Dates \_\_\_\_\_

Hoel, Dana \_\_\_\_\_ 9/10/85 \_\_\_\_\_

Employee Name & I.D. # \_\_\_\_\_ Date & Time of Incident \_\_\_\_\_

Department \_\_\_\_\_ Position \_\_\_\_\_

Department \_\_\_\_\_ Position \_\_\_\_\_

Witnessed By (Name & Title) \_\_\_\_\_

**INCIDENT**

Placed on in-house investigative suspension while being investigated

by an outside government agency.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### EMPLOYEE'S COMMENTS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If additional space needed for comments please attach additional page.

This is to be considered notice of:

- Need for Training
- Verbal Conference
- Written Warning
- Disciplinary Suspension From \_\_\_\_\_ Date \_\_\_\_\_ To \_\_\_\_\_ Date \_\_\_\_\_
- Investigative Suspension From 9.10.85 Date \_\_\_\_\_ To indefinite Date \_\_\_\_\_
- Termination Effective Date \_\_\_\_\_

You are given this notice so that you may have an opportunity to improve your performance. If this situation is repeated, or if you engage in any other misconduct, you will be subject to further disciplinary action, including suspension or termination.

Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Department Head \_\_\_\_\_ Date \_\_\_\_\_

Employee \_\_\_\_\_ Date 9-10-85

Acknowledges issuance only and confirms receipt by employee.

668

Employee Relations \_\_\_\_\_ Date \_\_\_\_\_

SEE REVERSE SIDE OF ORIGINAL COPY FOR INSTRUCTIONS

WHITE—Personnel File    YELLOW—Department Head    PINK—Employee    GOLDENROD—Union

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 86-155 AND  
86-EA-12  
OAL DOCKET NOS. CCC 1369-86 AND  
CCC 3181-86 (CONSOLIDATED)  
REGISTRATION NO. 59792-40  
APPLICATION NO. 52751-22

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW & PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

FINAL ORDER

Jose Luis Ortiz,

Respondent.

AND

APPLICATION OF JOSE LUIS ORTIZ

FOR A CASINO EMPLOYEE LICENSE

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 20, 1986,

IT IS on this 29<sup>th</sup> day of August 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Jose Luis Ortiz is revoked and that his application for a casino employee license is denied

substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Jose Luis Ortiz is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 1369-86 &  
CCC 3181-86 (CONSOLIDATED)  
AGENCY DKT. NOS. 86-EA-12 &  
86-155

**JOSE LUIS ORTIZ,**  
Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,**  
Respondent.

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,**  
Petitioner,

v.

**JOSE LUIS ORTIZ,**  
Respondent.

---

**Frances Sundheim**, Deputy Attorney General, for the respondent/petitioner, Division of Gaming Enforcement (W. Cary Edwards, Attorney General of New Jersey, attorney; Joanne Cocchiola Ciancimino, Deputy Attorney General, at the prehearing conference)

**Jose Luis Ortiz**, petitioner/respondent, pro se

Record Closed: May 22, 1986

Decided: July 7, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. First, Jose Luis Ortiz, petitioner/respondent, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent/petitioner, opposed licensure because it contended that the petitioner/respondent had committed a disqualifying criminal offense under section 86c(3) of the Casino Control Act (Act), and because the petitioner/respondent did not possess the requisite good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference. Although the petitioner/respondent conceded his criminal record, he contended that he satisfied the rehabilitation criteria of section 90h. Second, the Division charged that Mr. Ortiz, as the holder of casino hotel employee registration no. 59792-40, had committed a disqualifying criminal offense under section 86c(3), for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The respondent/petitioner opposed the action and, in the alternative, contended that he satisfied the rehabilitation criteria of section 91d.

PROCEDURAL HISTORY

Mr. Ortiz filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on March 9, 1984 (P-3). By letter, the Commission advised the petitioner/respondent that, based upon information received in a report from the Division, dated January 13, 1986, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed with the Commission on February 21, 1986, the petitioner/respondent requested a hearing concerning his application for licensure. On February 28, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was held on April 14, 1986, during which the petitioner/respondent's application as well as a probable complaint from the Division were discussed.

On April 25, 1986, the Division filed its complaint with the Commission. On May 12, 1986, the Commission transmitted the matter to the Office of Administrative Law. The matters were consolidated for hearing. The matter was heard on May 22, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Ortiz is 33 years of age (P-3). He was born in Puerto Rico. He has difficulty speaking and comprehending the English language. The petitioner/respondent did not complete high school.

From May 1973 until May 1981, the petitioner/respondent was employed as a laborer on various construction projects.

On July 7, 1976, the petitioner/respondent was arrested by the Camden Police Department and was charged with violations of N.J.S.A. 24:21-20a(1), possession of heroin; N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute; and N.J.S.A. 24:21-20a(4), possession of marijuana over 25 grams. On February 24, 1977, he was found guilty of the charges and was sentenced to two years probation, a fine of \$200 and \$25 costs.

On October 31, 1976, the petitioner/respondent was arrested by the Camden Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana. On November 18, 1976, he was found guilty, and was fined \$200 plus \$25 court cost.

On January 4, 1977, Mr. Ortiz was arrested by the New Jersey State Police and was charged with violations of N.J.S.A. 24:22-10a(4), possession of marijuana, and N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with the intent to distribute. The applicant was tried in Gloucester County and, on September 4, 1980, was found guilty and was sentenced to six months probation.

On January 8, 1977, the petitioner/respondent was arrested by the Camden Police Department and was charged with a violation of N.J.S.A. 24:21-20(a), possession of a controlled dangerous substance. On January 19, 1979, the petitioner/respondent was convicted of the charge. He did not receive a custodial sentence for this offense.

On February 12, 1978, the petitioner/respondent was arrested by the Hammonton Police Department and was charged with violations of N.J.S.A. 24:21-20a(1), possession of heroin; N.J.S.A. 24:21-20a(4), possession of marijuana; and N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. On May 25, 1978, the charges were not billed by the Atlantic County Prosecutor's office.

On August 28, 1978, the petitioner/respondent was arrested by the Camden Police Department and was charged with a violation of N.J.S.A. 2C:12-1b, assault with a deadly weapon, a knife. On October 30, 1978, the charges were dismissed.

On January 19, 1979, the petitioner/respondent received an additional two years probation because of a violation of probation. On January 8, 1980, the petitioner/respondent was sentenced to an indeterminate jail term of up to four years in the custody of the Commissioner of Corrections. He was paroled on October 27, 1980.

From May through October 1981, the petitioner/respondent was employed in general maintenance by Spartin Harbour, Brigantine, New Jersey.

On June 28, 1981, Mr. Ortiz was arrested by the Atlantic City Police Department and was charged with various drug-related offenses. By indictment filed on July 23, 1981, the petitioner/respondent was charged with two counts of violation of N.J.S.A. 2C:39-5b, possession of a handgun without a permit; N.J.S.A. 2C:20-7, theft by receiving stolen property, a gun; N.J.S.A. 2C:39-3f, possession of a prohibited weapon, hollow point bullets; two counts of N.J.S.A. 2C:39-7, possession of a weapon by a convicted felon; N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine; and N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, methamphetamine (P-1). On July 29, 1981, the petitioner/respondent pled not guilty to the charges. On September 3, 1981, he retracted his plea of not guilty and pled guilty to a violation of N.J.S.A. 2C:39-5b, possession of a

handgun without a permit, third degree, and of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, methamphetamine. The remaining counts as well as the municipal court complaint were dismissed. On October 9, 1981, the petitioner/respondent was sentenced to a four-year period of incarceration and payment of \$25 to the Violent Crimes Compensation Board, on each count, incarceration to be concurrent, but to become consecutive in the event of a parole violation. The sentencing judge noted that the petitioner/respondent was on parole at the time he committed the offense and that the conviction was his fifth. From February 11, 1982 until December 6, 1983, the petitioner/respondent was incarcerated in a state prison. He has successfully completed his parole.

The circumstances underlying the incident were described by William McKnight, a detective with the Atlantic City Police Department. Immediately prior to the incident, the police had received information from a confidential informant which indicated that the petitioner/respondent was a distributor of methamphetamine and also carried handguns. Det. McKnight and another detective observed the petitioner/respondent, who appeared to be involved in drug transactions. The detectives arrested Mr. Ortiz, and during the search, discovered three bags of marijuana, four bags of methamphetamine and two weapons, which each contained bullets. Although the petitioner/respondent disputes that he sold drugs on the date in question, he conceded that he possessed the drugs and would have sold them had the opportunity arisen. Mr. Ortiz further testified that he had the guns in his possession for his personal protection and he knew their possession was illegal. Also, the petitioner/respondent testified that he was addicted to drugs and sold drugs in order to support his habit.

Subsequent to his release from prison, Mr. Ortiz was employed by Harrah's Associates (Trump) for a period of approximately six months in the housekeeping department. The petitioner/respondent was terminated from this employment by reason of a disciplinary action which involved a bottle of wine. The petitioner/respondent stated that he found a bottle of champagne, which he gave to a supervisor, who was unavailable to corroborate his explanation.

Next, the petitioner/respondent was employed in the housekeeping department of the Claridge Hotel and Casino (Claridge) for a period of approximately two months.

At the same time, the petitioner/respondent was employed on a part-time basis in a janitor/maintenance capacity in an apartment building at 3 South Iowa Avenue, where he resides. Ultimately, the petitioner/respondent resigned from the Claridge and began to work full-time at the apartment building, where he remains to date.

At about the time of his incarceration, the petitioner/respondent met and began to date Alexis Sikora. Their relationship has continued subsequent to his release, and they now have an infant daughter. Although they are not married, both consider their relationship to be a marriage.

The petitioner/respondent has not been arrested or charged with any criminal misconduct subsequent to June 28, 1981. Nevertheless, he testified that he has occasionally smoked marijuana, which he knows is unlawful. The most recent incident was on May 11, 1986, his birthday.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

#### (B) DISPUTED FACTS

In dispute is the petitioner/respondent's credibility, the extent of his current involvement with illegal drugs, and his good character, honesty and integrity.

The primary concern is the petitioner/respondent's testimony concerning his behavior since his release from prison. Initially, his position in this matter must be recognized. He is an applicant for a casino employee license and the holder of a casino hotel employee registration, and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the petitioner/respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with and corroborated by the documentary evidence and his candid admissions of the use of marijuana, I am persuaded to believe that he testified truthfully. It must be noted that the petitioner/respondent has difficulty speaking and understanding the English language

and exhibited some apprehension in testifying openly and truthfully in this proceeding. It was evident that the petitioner/respondent's willingness to participate in such a proceeding and to place his trust in the system was a new experience for him. It was also evident that Ms. Sikora strongly encouraged the petitioner/respondent to participate honestly. Mr. Ortiz's testimony was extremely candid, straightforward, consistent and believable. In the final analysis, I am persuaded to accept his testimony in all respects.

The petitioner/respondent testified that other than his occasional use of marijuana, he has not used or otherwise been involved in illegal drug activities since his release. He stopped using drugs while incarcerated and without the benefit of a drug treatment program.

Mr. Ortiz testified that he needs to retain his casino hotel employee registration and desires to have a casino employee license in order to improve his employment opportunities and, in turn, support his changed lifestyle. He has experienced difficulty finding employment.

Ms. Sikora testified on behalf of the petitioner/respondent. Mr. Ortiz has paid his debt to society, has attempted to advance himself and needs greater employment opportunities. She has observed that the petitioner/respondent is a different person today from the one she met several years ago. These changes were the reason why the witness was willing to have a child by the petitioner/respondent. Ms. Sikora comes from a law enforcement family.

Mr. Ortiz also offered a letter from Richard and Yvonne Lavin, who have known him for approximately three years and reside in the same apartment building (R-2). The Lavins stated that the petitioner/respondent has the keys to their apartment, they trust him, and have found him to be a dependable and honest family person.

I am persuaded that Mr. Ortiz has undergone a dramatic and substantial alteration in his pattern of behavior. Prior to his incarceration, he was an addict and was involved heavily in illegal drug activities. Since his release, he has disassociated himself from his prior illegal activities, except as otherwise indicated previously, has become a parent and is a constructive member of society. This transformation is remarkable.

After consideration of the entire record in this matter, I further **FIND** that:

1. The petitioner/respondent's testimony was candid, consistent and credible in every respect.
2. The petitioner/respondent's willingness to participate openly and honestly in this proceeding was supported substantially by Ms. Sikora.
3. The petitioner/respondent occasionally uses marijuana.
4. Since his release from prison, the petitioner/respondent has not otherwise been involved in the use or sale of illegal drugs.
5. The petitioner/respondent has undergone a substantial and complete alteration of his lifestyle.
6. By reason of his criminal record history, the petitioner/respondent has experienced limited employment opportunities.

**DISCUSSION OF LAW AND CONCLUSION**

**(A) N.J.S.A. 5:12-86c(3)**

Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19, be disqualified from licensure and/or registration. The Division established that petitioner/respondent had been convicted of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute (methamphetamine). This conviction satisfies the criteria of section 86c(3) and disqualifies the petitioner/respondent from licensure and continued registration. I so **CONCLUDE**.

**(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d**

An applicant or respondent faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or

continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Ortiz holds a casino hotel employee registration and, although not employed currently by a casino, was previously so employed. As such, he had no responsibilities for actual gaming activities and had limited contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial patron contact. In addition, the petitioner/respondent is the applicant for a casino employee license, which would create the opportunity for substantial patron contact.

Second, the petitioner/respondent was convicted of a violation of N.J.S.A. 24:21-19a(1), which, by inclusion as a disqualifying offense under section 86c(3), is serious. Also, the circumstances underlying the incident enhance the seriousness of the misconduct.

Third, the petitioner/respondent was an addict, was knowingly involved in illegal drug activities in order to support his habit and committed the offense while knowingly possessing illegally two firearms. These circumstances render the misconduct far more egregious.

Fourth, the most recent criminal offense occurred in 1981, approximately five years ago.

Fifth, at the time of the offense the petitioner/respondent was 28 years of age. There was no indication that his misconduct was due to immaturity.

Sixth, the petitioner/respondent's criminal misconduct was not isolated in nature. Rather, it was the culmination of a ten-year period of involvement as a user and distributor of illegal drugs. Although the petitioner/respondent has not, with the exception of marijuana, used drugs and/or been involved in the distribution thereof since his release, his admitted continued use of marijuana raises concern.

Seventh, there were social conditions which contributed to the offense.

Eighth, it is evident that the petitioner/respondent has made substantial rehabilitative efforts. The enormity of his rehabilitative efforts is underscored by virtue of the extreme seriousness of his criminal record history. He pleaded guilty pursuant to a plea bargain, completed his sentence in full and has accepted full responsibility for his misconduct. In the hearing the petitioner/respondent testified candidly, which was contrary to his instincts and experience. The petitioner/respondent had a partly positive, although brief, record of employment within the casino industry, and has established a positive employment record otherwise. Further, it was apparent that Mr. Ortiz has undergone a remarkable transition in his lifestyle. Obviously Ms. Sikora and the birth of their child have had a substantial impact upon petitioner/respondent and he is now motivated to be a law-abiding citizen. Nevertheless, the petitioner/respondent's candid admission of continued and recent use of marijuana raises concerns with his commitment not to repeat his prior criminal misconduct. In addition, the fact that petitioner/respondent may have testified candidly and truthfully regarding his current drug use cannot enhance his credibility.

I **CONCLUDE** that petitioner/respondent has failed to establish, by clear and convincing evidence, his rehabilitation under sections 90h and 91d.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Ortiz was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner/respondent carried a heavy burden in view of his criminal record history. His presentation was most impressive and established that he has made remarkable progress. However, his continued use of marijuana, which he knows is illegal, raises doubts about the completeness of his rehabilitation. Accordingly, the petitioner/respondent has not satisfied his burden.

I **CONCLUDE** that petitioner/respondent has failed to establish, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty, and integrity, pursuant to section 90b.

(D) Penalty

N.J.S.A. 5:12-1b(8) establishes that licensure and/or registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee."

Sections 129 and 130 provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino hotel employee registration.

Section 130 set forth the following facts to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;
- d. the prior history of the particular licensee involved with respect to gaming activity;
- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. . . .

Although Mr. Ortiz has established himself to be honest and trustworthy and has undergone a remarkable transformation of his lifestyle, his continued use of marijuana reflects a failure to complete his rehabilitation and a serious disregard for the criminal laws. Therefore, his registration must be revoked. I so **CONCLUDE**.

#### DISPOSITION

It is **ORDERED** that the application of Jose Luise Ortiz for licensure as a casino hotel employee by **DENIED**; and it is further **ORDERED** that petition of the Division against the hotel employee registration of the petitioner/respondent be **GRANTED**, and that registration number 59792-40 be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 7, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

July 7, 1986  
DATE

Bernadette P. Frigon  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED IN EVIDENCE

- P-1 The State of New Jersey v. Jose L. Ortiz, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, file number 58121-81, Indictment, filed July 23, 1981 (12 pages)
- P-2 New Jersey State Police Special and Technical Services Section, Forensic Science Bureau-Laboratory Report, prepared by William Park, July 31, 1981
- P-3 Personal History Disclosure Form - 2A, Jose L. Ortiz, filed March 9, 1984 (31 pages)
- R-1 The State of New Jersey, Department of Corrections - Termination Certificate, Jose L. Ortiz, May 6, 1985
- R-2 Letter from Richard and Yvonne Lavin

WITNESS LIST

**For petitioner/respondent:**

Jose L. Ortiz  
Alexis Sikora

**For respondent/petitioner:**

William McKnight  
Jose L. Ortiz

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 84-354  
OAL DOCKET NO. CCC 845-85  
LICENSE NO. 09997-21

STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
BILL H. ORUCH, :  
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision on May 13 and June 2, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of June 11, 1986,

IT IS on this 12<sup>th</sup> of November 1986, ORDERED that the ALJ's recommendation to revoke the casino employee license held by Bill H. Oruch is rejected for the reasons stated in the record at the Commission's meeting of June 11, 1986, and based on the following findings of fact:

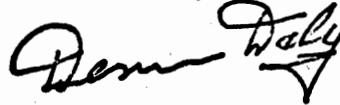
- (1) The record does not establish that the respondent committed the offense of theft of property lost, mislaid or delivered by mistake in violation of N.J.S.A. 2C:20-6.

(2) Respondent's conduct in stepping on a \$100 gaming chip in the gaming pit, surreptitiously picking it up and giving it to a cocktail waitress was an aberrant incident in an otherwise law-abiding life.

(3) Weighed against the respondent's employment record and the numerous letters attesting to his good character and business ability, this conduct does not so impair his good character, honesty and integrity as to require that his license be revoked.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee license of Bill H. Oruch is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR



BY: \_\_\_\_\_

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 845-85

AGENCY DKT. NO. 84-354

**DIVISION OF GAMING**

**ENFORCEMENT,**

Petitioner,

v.

**BILL H. ORUCH,**

Respondent.

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William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Harry A. Goldenberg, Esq., for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: March 10, 1986

Decided: April 28, 1986

BEFORE JOSEPH F. FIDLER, ALJ:

**STATEMENT OF THE CASE**

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on October 24, 1984, seeking judgment revoking the respondent's casino employee license, or some other appropriate sanction, pursuant to sections 86c and g, 89 and 90, and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's arrest on June 24, 1984, and charge of theft of property lost, mislaid, or delivered by mistake, in violation of N.J.S.A. 2C:20-6. The issues to be determined in this matter are as follows:

1. Whether the respondent, by reason of his alleged conduct which led to his arrest on June 24, 1984, on charges of a violation of N.J.S.A. 2C:20-6, has committed an offense which would indicate that his continued licensure as a casino employee would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and g of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.
2. Whether the respondent continues to possess the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90 of the Act.
3. Whether the respondent continues to possess sufficient business ability and casino experience to establish the reasonable likelihood of his success and efficiency as a casino employee, pursuant to sections 89b(3) and 90b of the Act.

#### PROCEDURAL HISTORY

By letter dated November 6, 1984, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement. On February 14, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. On April 3, 1985, Administrative Law Judge Richard L. Voliva, Jr., conducted a prehearing conference in this matter. The matter was subsequently reassigned and the hearing was held on May 21, 1985. At the request of the parties, the record was held open following the hearing to afford an opportunity to file written submissions on the question of penalty, as well as other summation.

When the requested submissions were not forthcoming, the undersigned wrote to counsel for the parties on August 21, 1985, asking that the papers for which they had requested the record remain open be forwarded by September 3, 1985. The respondent's submission was not received until September 16, 1985. The final sentence of the one page letter from counsel for respondent stated, "Mr. Mountford advised that he would indicate

that he is not seeking dismissal." When the Division's submission still had not been received, the undersigned wrote to the Deputy Attorney General on November 12, 1985, informing him that it was imperative that he provide the written argument on the question of penalty for which the record had been held open. The Deputy Attorney General was specifically reminded that he neither confirmed nor contradicted the assertion of respondent's counsel that the Division was, "not seeking dismissal."

The Deputy Attorney General did not respond to the letter of November 12, 1985. By letter dated January 21, 1986, the undersigned reminded counsel of the previous letters seeking the Division's written argument on penalty for which the Division had requested the record remain open. Counsel were further informed that since no response had been received from the Division, the record would be closed. On March 10, 1986, the Deputy Attorney General orally stated to the undersigned that he had discussed the matter with his superiors and that he was able to state the Division's position on penalty. Specifically, the Deputy Attorney General stated that the Division does seek judgment revoking the respondent's casino employee license. The record in this matter closed on March 10, 1986. A letter to the undersigned from counsel for respondent, dated March 26, 1986, was subsequently received. This letter stated counsel's opinion, in essence, that it was unfair to permit the Division to state its position on penalty.

#### FINDINGS OF FACT

The respondent is a thirty-three year old resident of Bargaintown, New Jersey. He holds casino employee license number 09997-21, issued by the Casino Control Commission on December 5, 1979. He has been employed in the licensed gaming industry for over five years. Since June of 1980, the respondent has been a supervisor of blackjack at Caesar's Boardwalk Regency Hotel Casino.

Numerous letters attesting to the respondent's character and business ability were admitted into evidence at the hearing. Casino supervisor Richard Shumski wrote that the respondent, with whom he had worked for five years, is honest, fair and dependable (Exhibit R-2). Casino Vice-President John F. Groom wrote that he has known the respondent for more than five years and has found him to be of the highest moral character and has shown himself to be a conscientious individual (Exhibit R-3). Pit boss Derek Solomon wrote that the respondent is honest, trustworthy and conscientious

(Exhibit R-5). Other letters from fellow employees of the respondent also attested to his integrity and professionalism (Exhibits R-4 and R-6).

It is undisputed that the respondent was relieved from his duties as a blackjack floorperson at Caesar's on June 24, 1984, and arrested on a charge of theft of property lost, mislaid or delivered by mistake, in violation of N.J.S.A. 2C:20-6. The respondent had been working at pit number five, observing blackjack games on tables number fifteen and number sixteen, when he stepped on an object on the floor. At that time, Bessie Ann Jones was performing her cleaning job by sweeping the pit area. Jones observed the respondent drop an ink pen from his hand, bend to the floor, and pick up an object which had been under his shoe. Jones observed that the object was a black gaming chip. It is undisputed that Jones then went directly to Caesar's security to inform investigator Lawrence Green of the circumstances she had just observed (Exhibit R-8).

According to the report of investigator Green, Caesar's Game Manager Resnik had the respondent relieved of his duties at tables fifteen and sixteen and the respondent was then escorted to the game manager's office. The respondent was interviewed concerning the incident which had been reported by Ms. Jones and he provided a handwritten statement (Exhibit P-1). He acknowledged stepping on an object which turned out to a gaming chip worth \$100. He also stated that he handed the chip to a cocktail waitress who was passing by. It is undisputed that this employee was Marie Bunting, who converted the chip into currency and returned to the respondent with five twenty dollar bills. A short conversation then ensued between Ms. Bunting and the respondent concerning the disposition of the money. In any event, when Ms. Bunting was escorted from the gaming floor and interviewed concerning the incident, the five twenty dollar bills were taken from her (Exhibit R-8).

Caesar's security alerted the Division of Gaming Enforcement concerning the incident and Agent John E. McLaughlin arrived at Caesar's and interviewed Ms. Jones, Ms. Bunting, and the respondent. It is undisputed that the handwritten statement of the respondent was written prior to his interview by Agent McLaughlin. After the interviews, the respondent was escorted from Caesar's premises. Agent McLaughlin then filed a complaint in the Atlantic City Municipal Court charging the respondent with theft of property lost, mislaid, or delivered by mistake, contrary to N.J.S.A. 2C:20-6. It is undisputed that this charge against the respondent was subsequently dismissed in Municipal Court prior to a trial on the merits. The respondent has been allowed to

continue his employment at Caesar's, and it is undisputed that he has no other record of arrest or disciplinary action taken against him.

All of the preceding evidence is essentially undisputed and believable and is thus **FOUND AS FACT.**

Conflicting testimony was offered at the hearing as to whether or not there was a patron looking for a dropped gaming chip at the time the respondent lifted his foot from a gaming chip on the floor and picked it up. Bessie Ann Jones testified that she observed a patron looking around for a chip. He approached her and asked her if she had swept it up. She told him that she had not and they both started looking for the chip. At that point, she observed the respondent, who was standing in the pit, drop his ink pen, lift his foot from a chip on the floor, bend down, and pick up the chip. This was done when the patron had turned his back, but had not yet walked away. According to Ms. Jones, the respondent, the patron and she were all within six feet to eight feet from each other.

Having observed the respondent pick up the chip, Ms. Jones went directly to casino security without speaking first to the respondent. She candidly acknowledged in her testimony that she would not have said anything about what the respondent had done if the patron had not questioned her as to whether she had picked up his gaming chip. Ms. Jones characterized the patron as having been a little loud, and she believed that the respondent must have heard what the patron said.

In his statement (Exhibit P-1) written before being interviewed by Agent McLaughlin, the respondent said that he had not had the time to look at the chip to determine its monetary value before he handed it to cocktail waitress Bunting. However, in his testimony at the hearing, the respondent stated that he realized when he picked it up that it was a chip valued at \$100. He believed that Ms. Bunting did not realize the value of the chip until she had converted it into currency. The respondent also wrote in his statement that when Ms. Bunting returned and said that it had been a \$100 chip and she was going to give the respondent the money, he told her, "no, then realizing what customer it belonged to," but he and security were unable to find the customer. At the hearing, the respondent testified that the written statement was incorrect. He further testified that he did not realize that a patron must have dropped the chip until security came by and said that a sweeper had identified a patron who had lost a gaming chip.

It was the testimony of the respondent that the policy of his casino when a chip is found on the floor at a gaming table is to put it into the rack. If it is found outside the pit, the chip can be cashed by the finder. The respondent testified that the chip had been found outside the pit. However, he also stated that he had been standing between tables fifteen and sixteen, observing those games for compliance with the rules, when he stepped on the gaming chip. He then looked to see if anyone was looking for a gaming chip. It was his opinion that if he had asked if anyone had dropped a chip, everyone would have claimed it. Contary to his testimony at the hearing, he declared in his written statement given at the time of the incident (Exhibit P-1) that he had been observing his game in pit number five when he stepped on the gaming chip.

The testimony of Bessie Ann Jones was straightforward and sincere. She was a candid witness and her testimony was worthy of belief. The credibility of the respondent is much less certain. In his direct testimony, he stated that he handed the waitress a gaming chip which he had picked up from the floor and when she returned, she informed him that it was for \$100. According to the respondent, he told her that she could have the money, and he jokingly told her that they could split it. Testifying on cross examination, the respondent acknowledged that he knew it had been a \$100 gaming chip at the time he handed it to the cocktail waitress. The accuracy of his testimony at the hearing is also placed in doubt because of inconsistencies with the written statement which he gave at the time of the incident on June 14, 1984. Having considered all of the testimony and other evidence offered in this matter, I make the following additional **FINDINGS OF FACT**:

1. The respondent was standing in the pit area when he stepped on and then picked up a \$100 gaming chip which had been lying on the floor.
2. The respondent knew that the gaming chip did not belong to him, and that, in the absence of any claims by a patron for the chip, it was the property of the casino.

#### CONCLUSIONS OF LAW

Pursuant to section 1(b)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

recipient is guilty of theft if, knowing the identity of the owner and with purpose to deprive said owner thereof, he converts the property to his own use.

It is clear that the respondent came into control of the property of another that he knew to have been lost or mislaid when he picked up the gaming chip from the floor of the casino. He showed a purpose to deprive the owner of the chip, and he converted the property to his own use, when he decided to hand the chip to the cocktail waitress. The remaining element of the offense is that the actor know the identity of the owner. If the respondent observed the patron looking for the gaming chip, it is clear that he should have known the identity of its owner. On the other hand, if no patron had lost the gaming chip, then the respondent should have known the chip belonged to the casino. This is sufficient to satisfy the remaining element. Therefore, I **CONCLUDE** that the respondent has committed the offense of theft of property lost, mislaid, or delivered by mistake, contrary to N.J.S.A. 2C:20-6.

The gaming chip was valued at \$100. Pursuant to N.J.S.A. 2C:20-2b(3), if the amount involved in a theft was less than \$200, the offense constitutes a disorderly persons offense. The respondent argues that the conduct reflects bad judgment, rather than indicating that he is a thief. He points to his otherwise unblemished career in the licensed casino industry and to his reputation for good character, honesty and integrity, as demonstrated by exhibits R-2 through R-7.

It is very significant that the respondent has continued his employment at Caesar's. This would appear to reflect the confidence of his supervisors. However, this evidence must be balanced against the justifiable undermining of public confidence in the integrity of the regulatory process and of gaming operations which would arise from the respondent's continued participation in the legalized gaming industry. I **CONCLUDE** that the respondent's conduct demonstrates that his continued licensure would be inimical to the policy of the Casino Control Act and casino operations, within the meaning of N.J.S.A. 5:12-86c(4).

The respondent offered ample evidence to demonstrate that he enjoys a reputation for good character, honesty and integrity. Were it not for the foregoing conduct, it is apparent that the respondent's possession of these attributes would not be in doubt. Based upon the foregoing conclusions, however, I am unable to conclude that the respondent possesses these attributes to the degree necessary for licensure, within the

licensee. Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license.

Pursuant to sections 90e, 86c(4) and 129 of the Casino Control Act, the Commission may revoke the license of any licensee disqualified on the basis of his conviction of any offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the Act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was charged with theft of property lost, mislaid, or delivered by mistake, in violation of N.J.S.A. 2C:20-6. It is undisputed that this charge was dismissed without a trial on the merits. Thus, there was no adjudication and, of course, no conviction. It remains to be determined whether the respondent committed the charged offense.

The respondent does not deny that he found a chip on the floor at the casino. He testified that he looked to see if anyone was looking for the chip, and seeing no one, he gave the chip to a waitress. Respondent argued that this conduct should be characterized as bad judgment, rather than a theft.

It was the credible testimony of Bessie Ann Jones, a cleaning employee at the casino, that a patron was looking for a dropped gaming chip at the time the respondent picked up a chip from the floor. She characterized the patron as loud and she felt the respondent must have noticed the patron. It would seem to be more likely than not that the respondent would have noticed the patron. However, if he did not, he still knew that the chip was not his. It must have belonged to either a patron or the casino. The respondent testified that a chip on the floor in the pit area should be placed on the rack and I have found as fact that the chip was lying on the floor in the pit area.

N.J.S.A. 2C:20-6 provides as follows:

A person who comes into the control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the

meaning of sections 89b(2) and 90 of the Casino Control Act. Nevertheless, his continued successful employment in the licensed casino industry demonstrates that he continues to possess sufficient business ability and casino experience so as to establish the reasonable likelihood of his success and efficiency as a casino employee, within the meaning of sections 89b(3) and 90 of the Casino Control Act. Finally, having concluded that the respondent's continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, I further **CONCLUDE** that his casino employee license should be revoked, pursuant to sections 86c(4) and 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Bill H. Oruch be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 23, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

4-29-86  
DATE

Alfred Hayes  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 1 1986  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

ml

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EXHIBITS IN EVIDENCE

For the petitioner:

P-1 Statement of Bill H. Oruch

For the respondent:

R-1 Not in evidence  
R-2 Letter from Richard Shumski  
R-3 Letter from John F. Groom  
R-4 Letter from Lynda Henson  
R-5 Letter from Derek Solomon  
R-6 Letter from Patricia O'Neill  
R-7 Letter, dated May 10, 1985  
R-8 Caesar's investigation report

WITNESSES

For the petitioner:

Bessie Ann Jones  
John E. McLaughlin

For the respondent:

Bill H. Oruch

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-23  
OAL DOCKET NO. CCC 01568-86  
LICENSE NO. 09119-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complainant, :  
V. :  
ANTHONY M. PARISI,  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and an initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 17, 1986,

IT IS on this <sup>29<sup>th</sup></sup> day of September 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Anthony M. Parisi is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration,

qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1568-86

AGENCY DKT. NO. 86-23

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,**

Petitioner,

v.

**ANTHONY M. PARISI,**

Respondent.

---

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; Andrew Kusnirik, Law Clerk appearing pursuant to R. 1:21-3c, at the prehearing conference only)

Anthony M. Parisi, respondent, pro se

Record Closed: July 3, 1986

Decided: August 4, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Anthony M. Parisi, respondent and the holder of casino employee license no. 9119-21, had committed a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to sections 86g and 86c(4), for which the Division seeks revocation of his casino employee license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on January 23, 1986. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter dated February 26, 1986, the respondent requested a hearing. On March 7, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 15, 1986. The matter was heard on July 3, 1986, at which time the record closed.

FINDINGS OF FACT

Mr. Parisi is 36 years of age (R-2). He has been married for the past ten years and is the father of two children.

The respondent is a 1968 graduate of Hammonton High School. He was a member of the United States Navy Reserves for a period of six years, and in 1974 he earned an honorable discharge.

Between 1968 and 1980, the respondent held a variety of mechanics jobs and for a period owned his own construction company.

Between April 1979 and January 1985, the respondent took and successfully completed study related to slot machine mechanics and servicing at the Nevada Gaming School, Atlantic Casino Training Academy, Atlantic County College and A.C. Coin and Slot School (R-2).

In 1980, the respondent received casino employee license no. 9119-21 from the Commission.

From September 15, 1980 until August 23, 1985, the respondent was employed as a slot mechanic by Resorts International Hotel, Inc. (Resorts). At the time of his resignation, the respondent held the title of assistant lead mechanic and was assigned as the acting lead mechanic for the 12:00 a.m. to 8:00 a.m. shift. This was a supervisory

position, and the respondent was responsible for the servicing of slot machines, responding to problems and preparing machines for daily opening. During his tenure at Resorts, he earned excellent performance ratings and had been promoted on a regular basis (R-3). On August 23, 1985, the respondent resigned from employment by reason of his involvement in incidents that took place on August 12 and 13, 1985.

In August 1985, Harry H. Haag, an investigator with the Inspector General's Office at Resorts, commenced an investigation of employee Steven J. Pepper. Mr. Pepper was responsible for the burglar and fire alarm systems at Resorts. Also, he owned a private alarm installation company. Investigator Haag had reason to believe that Mr. Pepper was using Resorts' maintenance shop and property for his private business. His place of assignment was the fire alarm room and maintenance shop in the basement of Resorts (R-2). This room is not open to the public and only a few employees have access. It is a secured area for which Mr. Pepper had the key. Investigator Haag observed a substantial amount of unrelated employee traffic through the shop, which aroused his suspicions. The investigator then installed a hidden camera in order to monitor and record the activities in the shop.

On Monday, August 12, 1985, the investigator observed Mr. Pepper perform certain activities which appeared to involve the distribution of illegal drugs (P-7). This activity was performed at Mr. Pepper's workbench (P-3 through P-6). Mr. Pepper received money from a co-employee to whom he gave an unidentified substance. Also, Mr. Parisi entered the room, gave money to Mr. Pepper and received some of the substance. Other similar transactions were also observed during the day.

On Tuesday, August 13, 1985, similar conduct was observed (P-8). At 9:07 a.m., Mr. Parisi entered the shop with coffee and pastries. He gave money to Mr. Pepper and received a substance in return. Mr. Parisi then ingested the substance. Other similar transactions were also observed.

Mr. Parisi's involvement in the incidents occurred when he was off duty from work and subsequent to the end of his shift.

On August 13, 1985, Investigator Haag contacted the Division and related his observations. Under the direction of Detective Loufik, of the New Jersey State Police assigned to the Division's response team to investigate narcotics activity as it pertains to

the casino industry, the Division continued the investigation. The video cassette tapes of events which occurred on August 12 and 13, 1985, were relied upon as probable cause for a search warrant. The warrant was executed on August 23, 1985. Mr. Pepper and other co-employees were arrested, and Division personnel discovered one ounce of methamphetamine and various drug-related paraphernalia. Mr. Pepper admitted the distribution of methamphetamine in the casino facility. Ultimately, Mr. Pepper and others were indicted (P-1), convicted and sentenced to various periods of incarceration. The respondent was never arrested nor charged and was advised that he would not be the subject of a criminal complaint.

On August 23, 1985, Investigator Haag interviewed Mr. Parisi along with other Resorts employees who had been implicated in the activity but had not been charged. The investigator and the respondent discussed the incidents of August 12 and 13, 1985. Ultimately, the respondent admitted that he had purchased one-quarter gram of "crank" for \$20 on each day. (Crank is a street name for methamphetamine, a central nervous system stimulant.) The respondent stated that he used methamphetamine in order to stay awake for a long drive home. He purchased methamphetamine from Mr. Pepper when he felt the need for it. Subsequent to the respondent's admission, Mr. Haag offered the respondent the opportunity to resign voluntarily or, in the alternative, to be fired. The respondent executed a written resignation at that time. Investigator Haag recalled that the respondent was cooperative in every regard and offered to help in any future investigations. The respondent also admitted this course of conduct during his testimony at the hearing.

From October 1985 until the present, the respondent has been employed by Irrigation Unlimited in Hammonton. He manages the company's service department and has an excellent record (R-1).

In January 1986, Mr. Parisi spoke with Detective Loufik and made an offer to help the Division in drug investigations in exchange for the Division's assistance in this case. Although there was a verbal agreement by the State Police, the respondent has not produced any information.

The respondent testified that his misconduct cost him a very good position at Resorts and substantial personal losses. He expressed a sincere intent not to repeat his misconduct. He has not used illegal drugs subsequent to August 1985.

Although the respondent did not dispute the Division's allegations and the Division did not attempt to refute the balance of the respondent's testimony, it is important to assess the sincerity of the respondent's assertions of remorse and his expressed intentions not to repeat his misconduct, which determination must rest upon the respondent's credibility. Initially, his position in this matter must be recognized, i.e., as the respondent he seeks to prevent revocation of his license and, as such, he has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the respondent's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the respondent testified truthfully in every regard. Further, the respondent candidly admitted his misconduct and acknowledged the serious cost, both professional and personal, which he has incurred. Accordingly, I am persuaded to accept his testimony in all respects.

The respondent also offered various letters on his behalf. Letters were submitted from Robert A. Stewart, manager, Slot Department at Resorts (R-4); Christopher R. Gibase, a former employment supervisor (R-5); Ralph Salamone, a former supervisor at Resorts (R-6); and Robert Scaffidi, president of Irrigation Unlimited, the respondent's current employer (R-1). Each stated that the respondent performed his employment functions in a professional and a responsible manner.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

#### DISCUSSION OF LAW AND CONCLUSION

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanctions against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license."

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Section 86g provides that a person be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A.

5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders' International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985) certif. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means, "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conduct constitutes violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - methamphetamine, and of N.J.S.A. 24:21-20b, use of a controlled dangerous substance - methamphetamine, which, under the circumstances, renders continued licensure to be inimical to the Act. The respondent's admissions to investigator Haag, which were corroborated by the investigator's observations and the video tapes, establish the charged misconduct.

Although the charged misconduct is not an included disqualifier under section 86c(3), it is clear that the misconduct was extremely serious in nature. More specifically, the respondent was licensed and employed in a supervisory capacity with responsibility for slot machines and for the personnel who maintained the machines. Although he was off-duty at the time, the respondent was present in the casino facility. Also, the respondent knew that his conduct was unlawful as well as that it constituted a breach of his duties under the Act and under the terms of his employment. This misconduct reflects a knowing and contumacious disregard of the criminal laws of this State, the regulations governing the casino industry and the procedures of his employer.

Nevertheless, the respondent has made substantial rehabilitative efforts. He has acknowledged fully and accepted responsibility for his misconduct, and has acknowledged his actions openly and honestly even beyond the scope of the specific allegations. Further, I am persuaded that the respondent recognizes his past errors and will no longer participate in illegal drug activities. It was apparent that the respondent has suffered substantially by reason of his misconduct. Also, the respondent has secured employment and has earned a very positive record.

The remaining issue is whether the respondent's rehabilitative efforts are sufficient to overcome his prior misconduct. They are not. Although the respondent has made outstanding progress, more time must pass in order to assess accurately the alteration of his behavior and his commitment not to repeat his misconduct in the future.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Parisi was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Aside from the respondent's misconduct, he appears to possess the requisite good character, honesty and integrity. However, because the nature of the offense presents a substantial risk to the integrity of the industry and because sufficient time has not passed in order to test accurately the respondent's rehabilitative efforts, he has failed to establish that he continues to possess the degree of good character, honesty and integrity required to maintain licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

**(C) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;
- d. the prior history of the particular licensee involved with respect to gaming activity;
- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. . . .

For the reasons previously expressed, it is clear that the respondent's criminal misconduct constitutes disqualifying offenses and that he no longer possesses the qualifications for licensure. Accordingly, the respondent's license must be revoked. I so **CONCLUDE**.

**DISPOSITION**

It is **ORDERED** that the petition of the Division against the casino employee license of Anthony M. Parisi be **GRANTED** and that license no. 9119-21 be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 4, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

August 6, 1986  
DATE

Doris J. Power  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 7 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- P-2      Blueprint
- P-3      Photograph
- P-4      Photograph
- R-5      Photograph
- P-6      Photograph
- P-7      Video tape of fire alarm room on August 12, 1985
- P-8      Video tape of fire alarm room on August 13, 1985
- 
- R-1      Letter from Robert Scaffidi, dated July 2, 1986
- R-2      Resume of Anthony Michael Parisi (9 pages)
- R-3      Personnel file of Anthony M. Parisi from Resorts International Hotel, Inc. (154 pages)
- R-4      Letter from Robert A. Stewart, dated June 9, 1986
- R-5      Letter from Christopher R. Gibase, dated June 10, 1986
- R-6      Letter from Ralph Salamone

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

- P-1 Id.    State of New Jersey v. Steven J. Pepper, Bruce Sacco, Robert Victor Hartline, James M. Gervasi, Superior Court of New Jersey, Law Division - Criminal, Docket No. 85-11-2032A, Indictment, filed on November 27, 1985 (13 pages)
- P-9 Id.    Photograph

WITNESS LIST

For the petitioner:

Harry H. Haag  
Richard Loufik  
Anthony M. Parisi

For the respondent:

Anthony M. Parisi



Pasqualoni for renewal of his casino key employee license<sup>1</sup> and revoke the casino key license held by Louise Keto and the casino employee license and casino hotel employee registration held by Martha Perez. The ALJ found that the respondents had engaged in conduct which constituted the offense of falsifying and tampering with records, in violation of N.J.S.A. 2C:21-4(a), and therefore, were disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g). Mr. Pasqualoni filed exceptions to the initial decision on August 14, 1986, Ms. Keto and August 15, and Ms. Perez on August 18, 1986. The Division of Gaming Enforcement (DGE) filed its responding brief on September 8, 1986. We heard oral argument from the parties at the public meeting of October 22, 1986.

Thereafter, at the public meeting of October 29, 1986, we requested the parties to brief two issues not raised in the complaint or in the prehearing conference order. They are whether the facts in these cases supported finding that the respondents violated sections 86(b) and 123<sup>2</sup> and, if so,

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1. In light of the facts as developed later, this application is more accurately described as a plenary casino key employee license application rather than a "renewal."
  2. Sections of the Casino Control Act may be cited  
(Footnote Continued)

what sanction, if any, would be appropriate. Briefs from the parties were filed on November 17, 1986, and oral argument on these additional issues was presented at the November 19, 1986, public meeting.

For the reasons stated hereafter we adopt the ALJ's findings of fact, but modify the conclusions of law to:

- (1) Find that the conduct of John A. Pasqualoni on June 13, 1985, violated section 86(b);
- (2) Find that Louise Keto and Martha Perez aided and abetted Mr. Pasqualoni in his deception, and are therefore subject to the same civil sanctions as Pasqualoni pursuant to sections 123(b) and 86(b) of the Act;
- (3) Find that the respondents' actions on June 13, 1985, undermine the present good character, honesty and integrity of each;
- (4) On these bases, deny the casino key employee license application of John A. Pasqualoni and revoke the casino key employee license of Louise Keto and the casino employee license of Martha Perez;

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(Footnote Continued)

throughout this opinion by the section number only, omitting the prefix "N.J.S.A. 5:12- ."

- (5) Reject the remaining conclusions of law as unnecessary in light of the ultimate disposition of this matter; and
- (6) Waive the disqualification of Ms. Perez in the interests of justice pursuant to section 91(e), thereby permitting her to retain her casino hotel employee registration.

FACTS

As indicated above, after reviewing all the testimony, documents and the stipulation of facts, we adopt all the ALJ's findings of fact in this case. A copy of the initial decision is appended hereto for convenient reference. Nevertheless, for purposes of completeness, a short recitation of the events pertinent to these matters follows.

On June 13, 1985, the respondents were employed by Trump Castle Associates (Castle), then an applicant for a casino license. A hearing on the license application and certificate of operation was scheduled for the following day, June 14, 1985. Each of the respondents was in the employ of the Castle, Mr. Pasqualoni as director of slot operations, Ms. Keto as director of licensing and Ms. Perez as licensing coordinator. Shortly after four o'clock on June 13, 1985, Ms. Keto received a phone call from John Bowman, Chief of the Employee Licensing Bureau, License Division, of the Commission's staff. Mr. Bowman advised Ms.

Keto that the Commission had no record that Mr. Pasqualoni had filed for renewal of his casino key employee license in 1985. Consequently, Mr. Pasqualoni's key license had expired on May 31, 1985.<sup>3</sup> Ms. Keto indicated to Mr. Bowman that he must be mistaken because her records indicated that a renewal form had been timely filed. However, after checking Mr. Pasqualoni's personnel file and the Castle's licensing status report, as well as inspecting Mr. Pasqualoni's license credential, it became apparent that Mr. Pasqualoni's key employee license had indeed expired as Mr. Bowman had asserted.

All the respondents met in Ms. Keto's office and there discussed and agreed that Mr. Pasqualoni would prepare and backdate his 1985 renewal application form and that respondent Keto would notify the Commission that he had submitted his application form and documents to the Castle's licensing department prior to the expiration date but, due to inadvertence, it had not been forwarded to the Commission. Respondents Keto and Perez were aware that the

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3. All the parties stipulated that according to employee licensing files at the Castle, Mr. Pasqualoni's license had expired on May 28, 1985. However, it is Commission practice for casino key licenses to run for one year, expiring on the last day of the month in which they had been issued 12 months previous. See DGE interview, John I. Bowman, June 14, 1985, D-21 in evidence.

Commission's licensing staff would accept the application as a timely filing if a member of the Castle's licensing department affirmed that the late filing was the fault of the casino staff and not of the applicant. All agreed on this plan even though they were aware that Mr. Pasqualoni's assistant, Philip Waganheim, the assistant director of slot operation for the Castle, had an appropriate license and could fulfill the minimum staffing requirements necessary for the issuance of the Castle's certificate of operation. Respondent Keto then placed a call to Claudette LeFevre, then director of legal affairs for the Castle, to advise her of the problems with Mr. Pasqualoni's license renewal and of the plan to notify the Commission that the renewal application had been "lost" by the Castle's licensing department. In order to permit Mr. Pasqualoni to continue working, Ms. LeFevre authorized the deception, although she denied that she was aware that the actions required a backdating of the application form.<sup>4</sup>

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4. The DGE objected to Ms. LeFevre's application for a casino key license based upon this incident. After the Commission denied her withdrawal request (Commission order dated June 18, 1986), Ms. LeFevre waived her right to a hearing and her license application was denied. (Application of Claudette LeFebre for a Casino Key Employee License, Docket No. 86-EA-44, Commission orders dated August 12, 1986, and December 12, 1986.)

Thereafter, respondents Perez and Pasqualoni proceeded to Ms. Perez's office to prepare his renewal application form. Ms. Keto had a series of telephone conversations with John Bowman, first to advise him that the renewal application had been filed with her office in a timely fashion but had been misplaced and, later, that she would deliver the forms to him the following morning. Ms. Keto also indicated that she would provide what was necessary in the form of a statement of explanation and, in response to Mr. Bowman's questions, stated that the application she had was dated May 7, 1985, and notarized on May 10, 1985.

In a series of telephone conversations between Commission staff members including Christopher Storcella, Director, Licensing Division, and Michael Santaniello, then Deputy Director, Division of Financial Evaluation and Control, it was decided that because of the pendency of the casino license and operations certificate hearing the next day, it would be expeditious for Mr. Santaniello, then present at the Castle, to obtain the renewal application forms from the licensing department at the Castle. Accordingly, Mr. Santaniello proceeded to the office of respondent Louise Keto.

When he arrived at her office, respondent Keto and Ms. LeFevre were present. He advised them that he was there to pick up the Pasqualoni renewal application. Respondent Keto

responded that she could not provide it at that time since they were busy with another crisis. Thereafter, upon further questioning, she advised him that they were still attempting to locate it. While waiting for the licensing staff to locate the application forms, Mr. Santaniello seated himself in the outer office across from the office labeled "Licensing Supervisor", which was respondent Perez's office. At one point, respondent Perez left her office and, while the door was open, Mr. Santaniello observed respondent Pasqualoni inside. Thereafter, Mr. Santaniello asked respondent Keto whether she had been able to contact Mr. Pasqualoni concerning his missing application form and was advised that she could not find him. All the respondents acknowledged that during the time that Mr. Santaniello sat in the outer office, respondent Pasqualoni, with the assistance of respondent Perez, was completing the necessary renewal forms.

After a series of actions by respondents Keto and Perez to make it appear as though they had "found" the documents, the renewal form, waiver and accompanying financial statement were delivered to Mr. Santaniello by respondent Keto. He again asked her whether she was able to contact Mr. Pasqualoni and, after using a telephone subterfuge, she indicated that she could not find him.

Mr. Santaniello, now accompanied by Mr. Storcella, spoke briefly with Willard "Bucky" Howard, Vice-President of Casino Operations for the Castle, who advised them that he understood that respondent Pasqualoni was in the licensing office. They responded that they were aware of that fact but declined Mr. Howard's offer to speak with Pasqualoni. Santaniello and Storcella then left the Castle carrying the application renewal form, waiver authorization and financial statement provided by respondent Keto. Later that same evening, they contacted the Division of Gaming Enforcement to report their observations.

Respondent Pasqualoni remained in the licensing area until the departure of Messrs. Santaniello and Storcella and then advised his secretary that he was going to the Lagoon Restaurant. While at the Lagoon Restaurant, he signed the necessary tax returns, authenticating them as copies, as well as a check dated May 7, 1985, in the amount of \$500, representing his renewal fee. These were supplied by respondents Keto and Perez. After he completed those documents, respondents Keto and Perez left Mr. Pasqualoni at the restaurant.

Shortly thereafter, Pasqualoni's assistant, Mr. Waganheim, arrived at the restaurant and advised him that he had been told by Mr. Howard that Mike Santaniello was aware of what had occurred. Thereafter, Mr. Waganheim and

respondent Pasqualoni spoke to Mr. Howard on the phone and later drove to his residence. Mr. Pasqualoni related to Mr. Howard the events of the day and counsel for Trump Associates, Nicholas Ribis, Esq., was consulted. Mr. Ribis contacted respondent Keto and instructed her not to deliver any further information or documents concerning Mr. Pasqualoni's renewal to the Commission.

On June 21, 1985, respondent Pasqualoni filed a key application, dated June 19, 1985, with the Casino Control Commission.

SECTION 86(b) DISQUALIFICATION

As noted previously, we requested that the parties address the issue of whether the facts as found by the ALJ would support a finding that the respondents violated sections 86(b) and 123 of the Act. After reviewing the facts in the context of that issue, we so hold.

N.J.S.A. 5:12-86 provides in pertinent part:

The Commission shall deny a casino license to any applicant who was 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;

Section 123(b) provides that:

Any person who aides, abets, counsels,  
commands, induces, procures or causes  
another to violate a provision of this  
act is punishable as a principle and  
subject to all sanctions and penalties,  
both civil and criminal, provided by  
this act.

It is undisputed that respondent Pasqualoni signed under  
oath three documents that were inaccurately dated: a  
license renewal application, a financial statement and a  
waiver of liability. All of these documents were  
inaccurately notarized by respondent Martha Perez. These  
documents were submitted to Commission personnel as part of  
respondent Pasqualoni's renewal application. Two additional  
documents were prepared; copies of Pasqualoni's tax forms,  
and a personal check, the latter of which was also  
inaccurately dated and signed by respondent Pasqualoni, in  
furtherance of his "renewal" application.

Commission regulation N.J.A.C. 19:41-7.10 requires  
that, "All application, registration, business enterprise  
disclosure and personal history disclosure forms and all  
other papers relating thereto submitted to the Commission or  
the Division by or on behalf of an applicant shall be sworn  
to or affirmed and subscribed and dated by the applicant..."  
Since the Commission regulation requires that all of these

documents be signed, dated and sworn to by the applicant, it is evident that this is information, documentation and assurances requested by the Commission within the meaning of section 86(b).

We have previously held that non-disclosures which are intentional or evince a conscious disregard for the regulatory process result in disqualification. Non-disclosures which are merely inadvertent or ignorant do not. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 13 (1979). It cannot be argued that the applicant's backdating of these documents should not result in disqualification because the action was not a willful non-disclosure. Respondent Pasqualoni was fully aware of the purpose behind backdating the document and that it constituted a misrepresentation to the Commission. Further, upon becoming aware of Mr. Santaniello's presence in the licensing office and thus given the opportunity to abandon the scheme, he chose instead to continue the deception. In furtherance of the consorted plan, he executed additional documents at the Lagoon Restaurant to complete the application. Despite the pressures of the casino opening, there is no doubt that these actions were taken intentionally.

Nor can it be said that the applicant's disclosure to his superior and to legal counsel on the night of June 13 and his subsequent cooperation with the Division of Gaming Enforcement cured his willful misrepresentation. As we found in a prior licensing matter, In the Matter of the Application of Angelo J. Ruggiero for a Casino Key Employee License No., Docket No. 79-EA-69 (Commission decision, December 1979), "...intentional failure to disclose where there are specific requests cannot be excused by subsequent 'candor and contrition' after the Division of Gaming Enforcement has discovered the undisclosed information. The Commission and the Division are entitled to disclosure of requested relevant information at the time when the request is made and the PHDF is completed." Id. at 9. This finding applies with equal force when an applicant supplies inaccurate, incomplete and misleading information. See In the Matter of John T. Daniels for a Casino Employee License, Docket No. 78-EA-13 (Commission decision December 13, 1979). Therefore, we conclude that respondent Pasqualoni is disqualified pursuant to section 86(b) of the Act.

We must evaluate the conduct of respondents Keto and Perez to determine whether their efforts in collusion with respondent Pasqualoni aided and abetted him in his violation of section 86(b). After reviewing the evidence, we conclude that their actions warrant that they be treated in the same

manner as though they were the principal in the section 86(b) violation. It was by virtue of the experience of these two respondents in employee licensing matters that this scheme was concocted. Respondent Perez's participation was vital because the signature and date on the application was required by Commission regulation to be executed before a notary or other person authorized to take an oath or affirmation. Further, respondents Keto and Perez engaged in various subterfuges in order to maintain the fiction that renewal application had been prepared by respondent Pasqualoni in early May and submitted to the Trump Castle licensing staff. All these actions furthered the intent of all the respondents to deceive the Commission in order to permit respondent Pasqualoni to continue working. Therefore we find that respondents Perez and Keto are disqualified by sections 86(b) and 123(b) of the Act.

GOOD CHARACTER, HONESTY AND INTEGRITY

The ALJ specifically declined to reach the issue of whether the conduct of the respondents undermined their continued good character, honesty and integrity under the Act. As we have stated in many instances, the disqualification criteria of section 86 cannot be separated from the applicant's affirmative burden of proof under section 89. In the Matter of the Application of William

Gonzalez for Licensure as a Casino Employee, Docket No. 80-EA-4 (1980).

The ALJ aptly summed up the dilemma faced by all the respondents.

Respondents were confronted with two courses of action. One was to notify the Commission of the non-renewal and allow a late renewal application to be filed, which might have taken additional time for respondent Pasqualoni to return to his position of slot manager for the Castle operation. The second alternative, which they chose, was to lie to the Commission regarding the filing of the renewal application. There is no question that it was done intentionally despite testimony which discussed the pressure of the moment for all of the reasons previously stated. Pressure situations create difficult choices for people. If pressure allows a choice of deceit, it cannot be compatible with the philosophy of the Casino Control Act and the responsibilities of the Casino Control Commission in its supervisory relationship to the Casino Control industry. (Initial decision at 23).

Under these facts, we cannot conclude that licensees and applicants who lie, conceal information and provide false and misleading information and documents have met their burden of establishing good character, honesty and integrity under the Act. See In the Matter of the Application of Edward F. Wunsch, Sr., for Licensure as a Casino Key Employee, Docket No. 83-EA-35 (Commission Decision November 17, 1983) at 12. Based on their conduct on June 13, 1985,

we therefore find that respondents Pasqualoni, Keto and Perez have failed to maintain the requisite good character, honesty and integrity required under section 89 and 90 of the Act.

PENALTY

Because we have found these respondents disqualified under the Act, the only appropriate penalty is denial or revocation, as applicable. See State v. Wynette Harris, Docket No. 81-18 (Commission Decision on Remand from Superior Court, Appellate Division, June 29, 1983). In light of this disposition, we need not address the remaining counts of the Division's complaint alleging additional bases for disqualification under the Act. Notwithstanding the above, we find it in the interests of justice to waive the section 86 disqualification of Martha Perez, inclusive of any disqualification under section 86(g), to permit her to retain her casino hotel employee registration. Respondent Perez's participation in this incident was that of a subordinate working under the direction of casino key employees. Considering her limited role, we find it appropriate pursuant to section 91(e) to allow her to retain her registration.

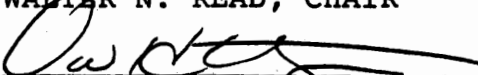
This has been a difficult case for us to resolve. All concerned recognize the particular pressures these

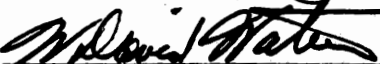
respondents experienced in the opening of this casino facility. Their downfall was their perception that the regulatory authorities were agents to be manipulated rather than resources to rely on in qualifying the facility and its employees. The role of the Commission and Division is to scrutinize and control to the extent humanly possible all aspects of the casino industry in order to protect the public's interest in casino operations and to maintain and retain the integrity, public confidence and trust in the industry. To do that we depend largely on the cooperation of those we license and register. Acts of deception against our staff and the Division strike at the foundation of that system. Nevertheless, we recognize the personal cost to these respondents and, by finding disqualification on the grounds outlined here, have mitigated to some extent the harsh consequences of denial and revocation.


Therefore, for the reasons stated, we modify the initial decision accordingly and deny the casino key license application of John A. Pasqualoni, revoke the casino key employee license of Louise Keto, revoke the casino employee license of Martha Perez, and waive the section 86

disqualification under section 91(e) to permit Martha Perez to retain her casino hotel employee registration.

  
\_\_\_\_\_  
WALTER N. READ, CHAIR

  
\_\_\_\_\_  
VALERIE H. ARMSTRONG, VICE-CHAIR

  
\_\_\_\_\_  
W. DAVID WATERS, COMMISSIONER

  
\_\_\_\_\_  
E. KENNETH BURDICK, COMMISSIONER

DATED: December 3, 1986

For the reasons stated on the public record, I hereby dissent.

  
\_\_\_\_\_  
CARL ZEITZ, COMMISSIONER

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-392 and  
85-EA-173  
OAL DOCKET NOS. CCC 6528-85  
and CCC 6748-85  
(CONSOLIDATED)

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STATE OF NEW JERSEY, DEPARTMENT OF LAW :  
AND PUBLIC SAFETY, DIVISION OF GAMING :  
ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
JOHN A. PASQUALONI, LOUISE KETO AND :  
MARTHA PEREZ, :  
Respondents. :  
and :  
APPLICATION OF JOHN A. PASQUALONI FOR :  
A CASINO KEY EMPLOYEE LICENSE :

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A hearing in these consolidated matters having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the parties having filed exceptions to the initial decision and replies thereto; and the Commission having requested and received briefs from the parties on the issue of whether the facts in these matters supported a finding that the respondents violated N.J.S.A. 5:12-86(b) and -123 and, if so, what sanction, if any, would be appropriate; and the Commission having considered the entire record of these

proceedings at its public meetings of October 22, October 29, November 19, and December 3, 1986,

IT IS on this 12<sup>th</sup> day of December 1986, ORDERED that the initial decision is modified as set forth in the Commission's decision on these matters dated December 3, 1986; and

IT IS FURTHER ORDERED that the application of John A. Pasqualoni for a casino key license is denied and the casino key employee license of Louise Keto and the casino employee license of Martha Perez are revoked substantially for the reasons stated in the Commission's decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that in the interest of justice, the disqualification of Martha Perez under N.J.S.A. 5:12-86 is waived pursuant to N.J.S.A. 5:12-91(e) to permit her to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that John A. Pasqualoni, Louise Keto and Martha Perez are prohibited for reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8(a).

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 6528-85

AND CCC 6748-85

(CONSOLIDATED)

AGENCY DKT. NOS 85-392, 392(a)

and 85-EA-173

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW ENFORCEMENT,  
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**JOHN A. PASQUALONI,  
LOUISE KETO AND MARTHA PEREZ,**

Respondents,

**AND**

**IN THE MATTER OF THE APPLICATION  
OF JOHN A. PASQUALONI  
FOR CASINO KEY EMPLOYEE  
LICENSURE RENEWAL**

---

**Frederic E. Gushin**, Deputy Attorney General and **Wendy Way**, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**Joseph A. Fusco**, Esq., for respondent John A. Pasqualoni (Wilson, Fusco, & Scerni, attorneys)

**David M. Satz, Jr.**, Esq., for respondent Louise Keto (Saiber, Schlesinger, Satz and Goldstein, attorneys)

**Susan B. Lang**, Esq., for respondent Martha Perez (Steedle, Megargee, Youngblood, Franklin & Corcoran, attorneys)

Record Closed: June 10, 1986

Decided: July 18, 1986

731

BEFORE RALPH J. TOLOMEO, ALJ:

STATEMENT OF THE CASE

On September 25, 1985, the Division of Gaming Enforcement (Division), petitioner, filed a complaint with the Casino Control Commission (Commission). The complaint named John A. Pasqualoni, Louise Keto and Martha Perez as respondents, alleging that the respondents' conduct on June 13, 1985, constituted a violation of N.J.S.A. 2C:21-4a, which negatively impacts on their honesty, integrity and good character pursuant to N.J.S.A. 5:12-89b(2), and which constitutes an inimical offense pursuant to N.J.S.A. 5:12-86c(4). Additionally, the complaint alleged that the conduct of respondents Keto and Pasqualoni on June 13, 1985, constituted a violation of N.J.S.A. 5:12-80(d) and, further, that such conduct reflects negatively upon the good character, honesty and integrity of respondents Pasqualoni and Keto, pursuant to the provisions of N.J.S.A. 5:12-89b(2). The complaint seeks judgment imposing an appropriate penalty with respect to the licensure as casino key employees of respondents Pasqualoni and Keto and the casino employee license and casino hotel registration of respondent Perez.

Additionally, on September 25, 1985, the Division of Gaming Enforcement filed a letter with the Casino Control Commission regarding the renewal application of John A. Pasqualoni for a casino key employee license for the renewal year of 1985. In its letter, the Division of Gaming Enforcement took "no position" regarding the Pasqualoni renewal application; however, the Division raised the issue of Pasqualoni's good character, honesty and integrity based on the allegations contained in the complaint filed.

At its public meeting of October 2, 1985, the Commission determined to serve on Mr. Pasqualoni a notice of its intent to deny his pending application for a casino key employee license. Additionally, the Commission suspended the casino key employee license of respondent Keto and the casino employee license of respondent Perez.

PROCEDURAL HISTORY

As a result of the above actions, respondents Pasqualoni, Keto and Perez requested hearings regarding the allegations contained in the complaint and respondent Pasqualoni requested a hearing regarding his application for renewal of his casino key employee license. The Commission, upon receipt of respondents' requests, determined the

matters to be contested cases and transmitted the same to the Office of Administrative Law for a determination pursuant to N.J.S.A. 52:14F-1 et seq.

The cases referred by the Commission to the Office of Administrative Law were received on October 11, 1985, and the Office of Administrative Law scheduled a prehearing conference on November 22, 1985. At the prehearing conference, petitioner moved to amend the second count of the complaint to include respondent Perez, alleging that "the conduct of respondent Perez as described herein constitutes a violation of N.J.S.A. 5:12-80d," and further demanding judgment for an appropriate sanction as to respondent Perez. This amendment request was unopposed and granted as well as amending the answer of defendant Perez to a denial of the allegation. Additionally, all parties agreed that due to the mutuality of allegations and proofs, the application case of John A. Pasqualoni for a casino key employee license renewal and the complaint action of the Division of Gaming Enforcement seeking sanction against respondents Pasqualoni, Keto and Perez should be consolidated. The matters were ordered consolidated.

Thereafter, a prehearing order issued, stating the issues for determination as whether or not the conduct alleged in the complaint constituted an offense which, if proven, was a violation of N.J.S.A. 2C:21-4a and, as such, a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), as contemplated by N.J.S.A. 5:12-86g. Upon receipt of the prehearing order, counsel for respondents objected to this issue and a hearing regarding the objection was conducted telephonically on January 7, 1986. At that time, the Division moved to amend its complaint to allege that the conduct, if proven, constituted a violation of N.J.S.A. 2C:21-4a as alleged in the complaint filed and, therefore, moved to amend its complaint alleging a violation of the statutory disqualifying offense. Pursuant to N.J.A.C. 1:1-6.3, the petitioner's request to amend was allowed and all parties agreed that the matter would proceed to hearing as scheduled, commencing January 8, 1986. On that date, the hearing commenced and was conducted for four days—January 8, 9, 10 and 13, 1986. Thereafter, additional documents and briefs were submitted by the parties and, with the consent of the parties, the record remained open in this matter until June 10, 1986, on which date the record closed.

#### FACTUAL FINDINGS

On the scheduled hearing date and prior to the testimony of any witnesses, counsel for the parties indicated that they had prepared and offered to the court

stipulations of facts regarding each respondent (JP-1 Evid., MP-1 Evid. and LK-1 Evid.). These stipulations of facts were received into evidence with the understanding that witnesses would be called by the parties to provide testimony regarding events which occurred subsequent to the meeting of all respondents at the Lagoon Restaurant in Brigantine, New Jersey, on the evening of June 13, 1985. Notwithstanding the stipulations, witnesses called by the parties as well as all three respondents who testified on their own behalf, offered testimony regarding their knowledge of facts previously stipulated.

Having reviewed the stipulations of facts as well as having the opportunity to hear the testimony of witnesses, including respondents, and in doing so, having the opportunity to assess the demeanor, attitude and credibility of the same, as well as considering all documentary evidence submitted by the parties, the following is Found as Fact.

On June 13, 1985, respondents John A. Pasqualoni, Louise Keto and Martha Perez were employees of Trump Castle Casino (Castle). At that time, respondent Pasqualoni was the director of Slot Operations and reported directly to Mr. Willard "Bucky" Howard, Vice President for Casino Operations. Respondent Louise Keto was the Director of Licensing and reported to Claudette LeFevre, Director of Legal Affairs. Respondent Martha Perez was a licensing coordinator supervised directly by Louise Keto.

On June 13, 1985, Trump Castle Casino (Castle) was an applicant for a casino license; however, a certificate of operation to commence casino operations had not been issued by the Casino Control Commission. A hearing for the same was scheduled for June 14, 1986 before the Casino Control Commission. Trump Castle Associates had acquired this facility from Hilton in April 1985, after the casino license application of Hilton Hotel Corporation was denied by the Casino Control Commission in February 1985.

The position of Director of Slot Operations, then held by respondent Pasqualoni, is and was at all times relevant, an existing position in the organizational structure at the Castle. The position is included in the job compendium of the Castle, which was part of the system of internal procedures and both administrative and accounting controls submitted by the Castle to the Casino Control Commission pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. The position requires a licensed casino key employee whose primary responsibilities are defined as "responsible for the administration

of slot operations and for the hiring and termination of all slot department personnel. Establishes policy in accordance with Casino Control Act and attendant regulations. Evaluates slot machine performance and recommends remedial action when required."

The position of Director of Licensing, then held by Louise Keto, also included in the jobs compendium of Castle, requires a licensed casino key employee whose primary responsibilities are "the preparation, implementation and overall supervision of all programs, systems and procedures relating to employee licensing. Acts as liaison with gaming agencies for all matters pertaining to employee licensing. This position reports directly to the Director of Legal Affairs and supervises employee licensing coordinator."

The Director of Licensing is also required to "be experienced in licensing departments of a casino/hotel, be familiar with the Casino Control Act and Casino Control Commission Regulations as they relate to employee licensing." This position also requires "excellent communication skills and knowledge of data processing systems, and a degree in Business Administration or a related area is preferred."

The job compendium of Castle describes the position of licensing coordinator, then held by Martha Perez, as "responsible for new license applications as well as license renewals, upgrades and verifications. Acts as liaison with department heads, reviews all key PHDF's worked on by specialists, and prepares petitions. Also responsible for reviewing and compiling status reports for department heads and generating and reviewing licensing computer reports for submission to the Casino Control Commission and Division of Gaming Enforcement. Assures work permit system is in compliance with Casino Control Commission regulations, policies and procedures." This position reports to the Director of Licensing and supervises employee licensing specialists and employee licensing clerks. The requirements of the position are two years in Human Resources or a related area, and basic knowledge of data processing. It further requires knowledge of the Casino Control Act and regulations and procedures related to employee licensing. A high school diploma is required and a college degree is preferred.

At this time, respondent Pasqualoni resided in Ocean County, New Jersey, and was 39 years of age. In 1965 and 1966, he served as part of the security agency of the United States Army and was honorably discharged, attaining the rank of E-3. From November 1977 to March 1979, respondent Pasqualoni was employed at the Frontier

Casino in Las Vegas, Nevada, as a slot attendant and, subsequently, as an assistant shift manager. In April 1979, respondent Pasqualoni began employment with Bally's Park Place Casino Hotel in Atlantic City, New Jersey. He held a casino employee license in December 1979 and, on May 5, 1980, was upgraded to a casino key employee licensee. Upon receiving his casino key employee license, respondent Pasqualoni was employed by Bally's in the position of slot shift manager and assistant slot manager. In November 1982, respondent Pasqualoni became employed by the Tropicana Hotel Casino in Atlantic City as slot marketing manager and reported directly to Willard "Bucky" Howard, Vice President for Casino Operations. In April 1984, respondent Pasqualoni left the Tropicana Hotel Casino, along with Mr. Howard, and in May 1984, became employed with the Hilton Hotel Corporation, which was applying for a casino license. Respondent Pasqualoni was hired as the Director of Slot Operations.

Respondent Louise Keto became involved in the casino industry when she was employed by the Playboy Hotel Casino as an employee licensing supervisor in August 1980, a position she held until September 1983, when she became employed as the Director of Licensing by the Hilton New Jersey Corporation (Hilton). Respondent Keto continued in that capacity when Hilton was acquired by Trump Castle Associates (Castle) in April 1985.

Respondent Martha Perez became employed in the casino industry in September 1980, working at Harrah's Marina Hotel Casino in the position of licensing clerk until April 1981. From April through August 1981, she was employed by Harrah's in the position of theatre wardrobe assistant. In February 1982, respondent Perez was employed by the Sands Hotel Casino in the position of licensing clerk and was subsequently promoted to the position of licensing coordinator. She left that position with the Sands in July 1984 and commenced employment as a licensing coordinator with the Hilton. She continued in that capacity when Hilton was acquired by Trump Castle Associates (Castle) in April 1985.

All respondents have been appropriately licensed in their respective positions throughout their employment with the casino industry in Atlantic City.

On April 13, 1984, while still employed by the Tropicana, respondent John Pasqualoni filed his 1984-85 casino key employee renewal application with the Casino Control Commission. At that time, he was terminating his employment with the

Tropicana to join the Hilton. A letter, dated May 16, 1984, from the Tropicana personnel administration manager to the Casino Control Commission Accounting Unit, states that although the Tropicana had submitted a casino key employee license renewal application on behalf of respondent Pasqualoni on April 13, 1984, due to his resignation from their employment, the Tropicana was withdrawing any financial obligation incurred after May 16, 1984, for his license fee.

After commencing employment with Hilton, respondent Pasqualoni took a copy of the May 16, 1984 Tropicana letter to respondent Keto at the Hilton licensing department office, then temporarily located in Brigantine, to request payment for his 1984-85 employee license renewal fee. The same was processed and submitted. In the latter part of January 1985, respondent Pasqualoni went to the Atlantic City offices of the Casino Control Commission, Division of Gaming Enforcement, to obtain his casino key employee license credential for 1984-85 and, thereafter, with the assistance of the licensing department of the Hilton, in February 1985, he filed with the Casino Control Commission copies of his certificate of successful completion of a slot management course at the Casino Career Institute. As a result of this information, the Casino Control Commission issued a casino key employee license credential to respondent Pasqualoni with "slot department manager/shift manager" endorsement for the 1984-85 year, bearing an expiration date of "0585." This credential was obtained by respondent Pasqualoni in March 1985. Upon receiving this credential, respondent Pasqualoni notified respondent Keto that he had not yet received his licensure renewal notification for 1985. He was advised by Keto not to be concerned because things were backlogged at the Commission.

Prior to February 28, 1985, the Hilton Organization was constructing its casino hotel and had various offices located in Atlantic City and Brigantine for purposes of hiring employees and the processing of same through the licensing/registrant process with the Commission. On February 28, 1985, when the Commission denied the casino license application of the Hilton, most activities came to a halt until April 10, 1985, when Trump Associates entered into an agreement with the Hilton to purchase the property. This agreement called for a "closing" to transfer title from Hilton to Trump on June 14, 1985. Under the agreement of April 10, 1985, the Trump Organization viewed the property as "theirs" because of the amount of money at risk—namely, the purchase price of the real estate without any conditions regarding a casino license. According to Nicholas Ribis, Esq., attorney for Donald Trump in this matter, when his client decided to purchase the

property and entered into the agreement of April 10, 1985, Mr. Trump set a completion/opening date of June 14, 1985, and expected that deadline to be met. According to all witnesses, this created a great deal of "pressure" at all levels. In addition, the transitional posture, vis-a-vis, Hilton to Trump, created confusion for some employees insofar as to whom they were to report and who was actually in charge. The Trump Organization decided to retain certain key management personnel of the Hilton, which included respondents Pasqualoni, Keto and Perez, as well as Mr. Howard and Mr. John Fitzgerald, the Chief Operations Officer of the Hilton.

Sometime after 4:00 p.m. on June 13, 1985, respondent Louise Keto received a telephone call from John Bowman, Chief of the Employee Licensing Bureau of the Casino Control Commission. Respondent Keto and Mr. Bowman had several conversations that day regarding employee licensing. The purpose of this call was to inform her about a problem relating to the casino key employee license renewal application of respondent Pasqualoni in that Mr. Bowman told respondent Keto the Commission had no record of Pasqualoni filing a 1985 renewal application form with the Commission. According to the Commission's records, Pasqualoni's license had expired. Respondent Keto initially indicated to Mr. Bowman that there must have been a mistake because her records indicated that the renewal application form had been filed. Thereafter, several telephone conversations took place between John Bowman and respondent Louise Keto during which Louise Keto requested respondent Martha Perez to check the personnel file of John Pasqualoni. In addition to checking the personnel file itself, the Castle's computerized data information, known as a licensing status report, was inspected. The licensing status report, dated June 13, 1985, indicated that respondent Pasqualoni was issued his casino key employee license on May 28, 1984, and the same would expire on May 28, 1985. Additionally, the computer information indicated that his renewal application form was filed on April 13, 1985. The same information as to Pasqualoni was also reported on earlier licensing status report printouts as well as an organization master listing printed June 5, 1985. However, the organization master listing was not programmed for nor does it show a renewal application date.

In addition to reviewing the personnel file and computer information, respondent Keto directed respondent Perez to contact respondent Pasqualoni and instruct him to come to their office location. Respondent Perez placed a call to Mr. Pasqualoni's secretary, Rose Marie Scammell, who contacted respondent Pasqualoni. Respondent Pasqualoni went to the office of respondent Keto for the purpose of discussing the status

of his 1985-86 license renewal application. After a conversation among respondents Pasqualoni, Keto and Perez, it became apparent to all three that the casino key employee license renewal application of respondent Pasqualoni had not been filed with the Casino Control Commission. During this discussion, respondent Pasqualoni indicated to respondents Keto and Perez that Philip Waganheim, the Assistant Director of Slot Operations for the Castle, was appropriately licensed and that minimum staffing requirements would be satisfied through Waganheim's licensure. Notwithstanding this knowledge and information, respondents Keto and Perez determined that respondent Pasqualoni was entitled to hold this position. Since the Castle was applying for a conditional license the next day, anticipating an opening on June 17, 1985, assuming that the Casino Control Commission would approve such licensure, Keto recommended that respondent Pasqualoni be in the position of slot manager for the casino, when it opened.

Both respondents Keto and Perez acknowledge they were familiar with the renewal process and procedures for casino key employee licenses. The procedures require an applicant to submit the requisite documentation to the licensing department of a casino so that the department may file the forms with the Commission along with the applicable fee. If such applications are not filed with the Casino Control Commission prior to the expiration of an existing license, the license expires upon its expiration date. The policy of the Casino Control Commission, known to respondents Keto and Perez, provides that in the event the renewal application was submitted to the licensing department of a casino but was not forwarded to the Commission in a timely fashion, the Commission would accept an explanation from a representative of the licensing department and the applicant stating that the application form was received by the licensing department in a timely fashion but inadvertently was not forwarded to the Commission. Upon receipt of the appropriate forms and written explanation, the Commission would allow continuation of an existing license beyond its expiration until the renewal application was reviewed and a position taken with respect to the renewal of the license. Knowing this information, respondents Keto and Perez discussed with respondent Pasqualoni the preparation and backdating of his 1985 renewal application form with the understanding that respondent Keto would notify the Commission that respondent Pasqualoni had submitted his renewal application form and documents to the licensing department of the casino prior to the expiration date. However, due to inadvertence, the same had not been forwarded to the Casino Control Commission in a timely fashion.

After these discussions, respondent Keto placed a telephone call to Claudette LeFevre, who was then the Director of Legal Affairs for the Castle, to inform Ms. LeFevre that respondent Pasqualoni had failed to file his license renewal application. Ms. Keto also said that she would, subject to Ms. LeFevre's approval, represent to the Commission staff that the renewal application forms had been misplaced by the licensing department of the Castle, thereby allowing respondent Pasqualoni to continue working, although his license had expired at the end of May 1985, and no renewal application for the same had been submitted to the Commission. At that time, Ms. LeFevre authorized respondent Keto to proceed, although Claudette LeFevre denies that she was aware the "lost and/or misplaced" application forms were to be backdated (D-18 Evidence).

After Keto's conversation with Claudette LeFevre, respondents Perez and Pasqualoni went to the private office of respondent Perez, which adjoined respondent Keto's office, known as the "licensing supervisor" office. Then, respondent Perez assisted respondent Pasqualoni in the preparation of his renewal application form (D-1 & D-2 in Evid.). Thereafter, respondent Keto had a telephone conversation with John Bowman, Chief of the Employee Licensing Bureau for the Commission, during which respondent Keto advised John Bowman that a mistake had been made and that respondent Pasqualoni had given his renewal application to the licensing department but it was left in his file when they moved their offices from Brigantine. Respondent Keto stated it was the "casino's fault" that the application had not been submitted to the Commission, at which time John Bowman indicated that the situation as presented could then be resolved. A short time later, John Bowman called respondent Keto and inquired as to when the application was dated. Respondent Keto stated that the date was May 7, 1985, and that the application form was notarized on May 10, 1985. At that time, Mr. Bowman attempted to explain to Keto the need for a statement of explanation. Respondent Keto indicated that she knew what was necessary and would provide the same. Mr. Bowman advised her that he wanted the Pasqualoni forms submitted to him by 5:15 p.m. that evening. At respondent Keto's request, it was agreed that the forms would be delivered the following morning and arrangements were made for the same to be delivered by 8:15 a.m. on June 14, 1985.

Thereafter, John Bowman spoke with Christopher Storcella, Director of the License Division of the Casino Control Commission, regarding his (Bowman's) conversation and arrangements with respondent Keto regarding respondent Pasqualoni's license renewal

application. During this period of time, John Bowman related the facts to Maureen Williamson, acting manager of the Casino Control Commission's Accounting and Operations unit, who made an inquiry of Assistant Chief Thomas Gallagher. During this time period, Michael Santaniello, Deputy Director for Special Projects, Division of Financial Evaluation and Control of the Casino Control Commission, was in the office of Mr. Willard "Bucky" Howard, Vice President of Casino Operations for the Castle, where they discussed the general preparedness of the Castle to open for test days on Monday, June 17, 1985. Mr. Gallagher placed a call to Mr. Santaniello, who received the same in Mr. Howard's office. Mr. Gallagher advised Mr. Santaniello that Maureen Williamson had been trying to reach Mr. Santaniello and that he should contact her immediately. Upon receiving this call, Mr. Santaniello called Maureen Williamson. Ms. Williamson advised Mr. Santaniello that Mr. Bowman told her that the license of respondent Pasqualoni, slot manager for the Trump, had expired and Mr. Bowman asked whether Trump had anyone qualified to replace him. When Mr. Santaniello received this information, he requested the use of a "private" phone from Mr. Howard, at which point Mr. Howard offered the privacy of his office. Mr. Santaniello also advised Mr. Howard that there was a renewal problem with the license of respondent Pasqualoni and this was the purpose of making the phone call.

At this time, Mr. Santaniello telephoned Mr. Storcella and related the facts that he had acquired. Mr. Storcella then spoke with Mr. Bowman and then advised Mr. Santaniello that respondent Pasqualoni's license had expired as of May 31, 1985 and, according to the Commission's records, a renewal application had not been filed. Mr. Storcella further advised Mr. Santaniello that the Trump licensing unit told John Bowman that it had inadvertently failed to file the renewal application with the Commission and that the renewal application was in "their" hands with the understanding that it would be delivered to the Commission. Mr. Storcella then related to Mr. Santaniello the policy of the Commission regarding "late filings." Knowing that the casino license and operation certificate hearings were scheduled for the following day (June 14, 1985), with test days scheduled to commence on Monday, June 17, 1985, Mr. Santaniello indicated that the problem could be resolved if he personally obtained the renewal application forms since he was physically on the premises. Mr. Storcella agreed and directed Mr. Santaniello to go to the office of respondent Keto, the Director of Licensing for the Castle.

At this time, Mr. Santaniello left Mr. Howard's office and advised Mr. Howard that he would go to the office of respondent Keto to get some information that would resolve the problem with respondent Pasqualoni's license. Mr. Santaniello then proceeded to respondent Keto's office, being escorted to the same by Mr. Howard's secretary. Upon his arrival, he observed respondent Keto and Ms. LeFevre as well as other employees in the area. At this time, Mr. Santaniello advised respondent Keto and Ms. LeFevre that he was there to pick up the Pasqualoni renewal application and was told by respondent Keto that the application wasn't available at the moment since they were dealing with another matter for John Bowman. Mr. Santaniello requested the Pasqualoni forms and was advised by respondent Keto that they were still searching for the same. Mr. Santaniello advised that he would wait to receive them and took a seat at a secretarial desk outside of respondent Keto's office, facing an office door marked "Licensing Supervisor." He was shown some computer information by respondent Keto who offered an explanation as to the mix-up involving the Pasqualoni renewal application. While seated at this location, Mr. Santaniello observed a woman leaving the office marked "Licensing Supervisor" and, while the door was open, he observed respondent Pasqualoni in that office. At that point, Mr. Santaniello asked respondent Keto whether or not she had been able to speak with respondent Pasqualoni and was told by her that she could not find him.

After having observed respondent Pasqualoni, Mr. Santaniello telephoned Mr. Storcella and advised him that he had not yet received the renewal application and, due to his location, was unable to discuss a situation that had been presented to him. Mr. Santaniello again took a seat and waited. During this time, respondent Pasqualoni remained in the office of the "Licensing Supervisor." The person departing that office was respondent Perez who had assisted respondent Pasqualoni in the preparation of the renewal application forms (D-1 & D-2 in Evidence). Both respondents Perez and Pasqualoni acknowledge that respondent Pasqualoni completed the forms with the assistance of respondent Perez and dated the forms May 7, 1985, and respondent Perez acknowledged the same as a notary public for the State of New Jersey with a date of May 10, 1985 (D-1 & D-2 in Evidence). Both respondent Pasqualoni and respondent Perez acknowledge that this was done on June 13, 1985, in the office of Martha Perez. Respondent Perez then left the office area with the completed forms while respondent Pasqualoni remained in the office. Respondent Perez, upon leaving the licensing office area, proceeded to the casino floor.

At that time, respondent Perez met Rose Marie Scammell, the secretary of respondent Pasqualoni, who was returning from a Pep Rally outside the casino. Respondent Perez then asked Ms. Scammell to accompany her to the fourth floor, which she did. Respondent Perez instructed Ms. Scammell to pick up a piece of paper and take the same to respondent Keto in the licensing office of the casino. Ms. Scammell agreed and went to the fourth floor with respondent Perez, where she was given a "paper" to deliver to respondent Keto. The "paper" was given to Ms. Scammell by a secretary named Holly, who is a licensing specialist employed in the casino licensing unit of the Castle. Upon receiving the "paper," respondent Perez instructed Ms. Scammell to deliver it to respondent Keto and was told, "When you hand her the paper, say this is all I can find in his file." As requested, Ms. Scammell went to the licensing department on the second floor and delivered the paper to respondent Keto as requested. At that time, she observed a gentleman, whom she later determined to be Mr. Santaniello, seated at a secretarial desk in the area. Thereafter, Ms. Scammell returned to her office on the third floor and subsequently received a telephone call from respondent Keto wherein respondent Keto said, "Thank you. That helped."

Mr. Santaniello observed Ms. Scammell deliver the paper to respondent Keto and inquired of respondent Keto whether or not it was the renewal application of respondent Pasqualoni. When respondent Keto acknowledged that it was, Mr. Santaniello asked to see the form, which respondent Keto handed to him. Upon reviewing the form, Mr. Santaniello asked respondent Keto when the licensing unit of the Castle received the application. Respondent Keto asked what the date was on the form, at which time Mr. Santaniello answered that the date of respondent Pasqualoni's signature was May 7, 1985, and the notarization date was May 10, 1985. Respondent Keto confirmed the date on the form as when Pasqualoni filed them with her office.

Shortly thereafter, another form was delivered to respondent Keto, who gave it to Mr. Santaniello. This form was entitled "Financial Statement," and bore the signature of John Pasqualoni, dated May 7, 1985. At that time, respondent Keto stated that other documents, such as tax returns, were still missing and were not available at that time.

Mr. Santaniello again asked respondent Keto whether she had been able to contact respondent Pasqualoni and respondent Keto utilized a telephone as a subterfuge in an attempt to contact respondent Pasqualoni. She subsequently advised Mr. Santaniello that she was unable to get in touch with respondent Pasqualoni.

Mr. Santaniello then made another telephone call to Mr. Storcella requesting that he come to the licensing unit location at the Castle and that he have a representative of the Division of Gaming Enforcement accompany him.

Prior to the arrival of Mr. Storcella, Mr. Howard came to the licensing office area. At this time, Mr. Howard was asked by Mr. Santaniello if he knew where respondent Pasqualoni was. Mr. Howard indicated he did not but would find him and left the area. After Mr. Howard's departure, Mr. Storcella arrived and Mr. Santaniello related his observations to Mr. Storcella. A short time later, Mr. Howard returned and spoke with Mr. Santaniello, at which time Mr. Howard said he was aware that respondent Pasqualoni was in the licensing unit office area. At this time, Mr. Howard asked Mr. Storcella and Mr. Santaniello if they wanted to speak with respondent Pasqualoni; however, both Mr. Storcella and Mr. Santaniello declined.

Thereafter, Mr. Santaniello and Mr. Storcella left the Castle facility with the application renewal form, waiver authorization and financial statement supplied to them by respondent Keto (D-1 & D-2 Evid.).

After the departure of Messrs. Santaniello and Storcella, respondent Pasqualoni left the office of respondent Perez and was told by Perez to leave the building and not to return that evening. Prior to departing the premises, respondent Pasqualoni went to his office, picked up his car keys and informed his secretary, Ms. Scammell, that he was going to the Lagoon Restaurant. This occurred sometime after 7:00 p.m.

Upon Ms. Scammell's return to her office after delivering the "paper" to respondent Keto, Ms. Scammell was asked by Mr. Philip Waganheim, assistant slot director, who had an office adjoining that of respondent Pasqualoni, to contact Pasqualoni's girlfriend, Tracy Kuhn, requesting Ms. Kuhn to obtain a blank check from respondent Pasqualoni's checkbook and copies of respondent Pasqualoni's 1983-84 tax returns. At this time both Mr. Waganheim and Ms. Scammell had a telephone conversation with Ms. Kuhn and Ms. Kuhn agreed to bring the requested materials. Mr. Waganheim was requested to contact Ms. Kuhn for the stated purpose by respondent Keto.

Ms. Scammell was still in her office when respondent Pasqualoni returned from the licensing office at approximately 7:00 p.m. and stated that he was "down in Martha's office filling out the renewal papers." Respondent Pasqualoni indicated that while doing so the office door was opened. He observed Mr. Santaniello sitting out there and they looked at each other. Ms. Scammell indicated that respondent Pasqualoni stated he believed Mr. Santaniello had seen him and that he was told to get out of the building by respondent Perez. Respondent Pasqualoni indicated that he was going to the Lagoon Restaurant in Brigantine and, "That was where he would be." Ms. Scammell advised respondent Pasqualoni that Tracy Kuhn was coming down with a check from his account and his tax returns.

After respondent Pasqualoni's departure, Ms. Scammell met Ms. Kuhn at the parking attendants' office of the Castle. At that time, Ms. Kuhn had the blank check and tax returns as requested. At that time, Ms. Scammell and Ms. Kuhn drove to the Lagoon Restaurant in order to have respondent Pasqualoni "write" the check. Respondent Pasqualoni wrote the check for the amount of \$500, dated May 7, which he gave to Ms. Scammell. At this time, Ms. Scammell returned to the Castle with the check and the tax returns. Ms. Scammell then photocopied the tax returns and the check for respondent Pasqualoni's personal records. After doing so, she went to the licensing unit offices on the second floor and met with respondents Keto and Perez. She delivered the check and the Pasqualoni tax returns obtained from respondent Pasqualoni and Tracy Kuhn. After both respondents Keto and Perez inspected the documents, it was observed that the tax returns did not bear the signature of respondent Pasqualoni, and Ms. Scammell was requested to obtain respondent Pasqualoni's signature on the same. Ms. Scammell returned to the Lagoon Restaurant and observed respondent Pasqualoni at the bar. As requested, respondent Pasqualoni signed the tax returns, which Ms. Scammell then took back to the Castle and copied. After copying the signed tax returns, she brought the signed tax returns to respondents Keto and Perez, at which time it was determined that they needed a signature described as an authentication in addition to respondent Pasqualoni's signature since the tax returns were copies and were not originals.

At this point, Ms. Scammell took the tax returns back to the Lagoon Restaurant for Pasqualoni's additional signature by way of authentication. Respondent Pasqualoni complied with this request and at that time, requested Ms. Scammell to contact Mr. Howard on his behalf. Ms. Scammell then returned to the Castle, went to Mr. Howard's office but found the door closed. Thereafter, Ms. Scammell went to the

licensing office and gave the forms to respondents Keto and Perez who were waiting for the same. Ms. Scammell then asked respondent Keto if she would contact Mr. Howard because respondent Pasqualoni needed to talk to him. Respondent Keto responded that Mr. Howard was aware of the situation and that Ms. LeFevre had advised Mr. Howard of what was being done. At this time, approximately 9:30 p.m., Ms. Scammell recommended that respondents Keto and Perez go to the Lagoon Restaurant to meet with respondent Pasqualoni, who Ms. Scammell believed to be very upset about this situation.

Thereafter, Ms. Scammell returned to the Lagoon Restaurant, accompanied by Tracy Kuhn, arriving at approximately 9:45 p.m. She advised respondent Pasqualoni that respondents Keto and Perez had the tax returns but that she was unable to contact Mr. Howard. Ms. Scammell told Pasqualoni that when she asked respondent Keto to contact Mr. Howard, respondent Keto advised that Mr. Howard was aware of the situation. Shortly thereafter, respondents Keto and Perez arrived and advised respondent Pasqualoni "to take it easy—that everything would be taken care of tomorrow with the remaining documents being submitted to the Casino Control Commission." After further conversation, respondents Keto and Perez left the restaurant and, shortly thereafter, Mr. Philip Waganheim arrived while respondent Pasqualoni, Tracy Kuhn and Ms. Scammell were there. Earlier that evening, Mr. Waganheim had been contacted by Mr. Howard regarding respondent Pasqualoni's licensing problem, and Mr. Howard had requested Mr. Waganheim to locate respondent Pasqualoni, and to call Mr. Howard at his home phone number, having given the same to Mr. Waganheim. Mr. Waganheim attempted to locate respondent Pasqualoni but was unable to do so until he went to the Lagoon Restaurant at approximately 10:00 p.m., where he observed him at the bar in the company of Tracy Kuhn and Rose Marie Scammell. Upon locating respondent Pasqualoni, Mr. Waganheim stated, "What the fuck is going on here.". Respondent Pasqualoni responded, "Don't worry, everything is ok." At this time, Waganheim told respondent Pasqualoni that everything was not O.K. and they had a conversation in the foyer away from the presence of both Tracy Kuhn and Rose Marie Scammell. This conversation consisted of Mr. Waganheim's relating to Pasqualoni that Mr. Howard indicated that Mike Santaniello knew what was going on. At that time, respondent Pasqualoni became very upset and depressed. Mr. Waganheim placed a telephone call to Mr. Howard. Respondent Pasqualoni spoke very briefly to Mr. Howard and subsequently both Mr. Waganheim and respondent Pasqualoni drove to Mr. Howard's residence, a trip of approximately 15 minutes.

Upon the arrival of respondent Pasqualoni and Philip Waganheim at the residence of Mr. Howard, respondent Pasqualoni related the events of the day in a summary fashion. Mr. Howard made calls to Mr. Fitzgerald and tried to reach Mr. Ribis. Mr. Howard received a telephone call from Nicholas Ribis, Esq., counsel for Trump Associates, who asked to speak with respondent Pasqualoni. Respondent Pasqualoni related to Mr. Ribis the events of the day, including the fact that the tax returns and check had not been filed with the Commission but were to be delivered the following morning as per the agreement between Mr. Bowman and respondent Keto. Thereafter, Mr. Ribis contacted Ms. Keto, instructing her not to deliver any further information or documents to the Commission. Mr. Waganheim was instructed to go to the Castle the following morning to meet respondent Keto and to ensure that no additional documents would be submitted to the Commission.

Thereafter, on June 14, 1985, respondent Pasqualoni was interviewed by Agent Steven Konick of the Division of Gaming Enforcement and later that day was also interviewed by Division of Gaming Enforcement Agents Sivitz and Sterns, who obtained a statement from respondent Pasqualoni. On June 21, 1985, respondent Pasqualoni filed a renewal application, dated June 19, 1985, with the Casino Control Commission.

Respondent Keto provided a sworn interview to Division of Gaming Enforcement personnel on August 7, 1985 (D-15 Evidence), and respondents Pasqualoni and Perez provided the same on August 8, 1985 (D-14, D-16 Evidence). On December 30, 1985, a sworn interview by Division of Gaming Enforcement personnel was conducted of Philip Waganheim (D-20 Evidence). In addition, interview reports by Division of Gaming Enforcement personnel were conducted of Rose Marie Scammell on June 14, 1985 (D-17 Evidence); Claudette LeFevre on July 30, 1985 (D-18 Evidence); Karen A. Kindall on June 14, 1985 (D-19 Evidence), and John I. Bowman, June 14, 1985 (D-21 Evidence).

In addition, memoranda from Michael Santaniello, dated June 28, 1985 (D-22 Evidence), Christopher Storcella, dated June 28, 1985 (D-23 Evidence), and James Flannagan, dated June 19, 1985 (D-24 Evidence), were received and reviewed as evidence in this case.

ISSUES

1. Whether or not respondents have committed the offense of falsifying records, a violation of N.J.S.A. 2C:21-4a, which, even though unprosecuted, is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and N.J.A.C. 5:12-86gl.
2. Whether or not the conduct alleged as to all three respondents, if not a violation of N.J.S.A. 2C:21-4a, is inimical to the policy of the Casino Control Act and casino operations pursuant to the provisions of N.J.S.A. 5:12-86(c)(4)?
3. Whether or not respondents failed to provide information and assistance to the Commission through its representative Mr. Michael Santaniello, during the late afternoon hours of June 13, 1985, pursuant to N.J.S.A. 5:12-80d.
4. Whether or not respondents Pasqualoni and Keto as casino key employee licensees have established their good character, honesty and integrity by clear and convincing evidence as required under the provisions of N.J.S.A. 5:12-89b(2).
5. Whether or not respondent Perez, as a casino employee licensee and casino hotel registrant, can establish her rehabilitation by clear and convincing evidence pursuant to the provisions of N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d if Division has established a violation of N.J.S.A. 2C:21-4a, a statutory disqualifying offense.

LEGAL DISCUSSION AND ANALYSIS

Under the facts as found, most of which have been stipulated by the parties hereto, on June 13, 1985, respondents Pasqualoni, Keto and Perez came to the recognition that a renewal application for the casino key employee license of respondent Pasqualoni had not been filed with the Casino Control Commission and, as a result, his casino key employee license had expired at the end of May 1985. This situation resulted from a

series of events—namely, the denial of casino licensure to the Hilton Organization; a period of concern to all employees as to their future under this setting; the negotiation and acquisition by Donald Trump with an accelerated opening date; the pressures of such a deadline, a prior miscommunication between respondents Keto and Pasqualoni in March 1985, regarding his 1985 renewal application, coupled with what has been acknowledged as a clerical entry regarding computer data information as to the status of the Pasqualoni renewal application showing a date of April 13, 1985.

Recognizing all of the foregoing as fact and reality insofar as the respondents put the pieces together to arrive at a determination that respondent Pasqualoni's renewal application had not been filed after John Bowman's telephone call, and, therefore, since his existing license had expired at the end of May 1985, he was not licensed in order to hold the position of slot manager for what was hoped to be the casino's being granted its license and commencing operations the following week, the three respondents agreed to a course of conduct.

As the Director of Licensing, respondent Keto, even though being advised by respondent Pasqualoni that Philip Waganheim had the requisite credential required for the position and, therefore, there would be no impact upon the Castle's obtaining its conditional license for test days and ultimately being granted its operational license, determined that this was a position that should be held by respondent Pasqualoni and so indicated to him. Respondent Keto, for her own reasons which appear to consist of a recognition of not checking the status of respondent Pasqualoni's licensure and recognizing its impact upon his ability to retain his position of slot manager, told respondent Pasqualoni, based on her knowledge and experience of the policy of the Commission, a late filing would be accepted if she, as licensing director, and Pasqualoni, as the applicant, would advise the Commission through John Bowman that Pasqualoni had in fact submitted his renewal application in a timely fashion to the licensing department of the Castle but the same had not been submitted to the Commission for filing. It is obvious that at that time all respondents knew that this information was not true and in fact would be a lie. All three respondents agreed, after respondent Keto consulted with Ms. Lefevre, the Director of Legal Affairs for the Castle, that this course of conduct would be taken. Further, all three respondents agreed that respondent Pasqualoni would, on June 13, 1985, complete the requisite application forms and backdate the same to May 7, 1985, so that it would appear to the Commission that respondent Pasqualoni had

filed the forms with the licensing department of the Castle in the early part of May 1985. Respondents Pasqualoni and Perez then retired to the office of respondent Perez to complete the forms. Respondent Pasqualoni, with the assistance of respondent Perez, completed the application form, the waiver form and the financial statement, all of which were part of the requirements of renewal process (D-1 & D-2 in Evid). Respondent Perez then notarized the signature of Pasqualoni as a notary public of the state of New Jersey, acknowledging that respondent Pasqualoni signed the documents in her presence swearing to the information contained therein as if she had done so on May 10, 1985. Thereafter, respondent Perez exited her office with the documents, at which time respondent Pasqualoni was observed by Michael Santaniello, who was there to assist the licensing department in their efforts regarding the "mix-up" of respondent Pasqualoni's renewal application as related to John Bowman.

Various subterfuges occurred as more fully outlined in the facts as found. Ultimately, the three documents signed and dated by respondent Pasqualoni, acknowledged by respondent Perez, were offered to Mr. Storcella by respondent Keto.

From the conduct as found, all three respondents were aware that John Bowman, an employee of the Casino Control Commission, was advised by respondent Keto that respondent Pasqualoni had submitted his application form to the licensing department of the Castle prior to the expiration of his license, which occurred at the end of May 1985. Respondent Pasqualoni, by entering a false date on the document on June 13, 1985, knew the same was false and that that information was done with the purpose to deceive. In addition, respondents Perez and Keto knew the same to be false yet agreed to accomplish their purpose, namely, to deceive the Commission. It was further understood that these documents would be delivered to the Commission the following morning. Mr. Santaniello, who was obviously there to assist the Castle and its efforts to meet its test conditional license and opening date, became suspicious when he observed John Pasqualoni sitting in the office of Martha Perez when she exited from the same. Thereafter, respondent Keto gave the documents to Mr. Santaniello at his request. I **CONCLUDE** that at this time the same were "uttered."

Therefore, I **CONCLUDE** that each of the respondents did, in fact, violate N.J.S.A. 2C:21-4a, falsifying or tampering with records, which provides:

750

Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys,

removes, conceals any writing or record, utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

This determination is arrived at after consideration of arguments offered by respondents that only three documents, consisting of the renewal application, waiver and financial statement, were submitted to Mr. Santaniello and were never "filed" with the Commission. Further, respondents argue that since the income tax returns for 1983 and 1984 and the check representing the fee for filing the renewal application pursuant to N.J.A.C. 19:41-9.14 were never filed, the completed application was not submitted and/or filed with the Commission. I **FIND** that the submission of the three documents signed by respondent Pasqualoni and notarized by respondent Perez and handed over by respondent Keto is sufficient to meet the elements of the offense. Respondents further argue that in the event such a finding is made, respondents are entitled to all statutory defenses under the penal code, specifically, the defenses of renunciation, N.J.S.A. 2C:2-6e(3), 2C:5-1d and 2C:15-2e, and retraction, N.J.S.A. 2C:2-6e(3), under which respondent Pasqualoni argues he has established that he: (1) "terminated his complicity," prior to the commission of the offense; (2) abandoned his effort to commit the crime or otherwise prevented its commission; and (3) "informed the authority of the existence of the conspiracy and his participation therein and thwarted and caused to be thwarted the commission of any offense and furtherance of the conspiracy." Respondent Pasqualoni further argues that he has established that he "retracted the falsification in the course of the proceeding . . . in which it was made prior to the termination of the proceeding . . . without having caused irreparable harm to any party." N.J.S.A. 2C:28-1d (perjury); N.J.S.A. 2C:28-2a (false swearing); and N.J.S.A. 2C:28-3e (unsworn falsification to authorities). Assuming, arguendo, that these defenses are applicable in this forum, having found that the offense was committed when respondent Keto handed the writings prepared by respondents Pasqualoni and Perez to Mr. Santaniello, I **FIND** that the defenses of renunciation and/or retraction do not apply in that respondent Pasqualoni had not terminated his complicity prior to the commission of the offense, nor had he abandoned his effort to commit the crime or to prevent its commission prior to the documents being given to Mr. Santaniello. Further, I **FIND** that "irreparable harm" occurred during the 6 hours (4:00 to 10:00 p.m.) that respondents devised the plan to deceive and executed the same. The harm being the integrity of the Casino Control Act and the Commission empowered to enforce it.

I further **FIND** that the argument of respondents that they would have been a suitable candidates for and would have successfully completed a pretrial intervention program based on the violation of the penal laws without merit as the Casino Control Act provides for unprosecuted conduct to be considered under N.J.S.A. 5:12-86g.

For purposes of this process, I **CONCLUDE** that since no criminal charge has been filed, that any considerations regarding potential pretrial intervention disposition is unwarranted. Further, I **CONCLUDE** that the offense, even as unprosecuted conduct, is not de minimis in that it is a statutory disqualifier for purposes of licensing through section 86 of the Casino Control Act and, therefore, its specific insertion therein indicates that one convicted of the same as a key license employee shall either have a license revoked, or have an application and/or renewal of licensure denied by the Commission.

With regard to the conclusion that the Division of Gaming Enforcement has proven by a preponderance of credible evidence that all three respondents committed the offense of falsifying records, a violation of N.J.S.A. 2C:21-4a as unprosecuted conduct under section 86g of the Act, I **CONCLUDE** that the other issues regarding inimicality, good character, honesty and integrity, and failure to provide assistance or information required by the Commission and to cooperate need not be addressed.

This determination was not arrived at lightly. Several witnesses were called on behalf of each of the respondents. Some of them included employees of the Division of Gaming Enforcement, the Commission and attorneys of the State of New Jersey who spoke highly of the good character, honesty and integrity of all respondents. It is recognized that their actions on the afternoon of June 13, 1985 were isolated, and there is no indication of any conduct either prior to or subsequent to this incident that can be considered negative in their lives. Notwithstanding these considerations, their actions on that date showed a departure from what would otherwise be considered their normal behavior, which was in direct contravention to the philosophy contained in the Casino Control Act and the Casino Control Commission's regulations. Each of the respondents made a decision to deceive the Commission by backdating renewal application forms and documents.

It is uncontroverted that respondent Pasqualoni was otherwise qualified for license renewal and, in fact, had obtained his casino key employee license for the past

several years. Respondents were confronted with two courses of action. One was to notify the Commission of the nonrenewal and allow a late renewal application to be filed, which might have taken additional time for respondent Pasqualoni to return to his position of slot manager for the Castle operation. The second alternative, which they chose, was to lie to the Commission regarding the filing of the renewal application. There is no question that it was done intentionally despite testimony which discussed the pressure of the moment for all of the reasons previously stated. Pressure situations create difficult choices for people. If pressure allows a choice of deceit, it cannot be compatible with the philosophy of the Casino Control Act and the responsibilities of the Casino Control Commission in its supervisory relationship to the Casino Control industry. It is indeed unfortunate that respondents chose the latter course of action, which can only result in the imposition of a penalty mandated by the Casino Control Act.

Insofar as the application of a penalty to the finding of a statutory disqualifying offense, the complaint filed by the Division of Gaming Enforcement seeks revocation of the casino key employee licenses of respondents Pasqualoni and Keto and the casino employee license and casino hotel registration of respondent Perez.

The casino key employee license of respondent Pasqualoni expired under its own terms at the end of May 1985. I **FIND** therefore, there is no license existing upon which action can be taken.

However, with respect to the application for renewal filed by respondent Pasqualoni with the Commission on June 21, 1985, under section 89d of the Act, "the Commission shall deny a casino key employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this Act."

Having found and concluded that respondents Pasqualoni, Keto and Perez have committed a violation of N.J.S.A. 2C:21-4a, a statutory disqualifying offense under Sec. 86c(1), it is clear that the provisions of Section 89d of the Act must apply. Therefore, I **CONCLUDE** that the renewal application of John A. Pasqualoni, based on the aforesaid provisions, must be **DENIED**.

Additionally, I **CONCLUDE** that the key employee license of respondent Keto must be **REVOKED**.

With respect to respondent Perez, as a casino employee licensee and casino hotel registrant, under Sections 90h and 91d of the Casino Control Act, she is entitled to offer evidence of rehabilitation to overcome a statutory disqualifying offense. This showing must be by clear and convincing evidence. In this regard, respondent Perez offered evidence which indicates that she is 43 years of age and a native of Santa Cruz, Bolivia. She came to the United States as a scholarship exchange student and returned to Bolivia, where she completed four years of study at a university. Thereafter, she further studied at the University of Madrid in Spain. Later she returned to the United States and married Carlos Perez. She was employed during her marriage and transfers of her husband to various locations in the United States. She was employed during her marriage and during the time that her husband was transferred to various locations in the United States. In 1980, she and her family moved to Atlantic City, New Jersey, at which time she obtained employment as a licensing clerk with Harrah's Casino in their licensing department. In April 1981, due to a work slowdown, she was laid off, but thereafter transferred to the theatre department as wardrobe assistant. After being laid off a second time in February 1982, she obtained employment with the Sands Hotel and Casino in their licensing department as a licensing clerk. She remained there until July 1984, and left to work for the Hilton as a licensing coordinator under her supervisor, Louise Keto. Ms. Martha Perez is 43 years of age and there is no evidence to indicate any negative information either prior to or subsequent to the incident of June 13, 1985. Martha Perez testified that she was a victim of a mistake of her own judgment and this type of incident would never be repeated. Several witnesses testified on her behalf, including coworkers and a former supervisor, Robert Picas, who believed that Martha Perez has an excellent reputation for good character, honesty and integrity and, even with knowledge of this incident, he would have her work for him, notwithstanding her actions of June 13, 1985.

**Martha Perez was suspended by the Commission in November 1985.**

In spite of individuals who believe Martha Perez made a mistake in judgment and would never repeat such action, as well as respondent herself who acknowledges her mistake and appeared extremely contrite regarding the incident of June 13, 1985, she agreed to participate in an activity that was intended to deceive the Casino Control Commission. As a notary of the State of New Jersey, she acknowledged documents knowing that such acknowledgment was false and intended to further deceive the Casino Control Commission. This activity occurred in June 1985. At the hearing in this matter

in January 1986, and even through the present time, no dramatic circumstances have been offered which show a change under the rehabilitative factors.

I **FIND** that the nature and seriousness of the offense and the circumstances under which the offense occurred are most egregious, particularly when the individual involved was in her 40s and knew, as a licensing coordinator, the provisions of the Casino Control Act and the regulations and policy of the Casino Control Commission. She chose to violate a trust imposed upon her as a casino employee and registrant in an area which is highly sensitive. For all of the foregoing reasons, I **FIND** and **CONCLUDE** that respondent Martha Perez has not established by clear and convincing evidence her rehabilitation, pursuant to Sections 90h and 91d of the Casino Control Act.

Therefore, it is **ORDERED** that the renewal application of John A. Pasqualoni for his key casino employee license be and is hereby **DENIED**. It is further **ORDERED** that the key employee casino license of Louise Keto be **REVOKED**. It is further **ORDERED** that both the casino employee license and the casino hotel employee registration of Martha Perez 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 18, 1986  
DATE

Ralph J. Tolombo  
RALPH J. TOLOMBO, ALJ

Receipt Acknowledged:

7/21/86  
DATE

Wm. Daly  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 24 1986  
DATE

Ronald J. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS

On behalf of the petitioner:

- PD-1 Pasqualoni's Renewal Application Forms
- PD-2 Pasqualoni's Financial Statement and Tax Forms
- PD-3 DGE Minimum Staffing - Slot Department
- PD-4 Castle Licensing Status Reports (6)
- PD-5 Tropicana - Letter of Notification: Pasqualoni
- PD-6 State of New Jersey - Notary Public Application
- PD-7 Martha Perez's Certified Notary Public Oath
- PD-8 Castle Employee License Renewal Application System
- PD-9 Castle (Hilton) - License Renewal Notification
- PD-10 Castle (Hilton) - Second Renewal Notice
- PD-11 Failure to Renew Notice to Department Supervisors
- PD-12 Notice to CCC—Failed to renew List
- PD-13 CCC - Internal Control Submission: Employee Licensing
- PD-14 Sworn Interview - Martha Perez, August 8, 1985
- PD-15 Sworn Interview - Louise Keto, August 7, 1985
- PD-16 Sworn Interview - John A. Pasqualoni, August 8, 1985
- PD-17 DGE Interview Report - Rose Marie Scammell, June 14, 1985
- PD-18 DGE Interview Report - Claudette LeFevre, July 30, 1985
- PD-19 DGE Interview Report - Karen A. Kindle, June 14, 1985
- PD-20 Sworn Interview - Philip I. Waganheim, December 30, 1985
- PD-21 DGE Interview Report - John I. Bowman, June 14, 1985
- PD-22 Michael Santaniello, Deputy Director, CCC - Memo to File, June 28, 1985
- PD-23 Chris Storcella, Director, CCC License Division, Memo to File, June 28, 1985
- PD-24 James Flanagan, Deputy Director, DGE, Memo to File (Excerpt), June 19, 1985

PD-25 Letter from Claudette M. LeFevre to Christopher D. Storcella, Director,  
August 6, 1985

On behalf of petitioner, Martha Perez:

PMP-1 DGE Interview Report - Philip I. Waganheim, June 14, 1985

On behalf of petitioner, Louise Keto:

PLK-1 Certified Statement of Juanita Meade, January 27, 1986

PLK-2 Certified Statement of Evelyn Means, January 23, 1986

On behalf of petitioner, John Pasqualoni:

PJP-1 For identification only - Personal History Disclosure Form - 1

PJP-2 For identification only - Application for Casino Key and Casino Employee  
License Renewal

PJP-3 For identification only - Employee License Renewal Application

PJP-4 For identification only - Employee License Renewal Application

PJP-5 For identification only - Employee License Renewal Application

PJP-6 For identification only - Employee License Renewal Application

PJP-7 DGE Interview Report - John A. Pasqualoni, June 14, 1985

PJP-8 Certification, Donald Trump, January 28, 1986

Joint exhibits:

JP-1 Stipulation of Facts

MP-1 Stipulation of Facts

LK-1 Stipulation of Facts

WITNESSES LIST

Willard "Bucky" Howard  
Nicholas Ribis, Esq.  
Edward Goldstein  
Phillip Waganheim  
Rose Marie Scammell  
Katherine Evers  
Jack O'Donnell  
Joseph Hirschhorn  
Thomas Gallagher  
Carolyn Pferfer  
John Pasqualoni  
Steven Bolson  
William Setzler, Esq.  
Louise Keto  
Marilyn Marshall  
Margaret Williams  
Rosina McGearry  
Paula DeJesus  
Theresa Taylor  
Paula Jones  
Robert Pichus  
Martha Perez

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-386  
OAL DOCKET NO. CCC 2387-86  
LICENSE NO. 07400-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
WILLARD W. PINCUS, :  
a/k/a WILLIAM PINCUS :  
Respondent. :

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This matter having been transmitted to the Office of Administrative Law (OAL) for a hearing; and the Division of Gaming Enforcement (DGE) subsequently having filed a motion to dismiss the complaint; and an initial decision having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 6, 1986,

IT IS on this 25<sup>th</sup> day of August 1986, ORDERED that the initial decision of the OAL is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the DGE against Willard W. Pincus is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 2387-86

AGENCY DKT. NO. 85-386

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW  
AND PUBLIC SAFETY,  
DIVISION OF  
GAMING ENFORCEMENT,**

Petitioner,

v.

**WILLARD W. PINCUS,  
a/k/a WILLIAM PINCUS,  
Respondent.**

---

**William E. Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Willard W. Pincus, respondent, pro se**

Record Closed: June 16, 1986

Decided: July 7, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on September 16, 1985, seeking the imposition of a civil penalty and suspension against the respondent's license for a violation of N.J.S.A. 5:12-100n. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled and conducted via telephone conference call on May 20, 1986.

By letter dated June 12, 1986, from the Deputy Attorney General (a copy of which is attached), the undersigned was advised that the Division of Gaming Enforcement wished to dismiss its complaint against respondent as its investigation revealed an incorrect identification of respondent.

Based upon the Division's letter of June 12, 1986, it is hereby **ORDERED** that the complaint filed against Willard W. Pincus be and is hereby **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that the file be returned to the Division of Gaming Enforcement for appropriate disposition.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 7, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 8, 1986  
DATE

Kiames Zapp  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1986  
DATE

Ronald L. Parkes  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBIT LIST

None



RECEIVED  
STATE OF N.J.  
OFFICE OF ADM. LAW

# State of New Jersey

JUN 16 12 55 PM '86

## DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX  
CN 047

TRENTON, NEW JERSEY 08625

June 12, 1986

W. CARY EDWARDS  
ATTORNEY GENERAL

DONALD R. BELSOLE  
FIRST ASSISTANT  
ATTORNEY GENERAL

ANTHONY J. PARRILLO  
DIRECTOR

Honorable Edgar Holmes, A.L.J.  
Office of Administrative Law  
Quakerbridge Plaza No.2  
Building No. 9  
CN-049  
Mercerville, New Jersey 08613

Re: State of New Jersey, et al.

v

Willard W. Pincus  
OAL Docket No.: CCC 02387-86  
Agency Ref. No.: 85-386

Dear Judge Holmes:

Please be advised that the Division of Gaming Enforcement wishes to dismiss its complaint in the above-captioned matter.

The reason for the dismissal is due to the fact that our investigation discloses an incorrect identification.

Very truly yours,

*William E. Mountford, Jr.*  
William E. Mountford, Jr.  
Deputy Attorney General

jc

c Dennis Daly, Sr. Asst. Counsel, Casino Control Commission

William Pincus  
65 Meadowbrook  
Mays Landing, NJ 08330

764

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-418  
REGISTRATION NO. 58762-40  
OAL DOCKET NO. CCC 1821-86

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

Complainant,

FINAL ORDER

v.

KATHLEEN PINTO,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and an initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 3, 1986,

IT IS on this 26<sup>th</sup> day of November 1986, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration held by Kathleen Pinto is dismissed for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1821-86

AGENCY DKT. NO. 85-418

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,

Petitioner,

v.

KATHLEEN PINTO,

Respondent.

---

John Sheehy, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Allen H. Vernon, Jr., Esq., for respondent (Mott & Mott, attorneys)

Record Closed: May 30, 1986

Decided: July 18, 1986

BEFORE EDGAR R. HOLMES, ALJ:

**PROCEDURAL HISTORY**

The Division of Gaming Enforcement (Division) filed a complaint on October 18, 1985, with the Casino Control Commission (CCC), seeking to revoke Kathleen Pinto's (respondent) casino hotel employee registration 58762-40 because she was charged with a violation of N.J.S.A. 2C:20-3. The respondent requested a hearing on November 21, 1985, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

FACTUAL DISCUSSION

There is no dispute as to the operative facts. The respondent was employed by Cash Call, a service industry which provides cash advances on credit cards to casino patrons. Her position did not require registration, although she was registered at the time of the events which occasioned her arrest.

The respondent worked at a Cash Call booth in the lobby of the Trump Castle Casino Hotel. She had a bank of approximately \$2,000. When a patron desired a cash advance, her duty was to receive the patron's credit card and identify the patron, verify with the credit card issuer that the patron had an available credit line, obtain a check from the computer at her station and cash the check for the patron.

During the course of the evening of July 25, 1985, the respondent received a request from a male patron for a \$300 cash advance. She inadvertently punched in \$200 on her check writing machine, failed to note her mistake and cashed the check for the patron for \$300. Later in the evening as the respondent was reconciling her bank, she noticed the error and had the patron paged without success.

The respondent had made a similar error earlier in the month and was aware of a company policy that mandated termination after three such errors. She foolishly decided to cover up her mistake. In addition to her bank, there was available to the respondent a large fund of cash in a deposit box in the hotel which was reserved for the purpose of replenishing the bank, if necessary. She took a \$100 bill from the fund and placed it in her bank so that her bank would balance at the end of her tour of duty. She intended to replace the \$100 in the fund with her own money when she returned to work the following day.

The next morning respondent obtained a \$100 bill from her bank account and went to work. When she arrived, she learned that the fund had been counted during the night and the shortage was discovered. She called her supervisor and related what she had done and stated that she had a \$100 bill with her to make the fund balance. She was instructed not to put the money in the fund but to go home and report to the office the next day. She did so, and when she reported to the office, she was interviewed by her employer and the Division of Gaming Enforcement. She was terminated and arrested. She was charged with a violation of N.J.S.A. 2C:20-3, a disorderly persons offense of

theft. She subsequently reimbursed her employer for the \$100. The charges against her were dismissed on September 4, 1985, in the Atlantic City Municipal Court.

LEGAL DISCUSSION

The respondent intended at all relevant times to make the fund whole again from her own money. Therefore, I FIND that she did not violate N.J.S.A. 2C:20-3, which reads as follows:

- a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.
- b. Immovable property. A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.

L.1978, c.95, § 2C:20-3, eff. Sept. 1, 1979.

The commentary to N.J.S.A. 2C:20-1 explains the meaning of "deprive" as it is used in the code.

Traditional larceny law required an intent to deprive the owner permanently; but in cases involving high-value, mobile property, like cattle and vehicles, it was held that a jury might find an intent to permanently deprive on the basis of evidence that the offender took the property for temporary use without intending to return, abandoning it under circumstances that amounted to a 'reckless exposure to loss.' State v. Davis, 38 N.J.L. 176 (Supt. Ct. 1875), is the leading case. Where the intent to return was contingent on payment of a reward or on repurchase by the owner, the jury could find an intent to deprive permanently in case the owner refused to pay the reward or other demand. State v. Hauptmann, 115 N.J.L. 412, 426 (E.&A. 1935).

The effect of the Code's definition of 'deprive' is: (a) to retain the general rule that it is sufficient if the withholding be permanent; (b) to accept the common law position of Davis that some temporary deprivations are thefts (those that involve a substantial risk of total loss in some contingencies) and of Hauptman as to rewards; and (c) to extend theft liability to situations of prolonged deprivations which substantially subvert the owner's dominion over his property. The New Jersey Penal Code, Volume II: Commentary: Final Report of the New Jersey Criminal Law Division Commission (1971).

These facts do not meet the test of Davis or Hauptmann and the deprivation was neither "prolonged" nor did it "substantially subvert the owner's dominion over his property."

CONCLUSIONS

Since no theft was involved, respondent's conduct was not an offense and I **CONCLUDE** that her registration would not be inimical to the Casino Control Act or casino operations.

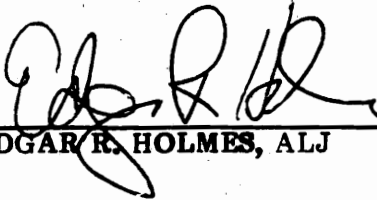
The respondent's actions in this case were foolish. However, she appeared genuinely sorry that she has tarnished her reputation for honesty and good character and I doubt that she will commit any such act in the future.

This event terminated respondent's position with Cash Call. She has been charged criminally and administratively with theft. She has retained an attorney for both matters at some cost to herself. I see no reason to consider another sanction under sections 129 and 130 for an essentially foolish action.


This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 18 1986  
DATE

  
EDGAR R. HOLMES, ALJ

July 21, 1986  
DATE

Receipt Acknowledged:  
  
CASINO CONTROL COMMISSION

JUL 23 1986  
DATE

Mailed to Parties:  
  
OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Kathleen Pinto

James Nichols

EXHIBITS

R-1 Check No. 113

R-2 Check No. 114

R-3 Complaint

P-1 Checkbook

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-43  
OAL DOCKET NO. CCC 7533-85  
REGISTRATION NO. 41374-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :  
:

FINAL ORDER

v.

DONOVAN G. RANKIN

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record in this matter at its public meeting of July 16, 1986,

IT IS on this 21<sup>st</sup> day of July 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7533-85

AGENCY DKT. NO. 84-43

**STATE OF NEW JERSEY,  
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**DONOVAN G. RANKIN,**

Respondent.

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**Wendy Way, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Donovan G. Rankin, respondent, pro se**

Record Closed: April 14, 1986

Decided: May 20, 1986

**BEFORE SOLOMON A. METZGER, ALJ:**

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino hotel employee registration pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Petitioner alleges that respondent has committed offenses which, though unprosecuted, require revocation pursuant to N.J.S.A. 5:12-86 and 91b. Respondent denies any wrongdoing. A charge involving failure to disclose required information, pursuant to N.J.S.A. 5:12-86.b., was withdrawn at the hearing.

Many of the facts are undisputed. In December 1983, respondent was indicted in Atlantic County for receiving stolen property; to wit, a 1979 Mercedes Benz, contrary to N.J.S.A. 2C:20-7, and for possession of a motor vehicle with the serial number removed, contrary to N.J.S.A. 2C:17-6b. The first of these offenses is a statutory disqualifer pursuant to N.J.S.A. 5:12-86c.(1). In a statement given to the police on August 2, 1984, respondent explained how he came to purchase the automobile in question. The indictment was dismissed on August 6, 1984. A stenographic record of the proceedings before the Superior Court on that day was made available in evidence. In moving to dismiss the indictment, the assistant prosecutor stated to the court:

Donovan Rankin was charged with possession of a stolen motor vehicle. He has, since his charges, cooperated with Cape May County in there [sic] ongoing investigation of a Joseph Gavil (phonetic spelling). I understand from them that they are satisfied with the statement that was given by Mr. Rankin last week, that in there [sic] minds it was truthful, and he intends to be cooperative with them.

In a separate matter, respondent was arrested in Fresno, California on August 13, 1981, and charged with indecent exposure. An arrest report submitted in evidence indicates that respondent was sunbathing without a swimsuit in a public hotel. The arresting officer also reports that he smelled an odor of alcohol on respondent's breath, but concludes that he was not intoxicated. There is a notation in the report under a category entitled, "D.A.'s remarks" that the case would not be prosecuted as, even if proved, respondent's behavior did not violate California law.

Petitioner rested with the presentation of documents. Respondent then testified. With respect to the incident involving the Mercedes Benz, he stated that sometime in the summer of 1979, while attending a function at a country club in Atlantic County, he met a Joe Gavil. Respondent was living in California at the time and was a national sales manager for a firm that required him to travel extensively throughout the country. Mr. Gavil told him that his business was selling executive lease cars and he inquired whether respondent might be interested in purchasing such a vehicle. Respondent was not in need of a car at the time, but expressed an interest for the future. Mr. Gavil then telephoned him a few times in California and eventually brought the vehicle in question to him. After satisfying himself that the price was reasonable, he purchased it. Thereafter, he received the appropriate registration documents and drove the car for approximately three years until he was stopped in New Jersey and learned that it was a stolen vehicle. He testified that during this three-year period he had driven the car to

Canada, it had been towed, its registration had been renewed, and he described other like instances in which officialdom had had an opportunity to review his papers and evaluate whether the car was his. In each case he had had no difficulty. Respondent testified that he had no idea that this was a stolen vehicle.

Respondent also testified with respect to the incident in Fresno. He testified that it was a very hot August day and he was wearing a very tiny bikini bathing suit at the hotel swimming pool. The manager told him to put on a towel; he would not, and eventually the police were called. Though he was taken to police headquarters, he testified that he did not realize he had been arrested since he was immediately released. He assumed that the police had simply intended to take him off the premises of the hotel.

Respondent is 47 years old and has lived in Brigantine since 1981. He was a food server at Resorts International for approximately two years and has been at the Claridge in a similar capacity for about one and one-half years. Other than the incidents which have been described in this record, he has never been arrested.

This is the substance of the record. To establish its primary charge, petitioner must show by a preponderance of the credible evidence that respondent had knowledge or reason to know that the Mercedes had been stolen and/or that the vehicle identification number had been tampered with. This has not been established. Petitioner's own proofs appear to indicate that those investigating the incident at that time were satisfied that respondent was not involved. Further, there is nothing in his statement of August 2, 1984, to the police, or in any other material in evidence, which in any way permits the inference that respondent was aware, or should reasonably have been aware, that the vehicle which he purchased was stolen.


The charge arising out of the incident in Fresno is similarly without substance. It relies solely on a report, some details of which respondent disagrees with. The report indicates that he was sunbathing naked; he says he had on a very tiny bikini bathing suit. The disagreement is hardly worth making a credibility finding over. Even if true, respondent was not prosecuted because apparently whatever his conduct, it was no offense under California law. Even if it were an offense in California, having occurred only once some five years ago, it bears so marginally on respondent's registration as to not weigh against him.

Based on the foregoing, it is my conclusion that the charges in petitioner's complaint have not been proved, and it is **ORDERED** that this matter be **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/20/86  
DATE

  
SOLOMON A. METZGER, ALJ

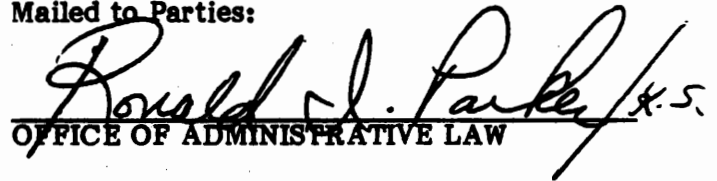
Receipt Acknowledged:

5/21/86  
DATE

  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 23 1986  
DATE

  
OFFICE OF ADMINISTRATIVE LAW

bc

WITNESS

Donovan G. Rankin

EXHIBITS

For petitioner:

- P-1 Fresno Police Department Arrest Report
- P-2 Investigation Report
- P-3 Arrest Report
- P-4 Miranda Warning
- P-5 Brigantine Municipal Court Complaint, S 46577
- P-6 Indictment
- P-7 Stenographic Transcript of Proceedings
- P-8 Statement

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NOS. 85-EA-156; 85-494  
OAL DOCKET NOS. CCC 6527-85;  
                  CCC 282-86 (CONSOLIDATED)  
APPLICATION NO. 60336-22  
REGISTRATION NO. 62930-40

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APPLICATION OF BEVERLY ANN ROBINSON :  
FOR A CASINO EMPLOYEE LICENSE :  
                                  AND :  
STATE OF NEW JERSEY, DEPARTMENT :           FINAL ORDER  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
                                  Complainant, :  
v. :  
BEVERLY ANN ROBINSON, :  
                                  Respondent. :

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A hearing in these consolidated cases having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission (Commission) by the administrative law judge; and exceptions having been filed by the respondent and a reply thereto by the Division of Gaming Enforcement; and the Commission having considered the entire record in this matter at its public meeting of September 17, 1986,

IT IS on this 19<sup>th</sup> day of November 1986, ORDERED that the initial decision is modified as follows:

At page three of the initial decision, the statutory citations to the respondent's June 1983 indictment should be corrected to read "N.J.S.A. 2A:111-2" and "N.J.S.A. 2C:20-4."

IT IS FURTHER ORDERED that the application of Beverly Ann Robinson for a casino employee license is denied and Ms. Robinson's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Beverly Ann Robinson is prohibited from applying for any license, registration, qualification or approval for five years except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CCC 6527-85  
and CCC 282-86 (CONSOLIDATED)  
AGENCY DKT. NOS. 85-EA-156  
and 85-494

**BEVERLY ANN ROBINSON,**

Petitioner,

v.

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW &  
PUBLIC SAFETY,  
DIVISION OF  
GAMING ENFORCEMENT,**

Respondent.

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Lorraine Gormley, Esq., Cape-Atlantic Legal Services, on behalf of petitioner

Frances I. Sundheim, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: July 15, 1986

Decided: July 21, 1986

**BEFORE SOLOMON A. METZGER, ALJ:**

This matter arises out of petitioner's application to be licensed as a casino hotel employee, pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent interposed an objection and the matter was transmitted to the Office of Administrative Law in October 1985 as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 2, 1985, and a

prehearing order issued on December 10, 1985. Thereafter, on January 10, 1986, the Commission transmitted a second contested case entitled State v. Beverly Ann Robinson, OAL DKT. CCC 0282-86, in which the Division sought revocation of Ms. Robinson's casino hotel registration based on the same facts and circumstances which caused it to object to her license application. The matter was consolidated pursuant to N.J.A.C. 1:1-14.1 et seq., and heard on June 5, 1986. The record remained open until July 15, 1986, for the receipt of additional materials.

The case presents a procedural question as well as substantive issues. The procedural matter involves petitioner's oral motion at the commencement of the hearing to withdraw her application for licensure. Respondent objected, citing N.J.A.C. 19:41-8.6. The substantive issues revolve around petitioner's record of criminal conviction, certain unprosecuted conduct which respondent seeks to prove pursuant to N.J.S.A. 5:12-86g, her probation record and work record in the casinos. Respondent takes the position that petitioner cannot establish good character by clear and convincing evidence, N.J.S.A. 5:12-90 and moreover, that the record makes it necessary to revoke her registration. N.J.S.A. 5:12-91. Petitioner believes that she has been rehabilitated pursuant to N.J.S.A. 5:12-91d.

Petitioner's motion to withdraw her license application is **DENIED**. N.J.A.C. 19:41-8.6 provides:

- (a) Except as otherwise provided in (b) below, a written notice of withdrawal of application may be filed by an applicant any time prior to final Commission action thereon. . .
- (b) Where a hearing on an application has been requested by a party or directed by the Commission, the Commission shall not permit withdrawal of said application after:
  - 1. The application matter has been transmitted to the Office of Administrative Law. . .
- (c) Notwithstanding the foregoing, the Commission may accept and consider a written notice of withdrawal after the time specified herein if the Division consents to the withdrawal and if the Commission is satisfied that there exists extraordinary circumstances justifying withdrawal.

Petitioner's application was transmitted to the OAL in October 1985. It was then preheard and scheduled for hearing. It falls squarely within subsection (b) of the regulation and as no subsection (c) proofs of "extraordinary circumstances" were presented, an exception is not warranted.

We now proceed to the substantive issues. The facts are for the most part undisputed. Petitioner is 25 years of age and has a ten-year-old daughter. She has been employed as a cocktail server for approximately one year at the Trump Castle. In December 1982, she was indicted in Monmouth County on one count of possession of marijuana with intent to distribute contrary to N.J.S.A. 24:21-19a(1), one count of possession of marijuana contrary to N.J.S.A. 24:21-20a(4) and one count of conspiracy to distribute marijuana contrary to N.J.S.A. 24:21-24. She pled guilty to the conspiracy charge, was fined \$100, placed on probation for two years and assessed a \$25 fine to the Violent Crimes Compensation Board. In June 1983, petitioner was indicted in Monmouth County on one count of obtaining money under false pretenses, contrary to N.J.S.A. 2A:11-2 and one count of theft by deception, contrary to N.J.S.A. 2C:20-11. Both charges involved welfare fraud. On November 18, 1983, petitioner entered a guilty plea on both charges. She was sentenced to four years' probation, ordered to pay a fine of \$100 and \$25 to the Violent Crimes Compensation Board. She was also ordered to make restitution to the Monmouth County Board of Social Services in the amount of \$2,775 at the rate of \$56 per month commencing December 1, 1983.

Detective Brian R. O'Callahan of the Manalapan Police Department testified on behalf of respondent. He was one of the arresting officers in the drug case. Based on a tip from an informant, two separate confidential buys were made from Ms. Robinson at her home. Thereafter, a search warrant was obtained and the search produced approximately one-half pound of marijuana. Petitioner was cooperative in leading police to her supplier.

Agent Revalee Brody, an investigator on respondent's staff, testified with respect to the two incidents of welfare fraud. The first, resulting in the charge of obtaining money under false pretenses, involved petitioner's failure to inform the Monmouth County Board of Social Services that she was employed at a time when she was receiving welfare benefits. The overpayment was \$558, and accrued between September 1978 and February 1979. The charge of theft by deception involved a false

representation to the welfare board that she was paying for babysitting when she was actually receiving these services gratis. She received excess benefits in the amount of \$2,217 from September 1979 to May 1981.

Ms. Brody testified that a few days prior to hearing she telephoned petitioner's probation officer who informed her that as of May 29, 1986, no restitution had been made. She had paid most of the smaller fines. He also informed Ms. Brody that she had failed to report on at least one occasion.

Ms. Brody also testified concerning a brief telephone conversation which she had with the personnel office at the Trump Castle prior to hearing. She was told that between June 1985 and February 1986 petitioner received nine disciplinary writeups relating to lateness and poor job performance.<sup>1</sup>

Petitioner testified in her own behalf. She acknowledged each of her prior convictions and that she had been involved in a small distribution operation for a period of about five months before her arrest. She testified that she was very young at the time, that she had no money to support her child and that she is remorseful. Petitioner testified also that she has not since been involved in any wrongdoing. On the one occasion she did not report to her probation officer, she was to have made a payment on her fine and did not have the money, so she did not report. She simply has not had the funds to make restitution in accordance with the court order and has been permitted to pay as much as she could.

Petitioner also submitted two character letters from supervisors at the Trump Castle.

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<sup>1</sup> Documentation supporting this testimony was not available on the day of hearing and respondent was granted an opportunity to submit this material at a later time, subject to review by petitioner. Counsel having seen the material, has objected to its receipt in evidence indicating that if it is to be admitted, she might wish to call additional witnesses or at least recall petitioner to rebut these statements. The material was not admitted primarily because its limited probative value is outweighed by the delay and expense associated with scheduling an additional hearing date. Further, this is not a close case and respondent's overall position is well supported without this evidence.

This is the substance of the record. As the crimes charged by respondent were either proved by judgments of conviction or petitioner's admission of the underlying conduct, the only open question is rehabilitation. I do not believe that this has been established. The charges stemming from the welfare fraud involve a course of conduct spanning nearly three years. Each monthly welfare check received during the periods in question continued the deception. Most significantly, for purposes of rehabilitation, petitioner has yet to make a single payment in restitution. While her income as a cocktail server may not be high, to establish rehabilitation she is obliged to make a clear showing that things have changed. Even smaller payments than were directed by the court would have established effort. Additionally, she was involved in the distribution of marijuana for at least five months at the time she was arrested. The only affirmative material in the record are letters of recommendation from supervisors at the Trump Castle indicating that she is a willing worker. These are somewhat undermined by Ms. Brody's testimony, but even crediting the letters, they show only that petitioner has worked without incident for a year. This does not overcome her long history of criminal behavior.

Based on the foregoing, it is my **CONCLUSION** that petitioner has not established that she is a person of good character, honesty and integrity for purposes of her license application, nor has she established rehabilitation as a registrant. It is thus **ORDERED** that her application for licensure be **DENIED** and that her casino hotel employee registration be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NOS. CCC 282-86 & 6527-85

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7/21/86  
DATE

*Solomon A. Metzger*  
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

July 22, 1986  
DATE

*Nickolas Zayas*  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 24 1986  
DATE

*Ronald J. Parky, Jr.*  
OFFICE OF ADMINISTRATIVE LAW

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**EXHIBITS ADMITTED INTO EVIDENCE:**

- P-1 Police Department Arrest report
- P-2 Indictment No. 335-82
- P-3 Judgment Of Conviction
- P-4 Indictment No. 880-6-83
- P-5 Summary Report
- P-6 Memo, dated December 11, 1986
- P-7 Judgment Of Conviction
- P-8 Judgment Of Conviction
- P-9 Stipulated Judgment

**FOR THE RESPONDENT:**

- R-1 Letter, dated June 2, 1986
- R-2 Letter, dated June 2, 1986
- R-3 Letter, dated June 2, 1986

**WITNESSES**

Brian O'Callahan  
Revalee Brody  
Beverly Ann Robinson

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-405(b)  
OAL DOCKET NO. CCC 1541-86  
LICENSE NO. 01738-21

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
SUSAN ROCK, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of September 3, 1986,

IT IS on this 10th day of September 1986, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: Dennis Daly  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1541-86

AGENCY DKT. NO. 84-405(b)

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**SUSAN ROCK,**

Respondent.

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**William E. Mountford, Jr.,** Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**Maureen McKenna Goldberg, Esq.,** admitted pro hac vice, for the respondent (Barbara J. Lieberman, Esq., attorney of record)

Record Closed: June 5, 1986

Decided: July 21, 1986

BEFORE **RICHARD L. VOLIVA, JR., ALJ:**

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Susan Rock, respondent and the holder of casino employee license no. 01738-21 and gaming school instructor license no. 00593-60, had committed a criminal offense which disqualified her from continued licensure under N.J.S.A. 5:12-86c and/or N.J.S.A. 5:12-90b, for which the Division seeks revocation of her casino employee license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 30, 1984. By letter, the Commission advised the respondent of the pending action and of her right to a hearing. The respondent requested a hearing. On March 6, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 14, 1986. The matter was heard on June 5, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Rock is 31 years of age and currently resides with her parents in Wakefield, Rhode Island.

In 1978, the respondent received casino employee license no. 01738-21 and gaming school instructor license no. 00593-60 from the Commission. She also commenced a two-year period of employment as a blackjack dealer with Resorts International Hotel, Inc.

The respondent was next employed by the Brighton Hotel (now Greate Bay Hotel and Casino, Inc. - Sands) as a dealer and floorperson. The respondent left the Brighton because of an economic layoff which was caused by a consolidation in shifts.

The respondent was next employed as a blackjack dealer for approximately one year by the Golden Nugget Hotel and Casino.

From November 1981 through October 1983, the respondent was employed as a blackjack dealer and floorperson by the Tropicana Hotel/Casino (Tropicana). As a floorperson, the respondent represented the first level of management and was primarily responsible to rate players, by recording the sums they bet and won or lost at games under her supervision. A floorperson is also responsible for public relations, to detect cheating and to verify that dealers perform their functions correctly and accurately. The

respondent supervised between two and four games, depending upon the location of the tables and the minimum bet at the tables.

As part of the patron rating process, the respondent would prepare a player rating form (PRF) for certain players at tables she supervised. PRFs would be prepared for all players who "bought in," i.e., bet, \$100, which could consist of an individual wager and/or a cumulative amount wagered. The respondent believed that the PRFs were for in-house purposes only, and were used as a basis for the issuance of complimentary services to patrons. A PRF consisted of a patron's name, the game, the time, the amount of the buy-in and the win/loss (P-2, P-3 and P-4). The Tropicana did not accept incomplete PRFs. However, it was often very difficult to compile the information accurately, especially patron names. The pit bosses required a name on all PRFs.

In addition, all patrons who were participants in junkets to the Tropicana had to be rated. Junket patrons wore badges, which consisted of a symbol and were colored. These badges identified specific and individual junkets. Junket manifests (patron lists) were prepared by the junket representatives and provided to the Tropicana, which, in turn, issued a copy of the manifest to each pit. The floorpersons used the junket manifests in order to identify patrons. However, it was not always possible to identify an individual patron by name, although the specific junket was identifiable. Ms. Rock testified that on the occasions when she was unable to obtain a patron name, she would proceed to the appropriate manifest and select a name at random as needed in order to complete the PRF. The respondent acknowledged that this practice caused inaccurate patron identifications on the PRFs.

The respondent also testified that the procedures to rate players changed periodically and with management changes, which occurred on three separate occasions during her period of employment at the Tropicana.

From December 1981 through March 1982, the respondent had a romantic involvement with Slabadan or Slobodan Nikolich, with whom she resided for a portion of this time. Mr. Nikolich was employed as a bus greeter by Atlantic Tour and Transit, Inc. (ATT). ATT ran junkets on superbusses to the casinos, including the Tropicana. Joseph Millman was the owner of ATT and was Mr. Nikolich's employer. During the course of her relationship with Mr. Nikolich, the respondent came to know Mr. Millman and participated in various social engagements with Mr. Millman and his wife. The respondent stated that

she felt prejudiced toward Mr. Millman, because she considered him to be a friend. The respondent's relationship with Mr. and Mrs. Millman ceased when the respondent broke up with Mr. Nikolich.

In April 1983 the Casino Investigation Bureau of the New Jersey State Police Detachment to the Division commenced an investigation of the superbuss junkets to the Tropicana operated by Mr. Millman. ATT was compensated for superbuss junkets by the Tropicana by means of reimbursement for the bus and a commission based upon the volume of patron activity. The Division received information from the surveillance department of the Tropicana that Mr. Millman, who was a licensed junket representative, was being given credit for patron activity to which he was not entitled, i.e., superbuss junket patrons were rated although they had not played. Accordingly, the Tropicana believed that overpayments had been made to Mr. Millman. The investigation was conducted under the supervision of Detective John Wild. The detective acknowledges the investigation was lengthy and complex because of the substantial number of trips and patrons involved. The respondent was not initially identified as a target of the investigation. However, she was implicated by another employee of the Tropicana who was a target of the investigation, subsequent to that employee's arrest on June 14, 1983. The other employee made false statements to the detective during his initial interview. The respondent was further identified during the investigation by reason of a conflict in information contained on the PRFs as opposed to the junket manifests. More specifically, the investigation indicated that some PRFs might contain false information.

On August 10, 1983, Det. Wild and Division Investigator Barbara K. Friese interviewed the respondent. The respondent was given her Miranda warnings and the interview was conducted in the evening at the Division's offices at the Tropicana. The officers advised the respondent of the investigation and indicated their belief that some PRFs contained false information. The respondent was shown three PRFs and acknowledged that her signature appeared thereon (P-2, P-3 and P-4). The respondent explained the method she used to rate players, which was done manually because the computer system was not then in place. The officers then advised the respondent that they had uncovered 25 PRFs which were completely false. The respondent stated that she was unaware of false information on the PRFs and had not placed false information thereon knowingly. In addition, the respondent acknowledged that she knew Mr. Millman through Mr. Nikolich, and described her relationship with each. The respondent also advised the officers that, response to her inquiry concerning junket group activities, Mr.

Nikolich had stated that she was better not knowing anything, which statement the respondent did not pursue. The respondent stated that she never received any money from Mr. Millman. Also, she indicated that she might have been prejudiced toward Mr. Millman by reason of their friendship. She further explained that if she were unable to identify a patron she would proceed to the appropriate manifest and select a name in order to complete a PRF. This practice may have caused inaccuracies in the player identification portion of the PRFs.

From February 13 through March 8, 1983, Ms. Rock was absent from work.

The three PRFs in evidence reflect the following. First and on March 8, 1983, Joseph Scalise was a patron at the Tropicana on a junket from Thorndale, Pennsylvania (P-2). The patron wagered \$700 over one hour and lost \$300. The PRF was completed by the respondent. Second and on March 16, 1983, Mike Carroll arrived at the Tropicana on a junket from West Chester, Pennsylvania (P-3). The patron wagered \$450 in cash over a one and one-half hour period and won \$200. The respondent completed the PRF. Third and also on March 16, 1983, a Tony Riccardo arrived at the Tropicana on a junket from West Chester, Pennsylvania (P-4). The patron wagered \$500 in cash and lost \$200 during a one-hour period. The respondent completed the PRF.

The Division concluded that information contained on the subject PRFs was false by reason of telephone communications with the purported patrons. Nevertheless, the officers acknowledged that casino patrons do not like to admit how much they gamble and win or lose. Also, the Division did not verify the information received during the various telephone interviews.

The junket from Chester County, Pennsylvania, on March 16, 1986, consisted primarily of police officers and attorneys from that area. Det. Wild testified that superbusses did not usually include chartered groups. Most casino patrons are not typical superbuss patrons, i.e., superbuss patrons are usually high rollers.

In October 1983, the respondent voluntarily left employment with the Tropicana to accept an offer of employment, tendered during September, from the Cable Beach Casino, Nassau in the Bahamas. The respondent assisted in opening the casino. The respondent testified that she sought new employment because she needed a change and wanted to travel. The respondent was released from this employment subsequent to a

newspaper article which discussed the Division's investigation into ATT's activities at the Tropicana. Also during this period of employment, the respondent had telephone contact with the Det. Wild concerning the possibility of criminal charges.

The respondent's earnings during 1983 were approximately \$35,000.

On March 21, 1984, the respondent, together with Joseph Millman, Barry Hammond, Michael Freedman, Mr. Nikolich and ATT were indicted by a State Grand Jury on various charges. More specifically, the respondent was charged with one count of a violation of N.J.S.A. 2C:5-2, conspiracy - third degree; six counts of violations of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:2-6, theft by deception - third degree; and 19 counts of violations of N.J.S.A. 2C:21-4a and N.J.S.A. 2C:2-6, falsifying or tampering with records fourth degree (P-1). This indictment concerned ATT superbus activities at the Tropicana between December 1981 and and June 2, 1983.

In April 1984, the respondent returned to Atlantic City for a ten-day period, during which she was arraigned. Thereafter, she returned to Rhode Island.

The respondent was admitted into the Pre-Trial Intervention Program (PTI). Her participation in PTI was transferred to the Department of the Attorney General in Rhode Island. From January 28 through July 28, 1985, the respondent performed 80 hours of community service work at the South County Community Action Program (Program) as a receptionist (R-1, R-2 and R-3). The respondent's performance was excellent (R-1). At the conclusion of her assignment, the Program offered the respondent permanent employment, which she did not accept because of low pay. Accordingly and on August 20, 1985, an order of dismissal of the indictment was entered (J-1).

The parties agreed to the following stipulation:

Subsequent to the indictment and in consideration for the Division of Criminal Justice not objecting to Susan Rock's admission into the Pre-Trial Intervention Program, Ms. Rock agreed to and did cooperate with the Division of Criminal Justice in its investigation of Slabadan Nikolich and Ms. Rock agreed to testify; however, the matter was resolved prior to trial.

The respondent has not been involved in any other alleged violations of the criminal laws.

From October 1985 until the present, the respondent has been employed as a relocation coordinator for Yorktown Associates, Inc., Realtors (Yorktown) (R-4). Her performance has been exemplary in all respects. Her salary is \$200 per week.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

**(B) DISPUTED FACTS**

In dispute were the PRFs, Ms. Rock's knowledge of the truthfulness of the information on the PRFs, the respondent's role in the preparation of the PRFs, the respondent's relationship with Mr. Millman, the respondent's credibility and her good character, honesty and integrity.

The Division alleged that the respondent placed false information on the three PRFs (P-2, P-3 and P-4) (At the hearing the Division withdrew all other charges against the respondent). Although the Division did not identify which information was alleged to be false, it was understood that the Division believed the gambling activity attributed to each patron was inaccurate.

The Division's proofs consisted solely of hearsay statements received during telephone communications purportedly with the persons whose names appeared on the PRFs, and which persons denied the accuracy of the information thereon. The purported patron disclaimers are hearsay statements, most being second and third degree hearsay, and were not made under oath. Also, the statements were taken during telephone interviews which are inherently risky and unreliable. Further, the Division acknowledged that casino patrons do not like to openly and honestly discuss their gambling activities, and the Division did not verify any of the vague and general denials made by the purported patrons. It should also be noted that each patron was on a superbus junket to the Tropicana, but each claimed either to have not made any bet or made only a minimum bet on one or two games. This patron activity is in conflict with the purpose of superbus junkets and is in conflict with the information on the PRFs. Further and specifically, patron Carroll denied having bought in for a total amount of \$650; nevertheless, the allegation is of a buy in in the amount of \$450, which conflict was never reconciled. Also, the telephonic interview of Tony Riccardo revealed that he is a law enforcement officer who used a false name on the junket and while at the casinos.

The Division officers testified that they had no reason not to believe the statements received during the telephone interviews and, therefore, did not otherwise verify the information received. Rather, the Division chose to accept as fact the statements made by the purported patrons, despite the obvious lack of reliability attributable to the statements. In essence, the discrepancy between the PRFs and the statements of the purported patrons were not investigated and were not resolved. These statements might constitute probable cause, but they certainly do not constitute competent or credible evidence. The Division's conclusions concerning the truthfulness of the PRFs were speculative at best and were without any basis in fact. It is not now possible to determine the accuracy of any of the information set forth on the exhibits. However, this does not establish that the information is false.

In addition, the Division offered no evidence of the means by which the respondent completed the three PRFs. Although Ms. Rock did not deny the preparation of the exhibits, she did not recall the incidents. Given the sheer number of PRFs completed during her tenure at the Tropicana, her absence of recollection is reasonable.

The Division also contended that the respondent's relationship with Mr. Millman was nefarious. This contention was based upon the interview of the respondent on August 10, 1983, during which she stated that she was prejudiced toward Mr. Millman by reason of their prior social relationship. Accordingly, the Division concluded that the respondent had committed criminal acts on behalf of ATT. This hypothesis is simply not supported by the respondent's statements during the interview, nor by any other evidence.

The respondent described the circumstances under which she met Mr. Millman as well as the duration and nature, i.e., social, of their relationship. Further, the respondent testified that she had no knowledge of the manner in which ATT conducted its business with the Tropicana. Although the respondent had had an intimate relationship with an employee of ATT, ATT's business relationship with the Tropicana was not part of this relationship. Also, the respondent testified that she never received any money from Mr. Millman nor did she commit any illegal act on his behalf.

The respondent also testified that on those occasions when she may have placed an incorrect patron name on a PRF, the name was taken from a manifest for a junket which included the inaccurately identified patron, i.e., she did not refer only to ATT's manifests. Nevertheless, the gambling activity recorded on the PRF was accurate.

Therefore, such actions could not lead to an undeserved benefit to a junket operator. The respondent also testified that she never intended to violate any standard of performance and never intended any harm to the Tropicana.

Prior to making a finding, it is necessary to assess Ms. Rock's credibility. Initially, the respondent's position in this matter must be recognized. As the respondent and license holder she has a direct interest in the outcome and bias in these proceedings. Nevertheless, her testimony concerning the events was consistent with her statements during the August 10, 1983 interview and was not refuted by any document. The respondent's testimony was only inconsistent with the hearsay statements of purported patrons, which are not reliable. It was clear both during the hearing and during the review of the record that from my observations of the respondent's demeanor, the plausibility of her testimony, the logic of her explanations, and the absence of any credible evidence to the contrary, that the respondent testified truthfully. The respondent's testimony was candid, consistent, believable and completely persuasive. In the final analysis, I am persuaded to accept her testimony in all respects.

Accordingly, there was no evidence to establish that the respondent's relationship with Mr. Millman was anything other than as she described. More specifically, it was social in nature and of a short duration. In fact, the relationship ceased approximately one year before the subject PRFs were completed.

The respondent offered several letters on her behalf. Jan Hall, a planner with the South County Community Action Program, supervised the respondent during the performance of her community service obligation under the PTI (R-1). Karen Costello Sullivan, Adult Diversion Unit Director for the Rhode Island Department of Attorney General, described the manner in which the respondent completed her obligations under the PTI (R-3). Last, Suzanne Swann, Officer Manager for Yorktown Associates, is the respondent's supervisor at her current place of employment (R-4). Ms. Sullivan stated that Ms. Rock completed all of the requirements of the PTI. Ms. Hall and Ms. Swann both stated that the respondent is a competent, reliable and honest person.

After consideration of the entire record in this matter, I further **FIND** that:

1. Investigative telephone interviews are inherently risky and the information received therefrom, absent verification, is unreliable.
2. Given the sources of the statements received during the telephonic interviews, together with the general unreliable characteristics thereof and the specific doubts as to credibility of the sources, the information received is not worthy of belief.
3. The Division did not otherwise verify any of the information received during the telephonic interviews. Therefore, such information is unreliable and not credible. Such evidence cannot support a finding of fact.
4. There was no evidence of the method or manner by which the respondent completed the three PRFs.
5. There was no reliable or credible evidence that any of the information set forth on the subject PRFs was false.
6. The respondent's testimony was candid, logical and believable in all respects.
7. The respondent's relationship with Mr. Millman was social in nature, of four months in duration and ceased during March 1982.
8. There was no evidence that the respondent did anything, let alone commit a criminal act, in order to benefit ATT.
9. The respondent had no knowledge that ATT might have improperly received monies from the Tropicana for services not rendered.
10. The respondent received no monies from Mr. Millman.
11. Although the respondent might have placed inaccurate patron names on PRFs, such names were taken from an appropriate junket manifest and did not result in any unjust financial benefit to any junket operator.

12. Employment supervisors of the respondent are of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends, pursuant to section 86g, that the respondent violated N.J.S.A. 2C:21-4a, which is a disqualifier under section 86c(1) and, therefore, cannot continue to hold a license.

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1)

Section 86g provides that a person be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. This statute provides:

Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

As is pertinent to this matter, the elements of the offense are that a person have made a record which contains false information, that the maker know the information is false and that the maker have had a purpose to deceive, injure or conceal a wrongdoing. N.J.S.A. 2C:2-b(2) defines knowingly as:

With respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or that he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result.

Similarly, N.J.S.A. 2C:2-b(1) defines purposely as:

With respect to the nature of his conduct or result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist.

From the findings of fact, it is clear that the Division failed to establish that the three PRFs contained any false information, that the respondent knew that the PRFs contained false information or that the PRFs were falsified for a purpose adverse to that of the Tropicana. More specifically, the Division has failed to establish any element of the charged offense.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 2C:21-4a.

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Rock was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino

Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

Despite its inability to establish any criminal misconduct by the respondent, the Division contends that the respondent's actions indicate that she no longer possesses the requisite degree of good character, honesty and integrity for continued licensure. The sole basis for this contention is the fact that the respondent was indicted. However, this contention is without merit.

An indictment, especially when the basis for the indictment is unknown, may establish probable cause to believe misconduct has been committed, but, alone, it is insufficient to establish the alleged misconduct. In addition, here the indictment was dismissed. The order of dismissal nullifies any potential evidential value attributable to the indictment. Further, the Division has offered no other reliable or credible evidence to support its untested hypothesis of wrongdoing. Accordingly, there is no evidence in the record which would reflect negatively on the respondent.

The fact that the respondent chose the option of PTI, which she completed satisfactorily, should not reflect adversely upon her. In fact, such an inference would be the antithesis of PTI. Rather, the respondent's explanation for her decision to enter PTI, the order of dismissal and the absence of any evidence of misconduct, together with the positive recommendations offered on her behalf lead inescapably to the conclusion that she presents no risk to the public nor to the integrity of the gaming industry in this State. An examination of the whole person clearly and convincingly establishes that Ms. Rock is of good character, honesty and integrity and is entirely suitable for licensure in this State. Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her continued good character, honesty and integrity, under section 90b.

DISPOSTION

It is **ORDERED** that the petition of the Division to revoke the casino employee license of Susan Rock be **DENIED** and **DISMISSED WITH PREJUDICE**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 21, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

July 22, 1986  
DATE

Nitara Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 24 1986  
DATE

Ronald J. Parke, Jr.  
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 State of New Jersey v. Susan Rock, et als., Superior Court of New Jersey, Law Division - Criminal, State Grand Jury no. SGJ109-83-8(1), Indictment (71 pages)
- P-2 Tropicana - Player Rating Form, Joe Scalise, dated Marh 18, 1983
- P-3 Tropicana - Player Rating Form, Mike Carroll, dated March 16, 1983
- P-4 Tropicana - Player Rating Form, Tony Riccardo, dated March 16, 1983
- 
- R-1 Letter from Jan Hall, dated May 30, 1986
- R-2 Letter to Susan Rock from Karen Costello Sullivan, dated May 30, 1986
- R-3 Letter to Stephen J. Imperiale from Karen Costello Sullivan, dated August 2, 1985
- R-4 Letter from Suzanne Swann, dated June 2, 1986
- 
- J-1 State of New Jersey v. Susan Rock, Superior Court of New Jersey, Atlantic County - Law Division, Order of Dismissal Under Rule 3:28, dated August 20, 1985

WITNESS LIST

For the petitioner:

Barbara K. Friese

John Wild

For the respondent:

Susan Rock

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-204  
OAL DOCKET NO. CCC 07351-84  
VENDOR REGISTRATION NO. 2907

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STATE OF NEW JERSEY,  
DEPARTMENT OF LAW & PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

FINAL ORDER

SALLA BROTHERS, T/A GENERAL AIR,  
INC.,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the respondent and a reply thereto having been filed by the Division of Gaming Enforcement; and the Commission having advised the parties pursuant to N.J.S.A. 5:12-107(b) that the Commission may take notice of the law of the Commonwealth of Pennsylvania concerning commercial bribery, 18 Pa.C.S.A. §4108, in its disposition of this matter; and the Commission having considered the entire record of these proceedings at its public meeting of September 4, 1985,

IT IS on this 12<sup>TH</sup> day of August 1986, ORDERED that the initial decision is modified as follows:

At pp. 8 and 9 of the initial decision, the ALJ indicated that the respondent's disqualification was predicated upon the judge's acceptance of the representation of the DGE that "the action of this respondent, if committed in this State, would be an offense of criminal bribery of the fourth degree...." While the Commission agrees with the ultimate conclusion that the respondent is disqualified, additional analysis is required.

Because the alleged unlawful conduct occurred in Pennsylvania, the first issue that must be determined is whether the conduct was legal under the existing law and the jurisdiction in which it occurred. The Commission previously held that section 86(c) of the Act encompasses only:

...those acts which, at the time and place committed, would have constituted an offense. Thus, if a person had conducted activity which was legal under the then existing law of the jurisdiction where it occurred, no automatic disqualification would arise under these criteria even if the same conduct would constitute one of the described offenses if it were committed now in New Jersey. [In the Matter of the Application of Resorts International, Inc., for a Casino License, Docket No. 79-CL-1 (1979) at 14.] See also, In the Matter of the Application of Playboy-Elsinore Associates for a Casino License,

Docket No. 81-CL-3 (1982); In the Matter of the Application of Seymour Alter for a Casino Key Employee License, Docket No. 79-EA-60 (1980).

Under Pennsylvania law, the applicable statute is 18 Pa. C.S.A. §4108, Commercial Bribery and Breach of Duty to Act Disinterestedly, which provides in pertinent part as follows:

(a) Corrupt Employee Agent or Fiduciary.--

An employee, agent or fiduciary commits a misdemeanor of the second degree when, without the consent of his employer or principal, he solicits, accepts, or agrees to accept any benefit from another person upon agreement or understanding that such benefit will influence his conduct in relation to the affairs of his employer or principal.

...

(c) Solicitation.-- A person commits a misdemeanor of the second degree if he confers, or offers or agrees to offer, any benefit the acceptance of which would be criminal subsections (a) or (b) of this section.

The effective date of this statute was June 6, 1973.

The Commission finds the elements of the offense in Pennsylvania were met when two principals for the respondent conferred a benefit on employees of Temple University in return for having each employee use his influence or agree to use his influence to have Temple University purchase products and services from the respondent.

As to the respondent's claim of economic coercion or duress, under the Pennsylvania Code, 18 Pa. C.S.A. §309, the only threats recognized by law as an affirmative defense are those involving a threat or use of an unlawful force against the actor or another against which a person of reasonable firmness in his situation would have been unable to resist. There has been no demonstration that economic coercion is a defense available in Pennsylvania. Therefore, we find the conduct of the respondent to be criminal under Pennsylvania law.

The Commission finds that all the elements of the applicable New Jersey statute, N.J.S.A. 2C:21-10(c) (commercial bribery) have been demonstrated by the Division by a preponderance of the credible evidence in the record. We reject the argument of respondents that the conferring of benefits to Temple employees was not a "voluntary act" by Vincent and Joseph Salla as required by N.J.S.A. 2C:2-1(a). An affirmative defense of duress is inapplicable in this case as there is no evidence that there was the use or threat to use unlawful force against a person as required to be demonstrated under the statutory definition, N.J.S.A. 2C:2-9. The New Jersey Supreme Court has rejected the proposition that threats to property or other economic concerns may be sufficient evidence to demonstrate duress. State v. Toscano 74 N.J. 421, 434 (1977).

Therefore we conclude that the respondent has engaged in conduct which would constitute an offense under Pennsylvania and New Jersey law.

IT IS FURTHER ORDERED that Salla Brothers, Inc., t/a General Air, Inc., is found disqualified based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that consistent with the finding of disqualification, Salla Brothers, Inc., t/a General Air, Inc. is removed from the Commission's Master Vendor's List; and

IT IS FURTHER ORDERED that Vincent and Joseph Salla are prohibited from holding any position or engaging in any activity for which license, registration, qualification or approval is required under the Casino Control Act and from applying for any such license, registration, qualification or approval except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that Salla Brothers, Inc., is prohibited from conducting direct or indirect business with or supplying any goods or services to any casino licensees or to any casino agent or employee acting on behalf of a casino licensee until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Salla Brothers, Inc., Vincent Salla or Joseph Salla, on the one side, and casino licensees or employees or agents acting on behalf of casino licensees on the other side, be terminated within 15 days of the date of the Commission's determination; and

IT IS FURTHER ORDERED that copies of this final order be served upon Salla Brothers, Inc., Vincent Salla, Joseph Salla, the Division of Gaming Enforcement, the Office of

Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7351-84

AGENCY DKT. NO. 84-204

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,**

Petitioner,

v.

**SALLA BROTHERS, t/a GENERAL  
AIR, INC.,**

Respondent.

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**R. Lane Stebbins, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Alfred Donati, Jr., Esq., and Alan Mansfield, Esq., members of the New York bar, admitted pro hac vice for respondent (Phillips, Nizer, Benjamin, Krim & Ballon, attorneys). Attorney of Record: Warren W. Wilentz, Esq. (Wilentz, Goldman & Spitzer, attorneys).**

**Record Closed: May 13, 1985**

**Decided: June 24, 1985**

**BEFORE BEATRICE S. TYLUTKI, ALJ:**

This matter concerns the amended complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 24, 1984, seeking the revocation of the respondent's registration as a vendor, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (Act). The respondent requested a hearing and the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held on December 10, 1984, the parties agreed that the issues are:

- (a) Whether the conduct of the respondent as set forth in the complaint filed by the Division rendered its continued registration inimical to the policies of the Act, pursuant to the provisions of N.J.S.A. 5:12-86b(4).
- (b) Whether the respondent's activities are equivalent to the offense of criminal bribery, a violation of N.J.S.A. 2C:21-10, and if so, whether the respondent is disqualified from registration, pursuant to N.J.S.A. 5:12-86g.
- (c) What are the appropriate sanctions to be imposed on the respondent, if any, pursuant to N.J.S.A. 5:12-129?
- (d) Whether this matter is barred by laches or any statute of limitations, and whether the Division's complaint violates the respondent's right to due process.

At the prehearing conference, the parties agreed that a hearing would not be necessary and that they would enter into a stipulation of facts and submit memoranda of law. Since the stipulation of facts was not submitted within the time period set forth in the prehearing order or a reasonable period after the termination of the settlement negotiations, I set the matter down for hearing on April 30, 1985.

The hearing in the matter took place on April 30, 1985, and I kept the record open for receipt of an additional exhibit to be submitted by Deputy Attorney General R. Lane Stebbins. I received this exhibit (R-1) on May 13, 1985, and the record closed on that date.

I **FIND** that there is no factual disputes in this matter.

On the day of the hearing, a stipulation of facts (J-1), which includes one exhibit (J-2), signed by the parties, was entered into evidence. This stipulation (J-1) contains the following facts:

Salla Brothers t/a as General Air, Inc. (Salla Brothers) is now and was at all times relevant to this matter a Pennsylvania corporation located at 113 North Fifth Street, Box 14, Darby, Pennsylvania 19023. Further, at all times relevant to this matter, Vincent Salla was the corporate president of Salla Brothers and Joseph Salla was the corporate secretary/treasurer.

Salla Brothers was the holder of casino service industry license number 728, issued by the Commission on January 23, 1980, and subsequently renewed on September 28, 1982. This license expired on January 31, 1984. A vendor registration form was filed on behalf of Salla Brothers and the corporation was registered as a vendor and was assigned vendor no. 2907.

A criminal indictment, captioned United States v. Nardini, et al., Crim. No. 84-00150 (E.D. Pa. 1984), was duly filed in the United States District Court for the Eastern District of Pennsylvania on April 4, 1984 (J-2). Insofar as the said indictment sets forth allegation of facts concerning respondent and its said principal officers, those allegations are true.

Prior to April 4, 1984, a representative of Salla Brothers, namely Vincent Salla, testified before a federal grand jury for the United States District Court for the Eastern District of Pennsylvania regarding the activities and payments described in said indictment. That testimony was voluntarily provided in connection with a United States Department of Justice investigation in which the respondent and its principal employees fully cooperated and provided invaluable assistance.

On or about April 4, 1984, the federal grand jury, before which said representatives of Salla Brothers testified, returned a 21-count indictment (J-2). The trial was scheduled to commence on or about July 9, 1984.

On or about July 9, 1984, at the time and place set for the hearing, Vincent Salla and Joseph Salla, as representatives of Salla Brothers, were present in the courtroom and were prepared to testify on behalf of the federal government. However, no testimony was required as all criminal defendants pleaded guilty or nolo contendere to various charges in the indictment.

Had the criminal defendants not conceded their guilt, the anticipated testimony of Messrs. Salla would have directly supported or substantially corroborated the government's proof in each and every count of the indictment which relates to the respondent and its principals.

In summary, the indictment (J-2) that is part of the stipulation of facts, alleges that certain employees of Temple University in Philadelphia, Pennsylvania, during the period 1969 through 1984, extorted monies and goods totalling approximately \$750,000 from certain vendors, including the respondent, and that said vendors' consents were induced by fear of economic loss, in violation of 18 U.S.C. § 1951. The overt acts set forth in the indictment (J-2), as they relate to the respondent and its principals, are:

- (1) In or about late 1969 or early 1970, William T. Mathis, an unindicted co-conspirator, demanded from Vincent Salla the payment of money in return for using his influence to have Temple University purchase products from Mr. Salla's companies (Count 1, para. 1).
- (2) In or about late 1971 or early 1982, John J. Nardini demanded from Vincent Salla the payment of money in return for using his influence to have Temple University purchase material and services from Mr. Salla's companies (Count 1, para. 3).
- (3) In or about 1981, Richard Walsh, an unindicted co-conspirator, on behalf of himself and Mr. Mathis, demanded from Vincent Salla the payment of money in connection with the amount of business that Mr. Salla did with Temple University in return for using his influence to have Temple University purchase the products and services of Mr. Salla's companies (Count 1, para. 8).
- (4) In or about 1981, Mr. Walsh, on behalf of himself and Mr. Mathis, demanded from Vincent Salla the payment of money in connection with the amount of business that Mr. Salla did with Temple University in return for using his influence to have Temple University purchase the products and services of Mr. Salla's companies (Count 1, para. 11).

- (5) In or about 1981, William T. Street demanded from Vincent Salla the payment of money in connection with the amount of business that Mr. Salla did with Temple University in return for using his influence to have Temple University purchase products from Mr. Salla's companies (Count 1, para. 10).
- (6) In or about February 1982, Bobby Miller demanded from Vincent Salla the payment of money in an amount equal to approximately 10 percent of the business that Temple University did with Mr. Salla's companies in return for using his influence to have Temple University purchase products from Mr. Salla's companies (Count 1, para. 13).
- (7) In or about June 1982, Raymond Miller demanded from Vincent Salla the payment of money in the amount equal to approximately 10 percent of the business that Temple University did with Mr. Salla's companies in return for using his influence to have Temple University purchase products from Mr. Salla's companies (Count 1, para. 14).
- (8) In or about November 1982, William Colbridge demanded from Vincent Salla the payment of money in an amount equal to approximately 10 percent of the business that Temple University did with Mr. Salla's companies in return for using his influence to have Temple University purchase products from Mr. Salla's companies (Count 1, para. 16).
- (9) In or about June 1983, Thomas J. Siedzkowski, on behalf of himself and Mr. Nardini, demanded and obtained from Vincent Salla approximately \$2,000 as partial payment for the business that Temple University did with Mr. Salla's companies (Count 1, para. 19).
- (10) Beginning in or about June 1983, Mr. Nardini, extorted approximately \$172,706 from Vincent Salla and Mr. Salla's payment was induced by the fear of financial and economic loss (Count 3).
- (11) Beginning on or about March 28, 1981, Mr. Street extorted approximately \$30,500 from Vincent Salla and Mr. Salla's consent was induced by the fear of financial and economic loss (Count 7).

- (12) Beginning on or about February 28, 1982, Bobby Miller extorted approximately \$3,800 from Vincent Salla and Mr. Salla's consent was induced by the fear of financial and economic loss (Count 8).
- (13) Beginning on or about June 25, 1982, Raymond K. Miller extorted approximately \$3,700 from Vincent Salla and Mr. Salla's consent was induced by the fear of financial and economic loss (Count 9).
- (14) Beginning on or about November 19, 1982, Mr. Colbridge extorted approximately \$1,200 from Vincent Salla and Mr. Salla's consent was induced by fear of financial and economic loss (Count 10).

By letter dated July 27, 1984, Ronald G. Cole, Special Attorney, Philadelphia Strike Force, U.S. Department of Justice, informed Mr. Stebbins that Salla Brothers, Inc. and its principal employees had been given an informal grant of immunity, that they had fully cooperated in the investigation of extortion by Temple University employees and that they were prepared to testify at the trial (R-1). In this letter, Mr. Cole stated that "you should understand that we are not requesting you to act in any particular way."

In his oral argument, Mr. Donati, counsel for the respondent, noted that the principals of Salla Brothers cooperated with the members of the Federal Task Force and argued that Salla Brothers and its principal employees were the "victims" of an extortion, that the payments were not bribes and that the payments were really "involuntary" because they were made as a result of the financial pressure exerted on the respondent. Further, he argued that it would be unreasonable to deny the respondent the right to continue its business activities with casinos in Atlantic City. Mr. Donati alleged that there was one vendor involved in the Temple University matter who refused to cooperate with the Federal Task Force and that this vendor is still doing business with casinos in Atlantic City. Therefore, Mr. Donati argued that if the respondent's registration is revoked, the public's perception will be that it is better not to cooperate with federal investigators. Mr. Donati stated that he was aware of discussions between members of the Federal Task Force and the representatives of the Division regarding this matter.

In his closing, Deputy Attorney General Stebbins stated that this was a troublesome case. The respondent had paid a substantial amount of money over a long period of time to certain Temple University employees in order to do business.

Mr. Stebbins recognized that the respondent's cooperation with the Federal Task Force was a mitigating factor, and he stated that the Division was not making any recommendations as to what sanctions, if any, should be imposed on the respondent in this matter.

Mr. Stebbins took exception to the comments made by Mr. Donati regarding the Division's contacts with the Federal Task Force members and with Mr. Donati's allegation that an unidentified vendor who had been involved in the Temple University matter was either licensed or registered to do business with casinos in Atlantic City. At Mr. Stebbins' request, I took official notice, pursuant to N.J.A.C. 1:1-15.3, that there had been one prior administration action taken against the respondent, In the Matter of the Renewal Application of Salla Brothers, t/a General Air, for Licensure as a Casino Service Industry, OAL DKT. CCC 4366-81 (decided July 23, 1982), reversed by Commission (September 28, 1982).\*

In this prior administrative matter, Administrative Law Judge Richard L. Voliva rendered an initial decision in which he concluded that the respondent's license as a casino service industry should not be renewed because the respondent had not established its good character, honesty and integrity as required by N.J.S.A. 5:12-89b(c) since a principal of the respondent had given an employee of Resorts International Hotel and Casino a \$200 payment in order to enhance the respondent's business relationship with Resorts. The facts in that case show that the respondent had an established practice of providing entertainment and gifts to purchasing agents and prospective customers, and that on one occasion a principal of the respondent had given \$200 in cash to an employee of Resorts and had said that the money was in lieu of taking that employee and his wife to New York for dinner and a show.

The Commission reversed the administrative law judge's initial decision and concluded that the practice of taking clients or potential clients out for dinner or offering other such amenities is an accepted practice which is tax deductible as a business

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\*At the hearing and by letter dated May 16, 1985, Mr. Mansfield objected to the reference to the prior administration matter. Mr. Mansfield alleged that he and Mr. Donati had a clear understanding that this prior matter would not be brought up during this hearing. Mr. Stebbins provided me with a copy of this initial decision and the final decision of the Commission as reflected in the minutes of its September 28, 1982 meeting by letter dated May 7, 1985.

expense, and that it was unfair to deny the respondent a license on this basis unless the Commission adopts regulations indicating that this business practice is prohibited when dealing with the casino industry.

Mr. Stebbins stated that the respondent's actions, if committed in New Jersey, would be considered criminal bribery pursuant to N.J.S.A. 2C:21-10c and that this violation would be a crime of the fourth degree. Therefore, pursuant to N.J.S.A. 5:12-86c(1), such a violation would not be a statutory disqualifier.

As to the issue of whether respondent's continued registration would be inimical to the policies of the Act, pursuant to N.J.S.A. 5:12-86c(4), Mr. Stebbins argued that the respondent engaged in conduct that was clearly illegal and contrary to the public policy statements contained in the Act. Mr. Stebbins argued that it was the clear intent of the Act to keep out companies that engaged in any unsound business practices, N.J.S.A. 5:12-1b(7) and (9).

Based on the facts in this matter, I **CONCLUDE** that the petitioner has shown that the continued registration of the respondent is inimical to the policies of the Act, pursuant to N.J.S.A. 5:12-86c(4). Pursuant to the Act, all vendors have to be either licensed or registered and this requirement has been inserted into the law in order to guarantee that persons doing business with the casino industry have financial integrity and have not engaged in any unsound, unfair or illegal practices, N.J.A.C. 5:12-1. In this matter, the facts clearly show that the respondent made a business judgment that it would pay the money demanded by certain Temple University employees in order to do business with the school. Although this is different than offering a bribe in order to get business, it is illegal and the respondent could have refused to pay the money and have forgone having the university as a customer. The fact that the respondent did pay a substantial amount of money over an extended period of time, which ended only after the Federal Task Force started its investigation, clearly reflects negatively on the business integrity of the respondent and renders the respondent's continued registration inimical to the policies of the Act.

As to the question of whether or not the respondent's actions render it disqualified from registration pursuant to N.J.S.A. 5:12-86g, I accept Mr. Stebbins' representation that the action of the respondent, if committed in this state, would be an

offense of criminal bribery of the fourth degree and, therefore, I **CONCLUDE** that the respondent is not disqualified pursuant to N.J.S.A. 5:12-86g.

As to the issues of whether this matter is barred by laches or any other statutory limitations or whether the Division's complaint violates the right of due process, I **CONCLUDE** that the respondent has not shown that any of these equitable principles apply in this matter.

Lastly, as to the sanction to be imposed by the petitioner, I **CONCLUDE** that because I found that the respondent's continued registration would be inimical pursuant to N.J.S.A. 5:12-86c(4), I **ORDER** that the respondent's registration be **REVOKED**. In reaching this conclusion, I have reviewed the decisions rendered in the prior administrative matter, and I **CONCLUDE** that based on the Commission's determination that no negative connotation should be given because of that prior administrative proceeding pursuant to the provisions of N.J.S.A. 5:12-130.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 24, 1985  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

June 25, 1985  
DATE

Bernadette J. Fryer  
CASINO CONTROL COMMISSION

Mailed to Parties:

June 27, 1985  
DATE

Robert J. Longoria  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE:

JOINT EXHIBITS:

- J-1 Stipulation of Facts agreed to by the parties
- J-2 Criminal Indictment in United States v. Nardini, et al., Criminal No. 84-00150 (E.D.PA. 1984).

FOR THE RESPONDENT:

- R-1 Letter from Ronald G. Cole, Special Attorney, Philadelphia Strike Force to R. Lane Stebbins, Esq., Division of Gaming Enforcement, dated July 27, 1984 (received by mail on May 13, 1985)

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-371  
OAL DOCKET NO. CCC 7008-85  
LICENSE NO. 11916-21

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STATE OF NEW JERSEY, DEPARTMENT OF :  
LAW & PUBLIC SAFETY, DIVISION OF :  
GAMING ENFORCEMENT, :

Complainant, : FINAL ORDER

V. :

MICHAEL D. SAMACICIA, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 6, 1986,

IT IS on this 20<sup>th</sup> day of August 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Michael D. Samacicia is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

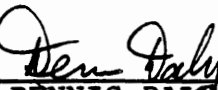
IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration,

qualification of approval under the Casino Control Act  
except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that notwithstanding the above,  
this order will not effect the respondent's casino hotel  
employee registration.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:



\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7008-85

AGENCY DKT. NO. 84-371

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC  
SAFETY,**

Petitioner,

v.

**MICHAEL D. SAMACICIA**

Respondent.

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**Stephen J. Cirillo, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Michael D. Samacicia, respondent, pro se**

Record Closed: May 5, 1986

Decided: June 19, 1986

**BEFORE JOSEPH F. FIDLER, ALJ:**

**STATEMENT OF THE CASE**

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on November 2, 1984, seeking revocation of the respondent's casino employee license, or some other sanction, pursuant to sections 86c and 86g, 90 and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's arrest on May 28, 1984, for possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1). The issues to be determined in this matter are as follows:

1. Whether the respondent, with reference to his arrest on May 28, 1984, has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.
2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the act.

#### PROCEDURAL HISTORY

By letter dated October 30, 1985, the respondent requested a hearing on the revocation complaint filed by the Division of Gaming Enforcement. On November 4, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on December 18, 1985, and the hearing was held as scheduled on March 6, 1986. The record remained opened following the hearing to permit the parties to provide additional information. The submission of the Division of Gaming Enforcement was received on March 17, 1986. When it was determined that the respondent would not make a submission, the record was closed on May 5, 1986.

#### FINDINGS OF FACT

The respondent is a 26 year old resident of Ventnor, New Jersey. He holds casino employee license no. 11916-21, issued by the Casino Control Commission. Since September 1984, the respondent has been employed as a bus person at the Camelot Restaurant of Resorts International Hotel and Casino.

From October 1980 until March 1981, the respondent was a dealer at the Golden Nugget Casino. Beginning in March 1982, the respondent was employed as a dealer

at the Playboy Casino for a period of 14 months. He left that position for personal reasons. Until he was hired at Resorts International in September 1984, the respondent held odd jobs. The respondent has been married for a little over one year, and he supports his wife.

The incident which is the subject of the complaint of the Division of Gaming Enforcement occurred on May 28, 1984. On that date, Atlantic City Police Department Detectives Hipple and Munoz were working in an undercover capacity at the Chez Paree Lounge in Atlantic City, New Jersey. Although the details of their observations are in dispute, it is undisputed that the officers arrested the respondent in the men's room of the Chez Paree on May 28, 1984, when they observed him to be holding a cellophane bag in his hand which contained pills appearing to be the controlled dangerous substance qualudes. The respondent was charged with possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). The arrest report and investigation report of Detectives Munoz and Hipple were admitted into evidence as Exhibit P-1.

On July 10, 1984, the respondent entered a plea of guilty to the downgraded charge of use of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20b(Exhibit P-2). In return for his plea of guilty to this disorderly persons offense, the respondent was granted a conditional discharge. In compliance with the terms of the conditional discharge, the respondent submitted to monthly urine tests at the Atlantic City Medical Center. According to the respondent, he entered his guilty plea voluntarily, upon the advice of the public defender. The respondent also testified that he has only one other arrest, which was for a disorderly persons offense in Atlantic City during 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 respondent's conduct at the Chez Paree Lounge on May 28, 1984. The investigation report filed by Detectives Hipple and Munoz (Exhibit P-1) states, in part:

The undersigned were working in an undercover capacity at the Chez Paree when we noticed two males in a bathroom stall of the mens room together. Male with long hair exhibited a cellophane baggie with what appeared to be pills the undersigned approached and male was placed into custody and charged with Poss. CDS qualudes. Male had pills in his hand [sic].

Testifying on his own behalf, the respondent stated that he would visit the Chez Paree Lounge about twice a month. On May 28, 1984, the respondent was in the men's room at the Chez Paree, at the same time another man was present. The respondent denied that they were in the same stall.

The respondent testified that he observed a cellophane bag on the floor of the men's room. He noticed that the bag contained pills which appeared to him to be qualudes. Because he was curious, he picked up the bag. According to the respondent, he said, "Wow, look what I found." Within just a few seconds, while he was holding the pills in his hand, the undercover officers placed him under arrest.

It was the testimony of the respondent that he had been under the influence of alcohol at the time of the incident. Nevertheless, he entered a guilty plea to the charge of being under the influence of a controlled dangerous substance. Curiously, the respondent also testified that he thought he was actually pleading guilty to the charge of possession of a controlled dangerous substance.

The respondent's version of the events which occurred on May 28, 1984, is unusual and improbable. In addition, his guilty plea to use or being under the influence of a controlled dangerous substance would have required him to admit to an offense which he now claims he did not commit. On the other hand, he also stated that he believed he pled guilty to the more serious offense of possession of a controlled dangerous substance. The respondent's testimony lacks the ring of truth and it is not believable. Accordingly, I further **FIND** that on May 28, 1984, at the time of his arrest, the respondent was in possession of a bag of pills appearing to be a controlled dangerous substance.

#### 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 condition upon the proper and continued qualification of the individual licensee. Section 129(1) of the act authorizes the revocation of the credential of any person for his commission of any offense or violation under the act which would disqualify such person from holding his license.

Pursuant to sections 90e, 86c(4) and 129 of the Casino Control Act, the Casino Control Commission may revoke the license of any licensee on the basis of his conviction of an offense which would indicate that continued licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to section 86g of the act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

In this matter, the respondent was originally charged with possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1). It is undisputed that the charge was downgraded and the respondent pled guilty to the charge of use of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20b. I have **FOUND** that the respondent was in possession of a bag of pills which appeared to be a controlled dangerous substance at the time of his arrest. However, there is insufficient credible evidence in the record to establish by a preponderance of the evidence that the pills possessed by the respondent were a controlled dangerous substance. What has been established (by virtue of his plea of guilty) is that the respondent committed the offense of use of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20b.

The respondent's conviction for use of a controlled dangerous substance occurred approximately two years ago. He satisfactorily complied with the terms of his conditional discharge, including submitting to testing for drug use. Based upon the foregoing, it does not appear from the respondent's plea of guilty to use of a controlled dangerous substance on July 10, 1984, that his continued participation in the legalized gaming industry would justifiably undermine the public's confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has not committed or been convicted of an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act, within the meaning of sections 86c(4) and 86g of the act.

The question remaining for resolution is whether the credible evidence in the record demonstrates that the respondent possesses the attributes of good character, honesty and integrity, necessary for him to remain qualified to hold his license, within the meaning of sections 89b(2) and 90b of the Casino Control Act. As discussed previously, the testimony offered by the respondent at the hearing concerning the incident on May 28, 1984, was not believable. This lack of candor on the part of the respondent can not be overlooked. I **CONCLUDE** that it so adversely affects the establishment of his good

character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the act, so as to require revocation of his casino employee license, pursuant to section 129 of the act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license of Michael D. Samacicia be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 19, 1986  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 19, 1986  
DATE

Neilus Hayes  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 24 1986  
DATE

Ronald J. Parker  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Atlantic City Police Department Arrest and Investigation Report

P-2 Complaint and Judgement of Conviction

For the respondent:

None

WITNESSES

For the petitioner:

Michael D. Samacia

For the respondent:

Michael D. Samacia

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-EA-188  
APPLICATION NO. 60027-21  
OAL DOCKET NO. CCC 0008-86

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APPLICATION OF BARBARA SCHIMPF :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER

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A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 16, 1986,

IT IS on this <sup>4th</sup> day of August 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Barbara Schimpf for a casino employee license is granted for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0008-86

AGENCY DKT. NO. 85-EA-188

**BARBARA SCHIMPF,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW AND PUBLIC**

**SAFETY,**

Respondent.

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**Edward P. Kozmor, Esq.,** for the petitioner

**Ralph L. Fusco, Deputy Attorney General,** for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: April 25, 1986

Decided: June 9, 1986

BEFORE **RICHARD L. VOLIVA, JR., ALJ:**

**STATEMENT OF THE CASE**

Barbara Schimpf, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (casino teller), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contention that the applicant had failed to disclose information material to licensure during a telephonic interview with a Division agent, in violation of section 86b of the Casino Control Act (Act), and by reason that the petitioner lacked the requisite good character, honesty and integrity, under section 89b(2), solely by reason of her failure to disclose in violation of section 86b.

PROCEDURAL HISTORY

Ms. Schimpf filed her Personal History Disclosure Form-2A (PHDF-2A) with the Commission on February 5, 1985 (J-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated October 29, 1985, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By request filed with the Commission on December 5, 1985, the petitioner requested a hearing. On January 2, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 28, 1986. The matter was heard and the record closed on April 25, 1986.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Schimpf is 29 years of age (J-1). She is a June 1973 graduate of the Bishop Neumann Business School, Philadelphia, Pennsylvania. The petitioner also earned a certificate from Ronnie's Bartending School in November 1976. She has resided continuously in Brigantine since May 1981.

From September 1979 through May 1982, the petitioner was employed as a bartender, waitress and bookkeeper.

From December 19, 1982 until late 1985, the petitioner, together with Ronald Brown, her boyfriend, operated the Corner Restaurant in Absecon. The petitioner functioned as manager and cook.

In January 1985, the petitioner applied to Harrah's Atlantic City (HAC) for employment. By letter dated January 22, 1985, HAC notified the petitioner of her employment as a change person and enclosed a PHDF-2A form, which was to be completed and to be submitted to the Commission for licensure (P-2). On February 5, 1985, the petitioner submitted her completed PHDF-2A, together with her check for the filing fee, to HAC for submission to the Commission (J-1). A problem later developed concerning the sufficiency of funds to cover the petitioner's check, which was cured (P-4,

P-5 and P-10). By letter dated February 22, 1985, HAC forwarded various application forms, including the petitioner's, to the Commission (P-7).

The petitioner was involved in an incident on February 10, 1985, which constitutes the basis for the Division's objection. On that day, the petitioner closed the restaurant at approximately 10:00 p.m. She used Mr. Brown's automobile and took a co-employee to his home. The petitioner stopped at her co-employee's home and consumed several vodka and orange juice drinks. She then began to drive to her home in Brigantine. The petitioner was stopped in Galloway Township by a New Jersey State Trooper. The petitioner was charged with violations of N.J.S.A. 39:4-50, driving while under the influence of alcoholic beverages, N.J.S.A. 39:4-50.2, refusal to submit to a breathalyzer test, and N.J.S.A. 39:3-40, operating a motor vehicle while driving privileges were suspended (P-13 and P-14). In addition, the petitioner was charged with a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance - marijuana under 25 grams (R-1). The alleged marijuana was in a plastic bag, which was observed by the arresting officer when the petitioner removed the bag from her purse and placed it under the front seat of the car. Although the petitioner disclaimed ownership of the alleged marijuana, she acknowledged her belief that it was marijuana and stated that she had placed the bag under the seat in order to avoid detection by the trooper. Some of the circumstances underlying this incident were in dispute and will be discussed infra.

The petitioner appeared in the Galloway Township Municipal Court in July 1985. Apparently, petitioner pled guilty to the motor vehicle violations and was sentenced to 2 days in the Atlantic County Jail in Mays Landing, sentenced to serve approximately 170-180 hours of community service and was placed on probation for a period of 6 months. Her probation was non-reporting. The petitioner served her period of incarceration in early August 1985. Her community service consists of performing clerical functions for the Atlantic County Department of Administrative Services. The petitioner has completed satisfactorily approximately 100 hours of this obligation (P-6). The petitioner asserted her innocence and refused to plead to the possession charge. As a result, she was granted a conditional discharge. Although there was substantial confusion at the hearing concerning what portion of the petitioner's sentence was attributable to which offense, it is apparent that the municipal court imposed no sentence under the conditional discharge, pursuant to N.J.S.A. 24:21-27a(1).

On August 30, 1985, Division Agent Robert Spisak conducted a telephonic interview of the petitioner. The substance of this interview was in dispute and will be discussed infra.

The petitioner and Mr. Brown closed the restaurant in late 1985 because it was financially unsuccessful. Thereafter, the petitioner was employed as a waitress in a restaurant for a period of six months and as a cashier in a WaWa Store for approximately three months.

For the past several months, the petitioner has been employed by Elson's Gifts, which is located in Trump's Castle (P-1). This employment does not require licensure by the Commission.

The petitioner has not been involved in any other alleged violations of the criminal laws.

The petitioner performs volunteer services in various hospitals in the Philadelphia/South Jersey area. This effort is not related to her community service obligation.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

**(B) DISPUTED FACTS**

In dispute were the circumstances underlying the purported failure by the petitioner to disclose the February 10, 1985 incident during the telephonic interview and the petitioner's good character, honesty and integrity.

The petitioner described further the circumstances underlying the incident of February 10, 1985, as well as her appearance in municipal court, which testimony formed a basis for her testimony concerning the telephonic interview. More specifically, the petitioner stated that prior to the incident she had discovered the bag, which she believed to contain marijuana, in the vehicle, which had been used by various employees of the restaurant. The petitioner retained the bag with the intent to identify the employee responsible for it. She did not accomplish this task prior to her arrest.

The petitioner testified that as a result of her appearance in municipal court, she believed the possession charge had been dropped. She was confused by the multiplicity of charges and the substantial negotiations. Further, the petitioner received a conditional discharge and did not plead guilty. Upon imposition of the conditional discharge, the municipal court judge stated that at the culmination of a fixed time period the possession charges would be dismissed. Also, the petitioner had not received any written information concerning the disposition of the possession charge. The petitioner also testified that she does not know what a "conditional discharge" is specifically. Last, the petitioner testified that she was upset during her appearance in municipal court.

The petitioner also described the telephonic interview with Agent Spisak. In response to the agent's questions, she stated that she had been arrested for drunk driving subsequent to having filed her PHDF-2A form. Thereafter, the agent confronted her with details of the possession charge and indicated that she should have disclosed this charge in response to his earlier question. The petitioner stated that she did not disclose the charge because it was dismissed and suggested that the agent contact her attorney in order to clarify the matter. The petitioner further testified that the telephone inquiry was made at a bad time for her. More specifically, she had recently been incarcerated, her business venture was failing and her future mother-in-law had come to live with her and her boyfriend. The agent responded that further investigation was necessary. The petitioner also testified that she never deliberately withheld information or denied the truthfulness of information asked of her. Further and after she realized that the possession charge had a potential impact upon her application, she did express concern to the agent. The petitioner also testified that she made telephone contact with the agent on several subsequent occasions to inquire of the status of her application. On one occasion, she was upset because she had received the Division's letter of objection to her application.

Agent Spisak testified on behalf of the Division. Prior to the telephonic interview, the agent had reviewed the New Jersey State Police rap sheet for the petitioner, which reflected only her arrest and charge of possession of a controlled dangerous substance. The rap sheet did not disclose a disposition. The agent discussed the matter by telephone with a New Jersey State Trooper who was not the arresting officer and who was aware only of the possession charge. At no time prior to the telephonic interview did Agent Spisak have knowledge of the drunk driving offense. During the telephonic interview, the agent read question number 16 and the instructions from the PHDF-2A to the petitioner, who stated that she understood the question. In

response to whether she had been arrested, the petitioner stated that she had been arrested for a drunk driving matter, but did not mention the possession charge. The agent inquired if there was anything additional, to which the petitioner responded in the negative. The agent then informed the petitioner of the possession charge, which she acknowledged. The petitioner stated that she had paid her dues to society. The petitioner further stated that she did not disclose the matter because the charges had been dropped and requested the agent to contact her attorney. The agent recalled one additional telephone communication from the petitioner, which occurred subsequent to the Division's objection letter and during which the petitioner was angry.

Although the variations between the testimonies of Ms. Schimpf and Agent Spisak would normally lead to a resolution of the issues based upon an assessment of credibility, such is not necessary in this matter. Rather, the variations are not as serious as they initially appear. More specifically, in response to the agent's inquiries, the petitioner stated that she had been arrested and identified the incident in issue. Because the agent was unaware of the totality of the charges filed against the petitioner, he was not able to determine that her response referred to the subject incident. Essentially, the petitioner and the agent were unable to communicate effectively, although each was individually concerned with the same incident. The circumstances underlying the petitioner's arrest, her appearance in municipal court and her description of the telephone interview corroborate strongly her explanation. Similarly, the limited information available to the agent explains his inability to understand the significance of the petitioner's response. The obvious failure to communicate is underscored by the inherent difficulties in any telephone communication. I am persuaded that the petitioner sufficiently identified the incident to the agent for purposes of his investigation.

The petitioner offered two witnesses to testify on her behalf. Morton H. Rappaport, senior vice president of the United Hospitals of Philadelphia, a former federal narcotics agent, a former commissioner of the New Jersey Board of Pharmacy, a former commissioner of the Board of Health of the Township of Cherry Hill and a member of the Equal Job Opportunity Commission under President Johnson, was the petitioner's first witness. The witness has known the petitioner for approximately 15 years, and he is a friend of the family. Mr. Rappaport was of the opinion that the petitioner is unquestionably a person of good character, honesty and intergrity. The witness cited the petitioner's volunteer activities with local hospitals.

Amos Howell, Jr., was the petitioner's second witness. Mr. Howell is an independent insurance agent. He has known the petitioner for the past several years and has a business relationship with the petitioner. The witness was of the opinion that the petitioner is a person of good character, honesty and integrity.

After consideration of the entire record in this matter, I further **FIND** that:

1. The petitioner's testimony of the circumstances underlying the incident of February 10, 1985, and her appearance in municipal court, was believable, persuasive and unrefuted by the Division. Accordingly, it is adopted in full as a finding of fact.
2. The testimonies of the petitioner and Agent Spisak concerning the telephonic interview were essentially consistent and the variations between the versions were not serious.
3. During the telephonic interview and in response to an inquiry by the agent, the petitioner acknowledged that she had been arrested on February 10, 1985, and had been charged with a drunk driving offense. The petitioner offered no more detailed explanation of the incident.
3. The agent was aware only of the possession charge and believed, in good faith, that the petitioner had failed to disclose the incident.
4. The failure of the petitioner and the agent to communicate effectively with each other was the direct result of the petitioner's lack of a full understanding of the events which has transpired in municipal court, the agent's lack of complete information concerning the incident, and the inherent difficulties in communication present in any telephonic interview.
5. The petitioner identified sufficiently and reasonably the incident of February 10, 1985, to Agent Spisak.
6. The petitioner is held in high regard by friends, business associates and supervisors.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License 78-EA-8 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

The purported failure to disclose by the petitioner was the result of a problem in communication between the petitioner and Agent Spisak. Both the petitioner and the agent contributed to the absence of communication, however, the petitioner's disclosure of her arrest on February 10, 1985, was sufficient and reasonable for purposes of the agent's investigation.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the petitioner violated section 86b.

(B) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Ms. Schimpf was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission

(November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, at 2.

The sole objection raised by the Division under section 89b(2) concerned the petitioner's purported failure to disclose under section 86b. Accordingly, and in the absence of a violation of section 86b, the Division has, effectively, no basis for objection.

Nevertheless, some comment concerning the incident of February 10, 1985, is appropriate. There is every reason to believe the petitioner's version of the incident, i.e., that the alleged marijuana did not belong to her. The fact that she received a conditional discharge without a guilty plea and the absence of any prosecution by the Division under section 86g corroborates the petitioner's testimony. Accordingly, the incident does not reflect negatively upon the petitioner's qualifications for licensure.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 89b(2).

DISPOSITION

It is **ORDERED** that the application of Barbara A. Schimpf for licensure as a casino employee be **GRANTED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 0008-86

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 9, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

June 11, 1986  
DATE

M. [Signature]  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 11 1986  
DATE

[Signature]  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Personal History Disclosure Form-2A, Barbara Anne Schimpf, January 28, 1985 (23 pages)
- P-1 Elson's, Atlanta, Georgia - Pay Statement, Barbara Schimpf, April 18, 1986
- P-2 Letter to Barbara A. Schimpf from Debi Mara, January 22, 1985
- P-3 Guaranteed Bank, Atlantic City, New Jersey, check drawn on the account of Barbara Schimpf, February 5, 1985
- P-4 First National Bank of Absecon - Money Order, payable to Casino Control Commission from Barbara Schimpf, April 10, 1985
- P-5 Receipt for Certified Mail, no. P237 241 658; Certified Mail Return Receipt
- P-6 Letter to Casino Control Commission from Jane Gross, April 23, 1986 (2 pages)
- P-7 Letter to C. Stephen French, Senior Applications Analyst, Casino Control Commission, from Elizabeth P. Flanary, Licensing Supervisor, Harrah's Atlantic City, February 22, 1985 (3 pages)
- P-8 Letter to Barbara A. Schimpf from Debi Mara, April 26, 1985
- P-9 Letter to Barbara A. Schimpf from Debi Mara, May 24, 1985
- P-10 Letter to Barbara Schimpf from Denise Brogan, April 8, 1986
- P-13 New Jersey State Police - Drinking-Driving Report, Barbara Schimpf, February 10, 1985, prepared by Detective I. J. Ruggeri; New Jersey State Police-Alcohol Influence Report, Barbara Schimpf, February 10, 1985, prepared by Detective I. J. Ruggeri (5 pages)
- P-14 Department of Law and Public Safety, Division of State Police - Summons Nos. M 7093329, M 709330 and M 709473, issued to Barbara A. Schimpf on February 10, 1985, by Detective I. J. Ruggeri (3 pages)
- P-15 Sunshine Pocket Planner 1985, Barbara Schimpf
- R-1 New Jersey State Police - Investigation Report, prepared by Detective I. J. Ruggeri and Trooper V. DeSantis, February 10, 1985

EXHIBITS NOT ADMITTED INTO EVIDENCE

- P-11 Id. Applicant Rating Chart (2 pages) (exhibit withdrawn)
- P-12 Id. Harrah's Atlantic City Application for employment-cover page, Barbara A. Schimpf, January 12, 1985 (exhibit withdrawn)

WITNESSES

For the petitioner:

Amos DeWitt Russell Howell, Jr.  
Morton H. Rappaport  
Barbara A. Schimpf

For the respondent:

Robert Spisak

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-342  
OAL DOCKET NO. CCC 7377-85  
REGISTRATION NO. 55675-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT :

Complainant, :

FINAL ORDER

v. :

EDWIN J. SOTO, JR., :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of July 2, 1986,

IT IS on this 18<sup>th</sup> day of July 1986, ORDERED that the initial decision is modified as follows:

The Commission finds that the respondent had engaged in conduct as an accomplice to a wrongful impersonation constituting a violation of N.J.S.A. 2C:21-17 and 2C:2-6. Because the respondent was never criminally charged, disqualification is under N.J.S.A. 5:12-86(c)(4) and (g).

IT IS FURTHER ORDERED that the casino hotel employee registration held by Edwin J. Soto, Jr., is revoked

substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Edwin J. Soto, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

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DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7377-85

AGENCY DKT. NO. 85-342

DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,

Petitioner,

v.

EDWIN J. SOTO, JR.,

Respondent.

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Frances I. Sundheim, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Edwin J. Soto, Jr., respondent, pro se

Record Closed: April 21, 1986

Decided: May 19, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 8, 1985, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent, Edwin J. Soto, Jr., 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.

PROCEDURAL HISTORY

A prehearing conference was held before Administrative Law Judge Ralph J. Tolomeo on January 7, 1986, and at that time the parties agreed that the issues in this matter are:

- A. Whether or not the conduct alleged in the complaint by the petitioner is inimical to the policies of the Casino Control Act and to casino operations pursuant to the provisions of N.J.S.A. 5:12-86c(4).
- B. Whether or not the conduct alleged in the complaint is a statutory disqualifier even though unprosecuted, pursuant to N.J.S.A. 5:12-86g.
- C. Whether or not the petitioner can establish his rehabilitation by clear and convincing evidence with respect to Issue B.

The hearing took place before the undersigned on April 14, 1986, and at the request of Mr. Soto, I kept the record open for one week to give him an opportunity to submit additional documents. I received one letter of recommendation from Mr. Soto on April 21, 1986, and the record in the matter closed on that date.

At the hearing, Deputy Attorney General Frances I. Sundheim stated that the Division would not be pursuing Issue B as identified above, which was based on the allegation that Mr. Soto was guilty of theft by extortion, a violation of N.J.S.A. 2C:20-5, since the Division had insufficient proof to establish such a violation.

#### FINDINGS OF FACT

Rafael Morales acquired a casino hotel registration in 1982, when he was 15 years old, by using the name and birth certificate of the respondent (P-3). From September 2, 1982 through December 1982, Mr. Morales, under the assumed name of the respondent, was employed by Tropicana Hotel and Casino (Tropicana) as a bus server at the Brasserie Restaurant (P-4), and was considered to be an exceptionally good employee. After the real Mr. Soto informed Tropicana that Mr. Morales was using his name, Mr. Morales' employment was terminated. Before this termination, Mr. Morales was interviewed by Albert Paris, who was at the time employed as an investigator by Tropicana. Mr. Morales told Mr. Paris that the respondent had allowed him to use his name and birth certificate so that he could get a job and that he was paying the real Mr. Soto \$40 a month for the use of his name (P-4). In addition, Mr. Morales stated that Mr. Soto had asked him to quit since the respondent wanted to get a casino job (P-4).

Deputy Attorney General Sundheim represented that it was not possible for the Division to get Mr. Morales to testify or to arrange for a sworn statement. Mr. Morales is currently incarcerated at the Harborfield Juvenile Detention Center in Egg Harbor City (P-1).

Mr. Soto applied for a casino hotel registration in 1984 (P-3) and during the Division's investigation, it was determined that there had been a prior casino hotel registration in Mr. Soto's name which had been cancelled since Mr. Morales had used Mr. Soto's name. When James E. Pflaumer, a state policeman assigned to the Division, initially interviewed Mr. Soto, the respondent denied knowing Mr. Morales and stated that he had lost his prior registration and that someone else may have used his registration. Mrs. Pflaumer then spoke to Mr. Morales' mother, and she told him that her son had paid Mr. Soto a percentage of his salary for the use of his name. When Mr. Pflaumer again spoke to Mr. Soto, the respondent admitted that he had allowed Mr. Morales to use his name and had given him his birth certificate so that he could get a job, but that he was not aware that Mr. Morales wanted to work for a casino. Mr. Soto denied receiving any money for the use of his name or birth certificate.

On his own behalf, Mr. Soto testified that in 1982, Mr. Morales, a personal friend, asked him and a number of other persons if they would allow Mr. Morales to use one of their names and birth certificates so that he could get a job. At that time, Mr. Soto was working at Fun City on the Atlantic City Boardwalk. Mr. Soto stated that he told Mr. Morales that he would have allowed him to use his birth certificate if he had not lost it. According to Mr. Soto, he thereafter found out that Mr. Morales was employed by Tropicana and was using his name. Initially, Mr. Soto did nothing about the matter and then he asked Mr. Morales to quit. When Mr. Morales refused, Mr. Soto went to the Tropicana and told them that Mr. Morales was working under an assumed name and that he had stolen Mr. Soto's identification papers.

Mr. Soto denied at the hearing that he gave Mr. Morales his birth certificate or that he received any money from Mr. Morales for the use of his name. Mr. Soto admitted that Mr. Morales had his birth certificate but he could not explain how Mr. Morales got it. Sometime prior to the hearing, Mr. Soto got back his birth certificate from Mr. Morales.

In addition, Mr. Soto denied that he had told Mr. Pflaumer that he had given Mr. Morales his birth certificate and suggested that Mr. Pflaumer had misunderstood him.

At the time of the hearing, Mr. Soto was 22 years old and had been employed as a server by Trump's Castle Hotel and Casino (Trump) for five months. On behalf of the respondent, Beth Maccagnano, the buffet manager at Trump wrote a letter stating that Mr. Soto is a reliable, cooperative and conscientious employee who has an excellent rapport with his coworkers and supervisors (R-1).

Based on the testimony and the exhibits admitted into evidence, I **FIND** the facts in this matter are not in dispute except for the testimony relating to the alleged arrangement between the respondent and Mr. Morales regarding the use of the respondent's name and birth certificate. As to this testimony, I **FIND** that Mr. Soto was not credible. Mr. Soto equivocated in his testimony as to when he allowed Mr. Morales to use his name and was unable to explain how Mr. Morales obtained his birth certificate, if he had not received it from the respondent. Based on the evidence before me, I **FIND** that Mr. Soto allowed Mr. Morales to use his name and birth certificate for the purpose of obtaining employment and that he became concerned about Mr. Morales' employment with a casino when he, himself, became interested in obtaining employment in the casino industry.

#### CONCLUSIONS OF LAW

In closing, Deputy Attorney General Sundheim argued that the Division had shown that Mr. Soto knowingly allowed a minor to use his name and birth certificate and that this action renders his continued registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4). Ms. Sundheim argued that the Commission needs to know who is employed by the casino industry in order to assure that the public policies of the Casino Control Act are fulfilled and that Mr. Soto's actions could have had an adverse effect on enforcement if Mr. Morales had acted improperly while employed by Tropicana.

Mr. Soto, on his own behalf, argued that it would be unfair for him to lose his registration at this time for an incident that had occurred a long time ago.

It has been established that in reaching a determination as to whether the license or registration of a person would be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4), it is necessary to consider both the alleged criminal offense as well as the factors normally considered when deciding the issue of rehabilitation pursuant to either N.J.S.A. 5:12-90h or 5:12-91b. See, Donna Davis v. Division of Gaming Enforcement OAL DKT. CCC 2008-85 (Aug. 12, 1985), modified, Casino Control Commission (Dec. 27, 1985).

Based on the facts in this matter, I CONCLUDE that Mr. Soto committed a criminal offense by allowing an underage person to use his name and birth certificate for purposes of getting a job for several months. Mr. Morales impersonated Mr. Soto for monetary gain, a violation of N.J.S.A. 2C:21-17, and Mr. Soto, as his accomplice, was guilty of an offense pursuant to N.J.S.A. 2C:2-6. This minor offense by Mr. Soto occurred in 1982 when Mr. Soto was approximately 18 years old, and apparently it was an isolated incident since there was no proof that Mr. Soto has been arrested or convicted of any criminal activities. In addition, Mr. Soto has shown a sincere desire to continue his employment in the casino industry. However, since I have determined that Mr. Soto lied at the hearing about allowing Mr. Morales to use his birth certificate, I have to CONCLUDE that the continued registration of Mr. Soto would be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).

#### DISPOSITION

Therefore, I ORDER that the registration of Edwin J. Soto, Jr. be REVOKED.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

May 19, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

May 20, 1986  
DATE

Arlene Rojas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 22 1986  
DATE

Ronald J. Parky/s  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Memorandum from Detective I. Mark M. Mai to Frances Sundheim, dated March 3, 1986
- P-2 Personal History Disclosure Form-4, No. 55675-40, in the name of Edwin J. Soto, Jr., received by the Casino Control Commission on July 17, 1984
- P-3 Personal History Disclosure Form-4, No. 43838-40, in the name of Edwin J. Soto, received by the Casino Control Commission on August 31, 1982
- P-4 Tropicana Security Department Statement Form containing the statement of Rafael Morales a/k/a Edwin Soto, dated December 9, 1982

FOR THE RESPONDENT:

- R-1 Letter from Beth Maccagnano, dated April 19, 1986 (received by mail by the Office of Administrative Law on April 21, 1986)

WITNESSES

FOR THE PETITIONER:

Albert Paris  
James E. Pflaumer

FOR THE RESPONDENT:

Edwin J. Soto, Jr.

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 86-75  
OAL DOCKET NO. CCC 2301-86  
LICENSE NO. 12765-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complainant, :  
V. :  
KOSTADINO S. STAMOULIS,  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 5, 1986,

IT IS on this 31<sup>st</sup> day of December 1986, ORDERED that the initial decision is modified as follows:

At page 3, the date of the sexual assault should be corrected to read "July 14, 1985," and further, that the respondent's casino license is revoked pursuant to N.J.S.A. 5:12-86(c)(4) and (g), and N.J.S.A. 5:12-89(b)(2) and -90(b);

IT IS FURTHER ORDERED that the casino employee license held by Kostadinos S. Stamoulis is revoked substantially for

the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining for any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8(a).

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 2301-86

AGENCY DKT. NO. 86-75

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**KOSTADINO S. STAMOULIS,**

Respondent.

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**William E. Mountford**, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

**Robert M. Bonomo**, Esq., for respondent (Bonomo, Ravitz and Walsh, attorneys)

Record Closed: July 15, 1986

Decided: September 23, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

**PROCEDURAL HISTORY**

The Division of Gaming Enforcement filed a complaint seeking to revoke the respondent's casino employee license based upon criminal charges filed against the respondent. He requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on July 10, 1986 and the record was closed on July 15, 1986 when no additional affidavits were filed. The pretrial order specified two issues, inimicality and good character.

UNCONTESTED FACTS

The Division proved and the respondent acknowledged that he was guilty of a fourth degree sexual contact committed July 14, 1985 in Lacy Township. The victim was a 14 year old girl.

The statute violated was N.J.S.A. 2C:14-3(b). This is not a statutory disqualifier.

CONTESTED FACTS

The respondent was also charged with a criminal sexual assault on the 14 year old's mother (N.W.) which allegedly occurred on the same day and was dismissed when the respondent pled to the accusation charging sexual contact with the daughter. The Division attempted to prove this assault pursuant to Section 86g of the Act. As a consequence, this hearing was the only occasion providing the victim and the accused their day in court.

I attended closely to the mechanics of this confrontation. When the victim gathered her courage and stared directly at the respondent from the witness stand, the respondent averted his eyes, buried his head and "squirmed" in his chair. On the other hand, when the respondent's attorney cross examined the victim, and by his tone of voice, insinuating manner and scornful demeanor, intimidated the victim and made her shrink in her chair, the respondent preened and puffed himself up and fixed her with a contemptuous and knowing smile.

The victim testified that she knew the respondent because he worked at a restaurant she frequented. On the evening in question she invited him to her home. He suggested a walk on the beach and when she went into her room to dress for this occasion he took the opportunity to assault her daughter. (He alleges the daughter "came on to him" but does not deny touching her vaginal area and breasts.) Thereafter, he and the victim went to the beach where he began to tell her how he would like to have sex with her daughter. She called him "scum"; he raped her both vaginally and anally. She later developed an infection and was treated. She felt the classic symptoms of rape victim syndrome, guilt, powerlessness and self hatred.

She told no one, attended a rape counselling session and finally divulged to her daughter the cause of her discontent. Her daughter, who had been keeping back her own involvement with the respondent then told her mother what the respondent had done to her. They both then went to the police.

The respondent's defense to all of these charges is "consent". He claims the daughter inticed him to feel her up by gratuitously rubbing his penis and telling him she "wanted" him; that the mother pulled his pants down in the truck and gave him oral sex when he was only kissing her.

His testimony is not credible on any issue.

I **FIND** that the respondent committed a sexual assault on N.W. on July 14, 1986.

#### PSYCHOLOGICAL EVIDENCE

The respondent submitted a report from his psychologist who asserts that the respondent "does not present the profile of a chronic sex offender." His finds the respondent to be "chronically insecure, tense and without confidence. This has resulted in his seeking social/sexual gratification in an inappropriate fashion." Otherwise the respondent appears to be functioning in the normal range of behavior.

#### CHARACTER EVIDENCE

The respondent also submitted evidence of his reputation for good character, honesty and integrity. It appears from his letters of recommendation, college transcripts, certificates of award and scholarship that he has a good reputation. In fact, he lacks the good character, honesty and integrity required by the statute. He has been adjudged guilty of sexually abusing a minor and I have found that he raped the child's mother although this conduct was unprosecuted. He does not appear to be genuinely sorry for his crime of child molestation although he sometimes moutes the appropriate words. Still, he says, she came on to him. His treatment of the child's mother was brutal. He battered her psyche if not her body.

Because he lacks the requisite good character, honesty and integrity for casino licensure, because he had been adjudicated guilty of an offense which involves moral turpitude, because I have found him responsible for the commission of a rape and because the respondent takes no responsibility for either sexual assault, I **CONCLUDE** that the respondent has committed offenses which render his licensure inimical to the Casino Control Act and casino operations. The last thing the casino industry needs is to be staffed by unrehabilitated sex offenders.

ORDER OF DISPOSITION

I, therefore, **ORDER** that respondent's casino employee license be **REVOKED**, pursuant to N.J.S.A. 5:12-89b(1)d.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept. 23, 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

September 24, 1986  
DATE

Clairus Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 26 1986  
DATE

Ronald J. Parker \*  
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

Patrolman William Nally  
Michael Murphy  
Nina Weekly  
Kostadino Stamoulis  
Spiro Gaitanos  
Emil Pizzulo

EXHIBIT LIST

P-1 Accusation  
P-2 Statement - Nina  
P-3 Statement - Mary Ellen  
P-4 Complaint  
P-5 Complaint  
  
R-1 Letter, Mark White, Ph.D. to Mr. Scott Synovest, undated  
R-2 Letter, William T. Donahue, dated January 1, 1986  
R-3 Letter, Harold A. Schuman, dated January 6, 1986  
R-4 Letter, Edward Calvert, dated January 6, 1986  
R-5 Letter, Richard Butler, dated December 29, 1980  
R-6 Passport, Konstantinos Stamoulis  
R-7 Resume, Kosta Stamoulis  
R-8 Statement of earnings  
R-9 Transcript, Stockton State College  
R-10 Certificate of Award  
R-11 Certificate, Casino Schools, Inc.

- R-12 Letter, Frank A. Creveling to Casino Control Commission, dated October 16, 1981
- R-13 Certificate, Casino Career Institute
- R-14 Certificate, Atlantic City Friends School
- R-15 Certificate, Atlantic City Friends School
- R-16 Certificate, Peirce Junior College
- R-17 Certificate, Stockton State College
- R-18 Letter - Frola
- R-19 Consent to questioning
- R-20 Handwritten note

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-92  
OAL DOCKET NO. 4882-85  
REGISTRATION NO. 52653-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :  
Complainant, : FINAL ORDER  
v. :  
MICHAEL S. TOLTOWICZ, :  
Respondent. :

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A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision on June 12, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of June 25, 1986,

IT IS on this 12<sup>th</sup> day of November 1986, ORDERED that the initial decision is modified as follows:

- (1) The finding of the administrative law judge that the respondent's conviction for possession of marijuana under 25 grams contrary to N.J.S.A. 24:21-20a(4) is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(4) is rejected;
- (2) The record contains sufficient evidence to establish that the respondent distributed methamphetamine, a controlled dangerous

substance, in violation of N.J.S.A. 24:21-19a(1) including: the respondent's statement admitting such distribution in the four months preceding his arrest, two admissions against interest made by him to an agent of the Drug Enforcement Agency and a detective of the Absecon Police Department and paraphernalia seized from the respondent's residence;

- (3) The respondent's commission of this offense requires his disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g).
- (4) The respondent has failed to demonstrate that he is rehabilitated pursuant to N.J.S.A. 5:12-91(d); and

IT IS FURTHER ORDERED that the casino hotel employee registration of Michael J. Toltowicz is revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Michael J. Toltowicz is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:4108.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 4882-85

AGENCY DKT. NO. 85-92

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,**

Petitioner,

v.

**MICHAEL J. TOLTOWICZ,**

Respondent.

---

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, Attorney; Norma Plenty, Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference)

Stephen A. White, Esq., for the respondent (Stephen A. White & Associates, P.C., Attorneys)

Record Closed: March 27, 1986

Decided: May 12, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Michael J. Toltowicz, respondent and the holder of casino hotel employee registration number 52652-40, had committed a criminal offense which disqualifies him from continued registration under N.J.S.A. 5:12-86c(3) and (4), per section 86g of the Casino Control Act (Act), for which the Division seeks revocation of his registration, pursuant to sections 129 and 130. The respondent denied the charges and, in the alternative, contends that he is rehabilitated from any misconduct pursuant to section 91d.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 6, 1985. By letter dated March 8, 1985, the Commission advised the respondent of the pending action and of his right to a hearing. The respondent requested a hearing. On August 7, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 13, 1985. The matter was heard on March 26, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Toltowicz is 23 years of age. He resides in Oceanville, New Jersey, with his wife and two minor children. The respondent completed the 9th grade, and can read and write.

Since April 17, 1984, the respondent has been employed by the Trump Plaza Casino Hotel (R-1). Currently, the respondent has inventory responsibilities for food and beverages. With the exception of one write-up for an improper call-out on an occasion when his wife gave birth, the respondent has a positive employment record.

The respondent was involved in an incident on August 7, 1984, which led to the commencement of these proceedings. As a result of an ongoing investigation, officers of the City of Absecon Police Department, together with agents of the federal Drug Enforcement Agency, obtained a search warrant and executed the warrant at the respondent's residence. The search commenced at 10:50 p.m. The respondent was given his Miranda warnings and the purpose of the search was explained. Thereafter the respondent stated, "You are not going to find anything here, I got rid of everything, I have cosmic powers." During his testimony, the respondent acknowledged the accuracy of the statement. However, the respondent added that the statement was made long ago and at a busy time. The respondent denied that he had cosmic powers, but explained that he had experienced an episode of precognition.

Upon request of the officers, the respondent consented to a search of his wife's car. A small amount of what appeared to be marijuana was discovered. The respondent stated, "The marijuana you found in the car is mine."

The officers also seized a plastic container containing inositol powder, numerous plastic ziplock bags, a silver aluminum pipe with residue, a plastic film capsule containing pink crystals, a small ziplock bag with white powder, a small ziplock bag with blue-white crystals, plastic sandwich bags with pink crystals, a small cellophane packet which contained marijuana, one medium-sized bag which contained marijuana (found in the vehicle), one plastic spoon with white powder residue, and one personal phone/address book. The officers also found marijuana plants in the rear of the dwelling. However, no methamphetamine was on the premises. Further, none of the substances were tested.

The respondent was taken to the Absecon Police Department where he was again given Miranda warnings. The respondent then gave a statement (P-1). More specifically, the statement was taken and written by Special Agent Gary O'Brien of the Drug Enforcement Agency, which statement was signed by the respondent. The truthfulness of this statement and the circumstances under which it was made were in dispute and will be discussed, infra.

While at the station the respondent expressed concern with the potential impact of the events. He cooperated fully with the investigating authorities. The respondent was released on his own recognizance.

On October 2, 1984, the respondent was indicted by an Atlantic County Grand Jury and was charged with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, methamphetamine; N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, methamphetamine; and N.J.S.A. 24:21-24, conspiracy to distribute a controlled dangerous substance (J-1). On November 16, 1984, a complaint was filed in the Absecon Municipal Court, which charged the respondent with a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana under 25 grams. Also on November 16, 1984, the respondent agreed to a plea bargain, which consisted of his guilty plea to the complaint in municipal court and a dismissal of the indictment. The respondent was sentenced to a one-year probation, a \$150 fine, and \$25 payable to the Violent Crimes Compensation Board. The respondent agreed to the plea bargain upon the advice of his attorney. Nevertheless, the respondent

never had the benefit of a lab report concerning the substances seized. The respondent appeared in court to enter his plea, and admitted commission of the offense to which he pled. The respondent completed probation in December 1985.

At the time of the incident, the respondent's wife was eight and one-half months pregnant with their first child. The event was respondent's first contact with criminal investigative authorities.

The respondent testified that the incident was unfortunate and that he regretted his misconduct. Also, he claimed that such misconduct would never happen again. At the time of the incident, the respondent had a conscious fear that he could lose his job. The respondent has no subsequent offenses.

The respondent also testified that at the time of the incident he had no controlled dangerous substances in the house, because he was concerned with his health. Nevertheless, the respondent admitted that he had used methamphetamine once or twice. In addition, the respondent testified that he occasionally used marijuana subsequent to the incident and as recently as a few weeks prior to the hearing. The respondent acknowledged that marijuana is illegal.

The respondent also testified that he needs his employment in order to support his family. The respondent's wife is employed part-time.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

**(B) DISPUTED FACTS**

In dispute were whether the respondent's statement of August 8, 1984, was voluntary, and whether the respondent possessed methamphetamine with intent to distribute.

Larry Heath, a detective with the Absecon Police Department and a participant in the incident of August 8, 1984, testified on behalf of the Division. The detective testified that Special Agent O'Brien hand-wrote the statement based upon

responses provided by the respondent to questions posed by the investigating officers. Prior to executing the statement, the respondent stated that its contents were accurate and acknowledged the truthfulness thereof. Also, the investigating officers did not threaten the respondent with immediate incarceration. The detective was of the opinion that the statement was made voluntarily.

The respondent also described the circumstances under which the statement was made. Although he was worried, he was not afraid because he knew he was not in possession of any controlled dangerous substance as he had disposed of everything. Further, because the respondent was nervous while at the police station, he felt compelled to agree with the statements made by the investigating officers, which were then included in the statement. Other reasons for respondent's concerns were that the officers threatened to lock him up immediately in the Atlantic County Jail, the respondent's pregnant wife was at home alone, the respondent was exhausted, and the respondent knew that his employment was in jeopardy. The respondent further testified that after he signed the statement, Special Agent O'Brien remarked that he should have been a used car salesman. The respondent testified that portions of the statement were true; more specifically, that he knew the two individuals named. However, the statement was false with respect to any involvement of the respondent in the sale of methamphetamine. Last, the respondent testified that he never sold methamphetamine, although he may have given some to another person on an occasion.

The detective also testified to his opinion that the respondent was involved in the sale of methamphetamine. This opinion was based upon consideration of all the items seized from respondent's home. Although these items each have a lawful use, they also have a potential use in the preparation and distribution of methamphetamine. Based upon the totality of the items seized, the detective was of the opinion that the respondent was involved in the sale of methamphetamine.

The respondent testified that all items seized from his home were used for their lawful purposes.

In order to resolve this matter, it is necessary, in part, to make an assessment of the credibility of the respondent and the detective.

Initially, the respondent's position in this matter must be recognized. He is the holder of a casino hotel employee registration and is the respondent, and as such, has a direct interest in the outcome and a bias in these proceedings. First, it must be noted that respondent's testimony while under oath, and the statement he signed and which he certified to be true, were mutually inconsistent. Clearly, on at least one occasion the respondent has made a statement while under oath which he claimed to be true but which he knew to be false. Also, it appears that on both occasions the respondent perceived a personal benefit to be gained from any statement he made. Nevertheless, his statement made to the investigating officers consisted of admissions of criminal misconduct, which were against the respondent's interests. The conflict between respondent's statement and his testimony herein concerning the events of August 8, 1984, render both to be unreliable for fact-finding purposes. Such a finding raises doubts concerning the reliability of the respondent's testimony concerning the circumstances under which the statement was made. Accordingly, I am not persuaded to accept that testimony.

It is also appropriate to evaluate Detective Heath's testimony. The detective has no interest in the outcome nor a bias in these proceedings. In addition, the detective's testimony was internally consistent and detailed, and his recollection was precise. Also, the detective's testimony is consistent with the fact that respondent made and signed a statement which contained admissions of criminal misconduct against his interests. Accordingly, I am persuaded to accept the detective's testimony in all respects.

Since the respondent's statement is not credible evidence, and since the detective's opinion cannot corroborate the respondent's statement because the detective's opinion may or may not relate to the events described in the statement, there is no credible evidence of any sale of controlled dangerous substances by the respondent.

After consideration of the entire record in this matter, I further FIND that:

1. The respondent's statement concerning his participation in illegal drug sales was directly opposite and completely incompatible with his exculpatory testimony at the hearing.
2. There was no evidential means by which to determine whether respondent's statement or his testimony represented the truth.

3. Neither the respondent's statement nor his testimony is credible or reliable.
4. Detective Heath's testimony was believable and credible in all respects.
5. The statement made by respondent on August 8, 1984, was given voluntarily and without duress or coercion.
6. Detective Heath's opinion concerning involvement by the respondent in the sale of illegal drugs was based solely upon the inventory of items seized from respondent's residence. The substances seized were not tested.
7. It cannot be determined whether the detective's opinion relates directly to the events set forth in the respondent's statement.
8. There is no credible evidence in the record to establish whether the respondent was involved in the sale of controlled dangerous substances.

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Toltowicz's alleged violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute - methamphetamine, constitutes a violation of Section 86c(4) per Section 86g, and further, that respondent's violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams, constitutes a violation of Section 86c(4), and, accordingly, establishes that his registration should be revoked.

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(3)

Section 86g provides that an applicant can be disqualified from licensure because of the commission of any act which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19, be disqualified from licensure and/or registration. The Division alleged that respondent's conduct constitutes a violation of N.J.S.A. 24:21-19a(1), which could disqualify the respondent from continuing to hold a registration.

The only evidence offered by the Division to establish the alleged misconduct consisted of the respondent's statement made to the investigating officers on August 8, 1984 (P-1).

It is well-settled that a confession, if found to be voluntary and trustworthy, is inculpatory proof of the highest order. State v. Whittington, 142 N.J. Super. 45, 50 (App. Div. 1976). In a criminal action, however, an uncorroborated extra-judicial confession cannot provide the evidential basis to sustain a conviction for a crime. State v. Lucas, 30 N.J. 37, 51 (1959); State v. Krieger, 193 N.J. Super. 568 (App. Div. 1983). "[T]he State must introduce independent proof of facts and circumstances which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury..." Lucas at 56. However, no such requirement exists for the use of a confession as proof of an act in a civil action.

A confession, although hearsay, is admissible in any civil action as an admission by a party pursuant to Evid R. 63(7) and in an administrative hearing pursuant to N.J.A.C. 1:1-15.8. Further, in matters which emanate from the Commission hearsay evidence, including an admission by a party, may be sufficient alone to support a factual finding upon which a decision is based. Div. of Gaming Enforcement v. Merlino et. al., N.J. Casino Control Comm., at 15 (Nov. 18, 1985). See also, N.J.S.A. 5:12-107a(6). The question arises as to when an admission is sufficient to support a determination.

As quoted in Giaraffa v. Moore-McCormack Lines, Inc., 270 F. Supp. 342, 349 (S.D.N.Y. 1967):

An admission, except when formally made at trial, even if by a party in propria persona, is at most only evidentiary matter which may be rendered nugatory by other evidence in the case. Ira S. Bushey & Sons v. W.E. Hedger & Co., 40 F.2d 417, 418 (2d Cir. 1930).

This principle is consistent with the finding in Fidelity & Deposit Co. of Md. v. Hudson United Bank, 493 F. Supp. 434, 443 (D.N.J. 1980), that prior extrajudicial admissions are probative but not conclusive, especially where the party has taken a position inconsistent with a prior unadjudicated proceeding where he never had an opportunity to contest the allegations or recitals. In such a case, the declarant should be given an opportunity at a hearing to explain or contradict the prior admission. Ibid., Accord, Stoelting v. Hauck, 32 N.J. 87 (1960); Corbett v. VanKirk, 38 N.J. Super. 478 (App. Div. 1956). Consequently, a prior admission is probative but not conclusive and may be discredited by evidence admitted at a hearing. Absent evidence to the contrary, the fact finder may view the evidence as affirmative substantive proof, Stoelting v. Hauck at 106, and if found reliable and credible, may use the admission as the sole support for a finding Fidelity & Deposit Co. of Md. v. Hudson United Bank at 443-444.

Here, however, the finding that the respondent's statement lacked reliability and could not support a finding of fact left the Division without sufficient credible evidence to establish the alleged misconduct.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 24:21-19a(1).

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is

"inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of The Hotel and Restaurant Employees and Bartenders International Union Local 54, N.J. Super. (App. Div.) July 11, 1985, (Slip Opinion at 17 and 18), the Appellate Division held that inimical means "adverse to the policy of the Act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conviction of a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams, under the circumstances, renders continued registration to be inimical to the Act.

The circumstances underlying the incident are clear. A registrant, while off duty and with knowledge that the possession of marijuana was contrary to the criminal laws of this state, was found to be in possession of less than 25 grams of marijuana. Further, the respondent possessed marijuana plants. In addition, the respondent's conduct since his arrest must be examined. By the respondent's own admission he has continued to possess and use marijuana as recently as a few weeks prior to the hearing which conduct the respondent knows to be unlawful. The fact that the respondent may not have been arrested and charged for such misconduct does not serve to mitigate the seriousness thereof. More specifically, the respondent has demonstrated that he is unwilling to abide by the laws concerning the possession and use of controlled dangerous substances. Although this misconduct has not affected the operations of any casino, it would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact upon the public perception of the integrity of the casino industry.

Also significant is the fact that while under oath the respondent knowingly, and purposefully provided a false statement which the respondent intended to be relied upon and to benefit him, either to investigating authorities or during his testimony in this matter. The fact that the respondent attempted to conceal the true nature of his actions by giving false testimony defeats any potential mitigation of the seriousness of his actions. Further, the fact that the respondent may have testified candidly regarding his current drug use cannot enhance his credibility.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

**(C) PENALTY**

Sections 129 and 130 of the Act provide various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino hotel employee registration.

Section 130 sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge and 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 correction action taken by the licensee to prevent future misconduct of a like nature from occurring....

The seriousness of Mr. Toltowicz's misconduct is exacerbated by his continuing use of controlled dangerous substances in knowing defiance of the criminal laws. Also, the respondent has established himself not to be honest and trustworthy in his dealings with law enforcement authorities in this state. Further, this misconduct occurred during the time when the respondent held a casino hotel employee registration and was employed in the gaming industry in New Jersey. His conduct reflects a serious disregard and a lack of appreciation of his attendant responsibilities. Therefore, his registration must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Michael J. Toltowicz be **GRANTED**, and that registration number 52652-40 be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 12, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

May 13, 1986  
DATE

Alvin Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 19 1986  
DATE

Ronald J. Park  
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBITS INTO EVIDENCE

- J-1      The State of New Jersey v. Michael Toltowicz, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Docket Number 72867-84, Indictment, filed October 10, 1984; The State of New Jersey v. Michael Joseph Toltowicz, Absecon Municipal Court, Number WB13923, Complaint November 16, 1984; The State of New Jersey v. Michael Toltowicz, Atlantic County Superior Court, Docket Number 72867-84 - Criminal Record; Letter from Roseanne Lugg, March 15, 1985 (8 pages)
- P-1      Certified Statement of Michael J. Toltowicz, August 8, 1984; Miradana Statement of Michael J. Toltowicz, August 8, 1984 (2 pages)
- R-1      Letter from John Conte, Assistant Executive Steward, November 11, 1985

WITNESSES

For the petitioner:

Larry Heath

For the respondent:

Michael J. Toltowicz

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-218  
OAL DOCKET NO. CCC 8052-85  
REGISTRATION NO. 45868-40

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, :  
Complainant, :  
v. : FINAL ORDER  
GODOFREDO URREA, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 30, 1986,

IT IS on this 3<sup>rd</sup> day of October 1986, ORDERED that the initial decision is modified as follows:

The Commission disavows any reliance upon the ALJ's assertion that the respondent "may continue to traffic in drugs in the future" or that "there is every likelihood that the respondent will continue his illegal dealing of narcotics." Init. dec. at 4.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Godofredo Urrea is revoked

substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Godofredo Urrea is not eligible to apply for any license, registration, qualification or approval under the Casino Control Act, pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

  
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CCC 8052-85

AGENCY DKT. NO. 85-218

**STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**GODOFREDO URREA,**

Respondent.

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**William Mountford, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)**

**Lorraine Gormley, Esq., for respondent (Cape-Atlantic Legal Services)**

Record Closed: April 4, 1986

Decided: May 19, 1986

**BEFORE EDGAR R. HOLMES, ALJ:**

**PROCEDURAL HISTORY**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on May 20, 1985 seeking to revoke the respondent's casino hotel employee registration number 45868-40, as a result of an indictment charging him with violations of the Controlled Dangerous Substances Act and a subsequent conviction thereupon. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The matter was preconferenced by telephone on February 11, 1986 and a plenary hearing was conducted on April 4, 1986 in the Atlantic County Civil Courthouse in Atlantic City.

The issues identified at the prehearing conference were as follows:

- A. Has the respondent committed a disqualifying offense requiring revocation of his registration in accordance with N.J.S.A. 5:12-86(c)3?
- B. Did the respondent engage in conduct which, had it been prosecuted, would have resulted in a finding that he had committed an offense requiring disqualification pursuant to N.J.S.A. 5:12-86(c)3? The Division proceeds pursuant to section 86(g) of the Casino Control Act.
- C. Has the respondent rehabilitated himself from the adverse impact of prior conduct such as to permit his continued registration pursuant to section 91 of the Casino Control Act?
- D. Is revocation the appropriate sanction to be imposed on the respondent in view of his conduct? N.J.S.A. 5:12-130.
- E. Do the interests of justice require that Mr. Urrea's registration be continued, despite other grounds for revocation, N.J.S.A. 5:12-91(e)?

At the hearing the parties stipulated that the respondent was convicted of a statutory disqualifier as referred to in issue A above, rendering moot the issue of unprosecuted conduct referred to in issue B above.

STIPULATED FACTS

1. The respondent was convicted of distribution of cocaine by his plea of guilty entered December 5, 1983. On January 6, 1984, he was sentenced to three years, New Jersey State Prison.
2. This was his first offense.

REHABILITATION

The testimony of the respondent was essentially that he was always a law abiding citizen. He said that he has been involved in the restaurant business as a bus person since coming to this country in 1965. He had been trained as an accountant in his native Columbia. He is a regular church goer and lives with his wife and children. He produced letters of recommendation that he is of good character and a hard worker. While at Leesburg Prison Farm he studied English as a second language for which he has a certificate. He is 48 years of age and used cocaine for approximately one week prior to his arrest. He testified that this drug involvement was an aberration and that he has not used drugs since his arrest. He said he would not get involved again. He explained the circumstances of his arrest and conviction as the result of a chance encounter in a bar. He claimed that a person named "John" upon hearing that the respondent was having financial difficulties, offered him \$600 to sell some drugs. "John" gave him a phone number to call, he called the number, was given another number to call, he called it. As a result he met a man who turned out to be an undercover policeman and sold him some drugs for \$2400. He believes that John may have been a policeman, too.

The undercover agent who purchased the drugs from the respondent, however, testified that the respondent met with him on two occasions. On the first occasion the respondent, in order to induce him to buy, offered the agent a "taste," indicating that the respondent carried a sample with him. On the second meeting, the transaction was completed and the agent was told by the respondent that he, the agent, could "whack" the cocaine a couple of times. This referred to the use of a cutting agent to increase the quantity for resale. The agent and the respondent began negotiations at this time for a much larger quantity which apparently scared the respondent off. From the testimony of the agent it is apparent that the respondent exhibited the demeanor, sophistication and knowledge of a professional drug dealer in his transaction with the agent.

**I FIND as follows:**

1. The registrant's position is as a food handler, a bus person, in a casino hotel restaurant.
2. The offense is serious, it involved the sale of cocaine in a sufficient quantity to warrant a three year prison sentence.

3. The offense occurred because the respondent was a wholesale drug dealer.
4. The offense occurred on March 28, 1983.
5. The registrant was 46 years old when the offense occurred.
6. This was the first conviction of an experienced drug dealer.
7. There were no unusual social conditions which contributed to this offense.
8. The respondent completed a course of study while in prison. Persons who supervise him recommend him for registration. The respondent's attempt to minimize his involvement in drug trafficking leads me to determine that he exhibits no additional evidence of rehabilitation.

I **CONCLUDE** that the respondent has failed to affirmatively establish his rehabilitation.

#### REVOCATION

I **CONCLUDE** that the respondent's registration should be revoked. He attempted to portray himself as a naive victim of police entrapment. He is in reality an experienced drug trafficker and may continue to traffic in drugs in the future. He should not have access to casino employees or registrants in casino hotels or restaurants.

#### INTERESTS OF JUSTICE

The interests of justice will not be served by placing drug traffickers in casino hotels in positions of employment. Especially is this the case where there is every likelihood that the respondent will continue his illegal dealing of narcotics.

I **ORDER** that respondent's casino registration be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 19 1986  
DATE

Edgar R. Holmes  
EDGAR R. HOLMES, ALJ

May 19, 1986  
DATE

Receipt Acknowledged:  
Alvin Zayas  
CASINO CONTROL COMMISSION

MAY 22 1986  
DATE

Mailed to Parties:  
Ronald L. Park x. 5  
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

- P-1 Investigation Report, arrest report and warrant
- P-2 Indictment
- P-3 Court minutes and conviction LR28, Statement of Reasons for sentence
  
- R-1 Letter, parole officer
- R-2 Letter, Troyanovich (with attached certificate)
- R-3 Letter, Barrett
- R-4 Letter, LoCascio
- R-5 Letter, Seidenberg
- R-6 Letter, Belton
- R-7 Letter, Sanford

WITNESSES

For petitioner:

Timothy Mooney

For respondent:

Godofredo Urrea

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-EA-224  
OAL DOCKET NO. CCC 00325-85  
APPLICATION NO. 46266-21

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APPLICATION OF RALPH P. VALENTI :  
FOR A CASINO EMPLOYEE LICENSE : FINAL ORDER  
(JUNKET REPRESENTATIVE) :

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A hearing having been held before the Office of Administrative Law; and an initial decision having been filed by the administrative law judge with the Casino Control Commission (Commission); and the Commission having considered the entire matter at its public meeting of September 24, 1986,

IT IS on this <sup>29<sup>th</sup></sup> day of September 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the casino employee license application of Ralph P. Valenti is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 0325-85

AGENCY DKT. NO. 84-EA-224

**RALPH P. VALENTI,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,**

**DEPARTMENT OF LAW & PUBLIC SAFETY,**

Respondent.

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**Jeffrey P. Blumstein, Esq.,** for the petitioner (Szaferman, Lakind, Blumstein, Watter & Blader, attorneys; **Ralph P. Valenti, pro se,** at the prehearing conference)

**Stephen J. Cirillo,** Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney; **R. Lane Stebbins,** Deputy Attorney General, at the prehearing conference)

Record Closed: July 10, 1986

Decided: August 8, 1986

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

**STATEMENT OF THE CASE**

**Ralph P. Valenti,** petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee-junket representative, pursuant to N.J.S.A. 5:12-102b. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of its contentions that, because of his criminal record history, the petitioner lacked the requisite good character, honesty and integrity, under sections 89b(2) and 90b of the Casino Control Act (Act), and lacked sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a junket representative, under section 89b(3) and 90b.

PROCEDURAL HISTORY

Mr. Valenti filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on May 3, 1983 (R-2). By letter dated December 12, 1984, the Commission advised the petitioner that, based upon a report received from the Division, dated November 7, 1984, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on December 31, 1984, Mr. Valenti requested a hearing. On January 18, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 26, 1985. Following several adjournments, on January 15, 1986, the matter was placed on the inactive list for a period of three months, pursuant to section 86d. When the criminal proceedings were resolved favorable to the petitioner, the matter was returned to active status. On March 3, 1986, an additional prehearing conference was conducted, during which the issues were modified. At the commencement of the hearing, the issues were further modified as reflected in the statement of the case. The matter was heard on July 10, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Valenti is 51 years of age and is a lifelong resident of New York (R-2). He currently resides in Niskayuna, New York. The petitioner is married and is responsible for six children, four of which are his and two of which are his current spouse's.

The petitioner is a 1952 graduate of LaSalle Institute, Troy, New York. He attended Champlain College in Plattsburgh, New York, for one year, until the school was closed. In 1955, the petitioner graduated from Paul Smith's College in Saranac Lake, New York, where he earned an associate's degree in applied sciences with a major in hotel management.

The petitioner was first employed by the recreation department of the Fountainebleu Hotel in Miami, Florida.

Thereafter, for a period of 15 months, he was employed by the John Hancock Life Insurance Company.

In 1957, upon the death of an uncle, the petitioner returned to New York and operated his late uncle's restaurant until it was sold. The restaurant held a liquor license and the petitioner dealt occasionally with the New York State Liquor Authority.

From 1958 to 1970, the petitioner was the owner and operator of Rafael's Restaurant, which was a catering house. The restaurant had 74 employees and a seating capacity of 1,000. Annual gross receipts were approximately \$1 million. The restaurant also had a liquor license on which the petitioner was the named licensee. The petitioner lost the lease to the premises because of the death of the owners and the eventual sale of the property. Accordingly, the business was closed.

From April 1968 to May 1980, the petitioner owned and operated the Exit 8 Luncheonette and Pizzeria in Clifton Park, New York. From 1968 to 1970, the pizzeria was run by employees. From 1970 to 1980, the petitioner ran the business on a fulltime basis. In 1980, the petitioner sold the business to a cousin; however, the petitioner retained an equity interest under the terms of the transaction.

At various times during his life, the petitioner has placed bets with bookmakers on sporting events.

On May 11, 1978, the petitioner was arrested and ultimately was indicted on a charge of promoting gambling. He pled not guilty. On June 29, 1978, the petitioner pled guilty to a violation of Section 240.20 of the Penal Law of the State of New York, disorderly conduct, for which a fine of \$250 was imposed (R-3). The remaining charges were dismissed. No proofs were offered by either party concerning the circumstances underlying this charge.

On October 3, 1978, the petitioner was indicted for an alleged violation of Section 155.35 of the Penal Law of the State of New York, grand larceny in the second degree, concerning an alleged theft of services from a Thomas D. DiNola in an amount of \$10,000 (R-3). The petitioner pled not guilty to the indictment. On May 8, 1979, the indictment was dismissed.

From May 1980 to August 1981, the petitioner owned and managed Aniello's Restaurant in Albany, New York. The restaurant had a liquor license, on which the petitioner was the named licensee. The restaurant was financially unsuccessful and was closed. The petitioner is still paying debts incurred by the restaurant, the balance of which is approximately \$9,000. He has paid \$5,000 to date.

In 1981, the petitioner's cousin, Sam Valenti, occasionally operated a junket to the casinos in Atlantic City. Sam Valenti requested that the petitioner refer potential customers. The petitioner made some referrals but received no compensation. It never occurred to the petitioner that he might need a license.

From September 1981 to February 1982, the petitioner was unemployed (R-2).

On or about October 28, 1981, the petitioner was charged in a criminal information with a violation of Section 225.05 of the Penal Law of the State of New York, promoting gambling in the second degree, concerning an incident which purportedly occurred on October 28, 1981 (R-5). On May 17, 1982, the petitioner pled guilty to a violation of Section 240.20 of the Penal Law of the State of New York, disorderly conduct. On August 18, 1982, the petitioner was fined \$250, and the indictment was dismissed. He paid the fine.

At an unidentified time, the pizzeria was placed in bankruptcy under Chapter 11. The petitioner reassumed ownership and control of the premises and rebuilt the business with the intent to sell it again. In order to reassume control of the business, the petitioner incorporated and took in partners. His partners were Mike White and Dan Durando, each of whom contributed \$5,000 and received a 25-percent ownership interest. The petitioner had known Messrs. White and Durando for approximately 25 years as customers at his various businesses and as operators of a junket business. The junket business, known as Berkshire Tours, conducted junkets to the casinos in Las Vegas, Nevada, and the Caribbean Islands for approximately 20 years. The tour business was operated out of the homes of Messrs. White and Durando.

During 1982, Messrs. White and Durando discussed the operation of junkets to Atlantic City. They were aware that the petitioner had referred patrons to Sam Valenti. Messrs. White and Durando operated one or two planeloads per month to Atlantic City.

They offered to compensate the petitioner for patron referrals. The petitioner began to refer patrons to Messrs. White and Durando. The petitioner was unaware of any licensure requirements in New Jersey. He was also a patron on two junkets. Mr. Durando became ill and was unable to participate fully in the business. Mr. White asked the petitioner to assist in the business and advised him to secure a field agent registration. On May 28, 1982, the petitioner filed for and ultimately received from the Commission a third party vendor-field agent registration (R-2).

Thereafter, the petitioner began to go on junkets to Atlantic City. The petitioner solicited patrons for junkets, distributed advertising for junkets, transported patrons to the airport and escorted patrons in the various casinos. However, he did not arrange credit for patrons, did not deal directly with any casino junket representative, did not otherwise deal directly with the casino and did not receive any compensation directly from the patrons. The petitioner testified that he was isolated from any direct contact with the casinos. At this point, the pizzeria was used as the headquarters for the business. The petitioner was paid for his services and referrals, which compensation consisted of one-third of the service charge of \$50 collected from each patron. Apparently, there were some patrons from whom a service charge was not collected. The casinos provided the planes and food.

In 1982, the petitioner earned approximately \$14,000 for his services and referrals of patrons for Atlantic City junket trips.

In November 1982, Mr. White gave the petitioner a PHDF-2A and advised him that a completed application must be filed in order to secure a new type of license (R-2). The petitioner completed the application on or about November 4, 1982, when it was executed and notarized (R-2). He gave the PHDF-2A to Messrs. White and Durando. However, it was not filed.

On January 27, 1983, an amendment to the Act became effective, and the petitioner's registration was no longer valid. However, the petitioner was unaware that his registration was not valid, and believed that he was still able to work for Messrs. White and Durando.

In March 1983, the petitioner learned that his PHDF-2A had not been filed. On May 3, 1983, the petitioner went to Atlantic City on a junket and hand-delivered his application form (R-2). The petitioner designated Atlantic Tour and Transit as his agent

for service of process, which company he explained was the successor to VIP Tours. The petitioner believed that Atlantic Tour and Transit had whatever license was required. The petitioner also believed that a junket representative license would enable him to operate independently of Messrs. White and Durando. The petitioner had begun to feel that Mr. White was treating him only as an employee rather than as a principal in the business operations.

In June 1983, Mr. White and the petitioner had a disagreement. At this time Mr. Durando was too ill to work. Eventually, it was agreed that Messrs. White and Durando would share equally the profits, and that the petitioner would receive one-half of Mr. Durando's share. This relationship continued until December 1983.

In 1983, the petitioner earned approximately \$19,000 for his services and referrals, approximately one-half of which was attributable to Atlantic City junkets and the remainder was attributable to junkets to other locales.

The pizzeria was again sold in 1984.

Mr. Durando passed away recently.

In January 1984, the petitioner began to operate his own junket business. He has never operated junkets to Atlantic City. He has taken junkets to Santo Domingo, Nassau, Freeport and Puerto Rico. These junkets consist of approximately two to three days and three to four nights, with approximately 27 to 80 patrons. The petitioner negotiates with the various casinos, arranges for any commercial flights, accompanies patrons on the trips, helps establish patron credit, deals directly with casino staff, prepares brochures and makes mailings of potential trips, which are sent to a list of patrons prepared by the petitioner from the Atlantic City trips. The petitioner has conducted 14 junkets, and is always welcome to return to the various destinations. The petitioner earns a commission, i.e., a percentage of the losses of the patrons. These junkets have not provided sufficient income for the petitioner to support himself.

From February 1982 to the present, the petitioner has operated a business which sells bedding items. The business is operated from a store and a truck, which he takes to various flea markets. Because the store operation is not profitable, the petitioner plans to conduct all of his business on the road.

The petitioner is not fully informed about the rules and regulations of junket operations within the casino industry in New Jersey.

The petitioner no longer makes bets on sporting activities.

In 1984, the petitioner was indicted in Albany County, New York, and was charged with various violations of the New York State Penal Code, which charges appear to be gambling-related. In early 1986, the petitioner was tried and acquitted of all charges. Prior to the hearing, the Division chose not to pursue the circumstances underlying these charges at the present time.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the two occasions in 1978, when charges were filed against the petitioner; the circumstances underlying the incident of October 28, 1981; the petitioner's good character, honesty and integrity; and the petitioner's business ability.

As indicated, there was no evidence offered by either party concerning the circumstances underlying the May 11, 1978 arrest of the petitioner and charges of a gambling-related offense. The petitioner claimed that there was no basis to the charges. He agreed to plead guilty to disorderly conduct, which plea was apparently entered by the petitioner's attorney without the petitioner being present, and a fine of \$250, upon advice of counsel, in consideration of counsel fees in the amount of \$5,000 if the matter went to trial, and upon advisement that a conviction for disorderly conduct did not constitute a crime in New York State. The belief that disorderly conduct did not constitute a crime was important to the petitioner because he was a named licensee on a liquor license, which license may have been jeopardized by a conviction. The petitioner also asserted that he never made any admission concerning the original charges. It is also important to note that in response to question no. 16 on his PHDF-2A, the petitioner disclosed the matter and indicated his belief that it did not constitute a crime (R-2 at 15).

The petitioner also described the circumstances underlying his indictment in September 1978, and a charge of grand larceny in the second degree. The petitioner acknowledged that he occasionally made sports bets with bookmakers. A Thomas DiNola informed the petitioner that he had successfully picked winning teams with a computer. DiNola and the petitioner agreed that in exchange for DiNola giving the petitioner computer selections for various sporting events on which the petitioner could bet, the petitioner would make a \$100 wager on DiNola's behalf. The cost of the wager was to be borne by the petitioner as compensation for DiNola giving him the computer selections and in lieu of any other charges. If the wager was successful DiNola would receive the winnings. The petitioner made such wagers on a few occasions. He stopped making wagers on DiNola's behalf when he learned that DiNola was operating a scam. More specifically, DiNola had a similar arrangement with other persons who placed wagers on DiNola's behalf on the opposing teams in the same sporting events. In essence, DiNola had wagers placed on both teams without assuming any of the costs. Nevertheless, DiNola continued to press the petitioner for monies he claimed were owed as a service fee for use of the computer. The petitioner refused to make payment. The petitioner testified that he discussed the matter with several New York State police officers who were frequent patrons in the pizzeria. They advised the petitioner to tell DiNola to stop making demands or he would be arrested; ultimately, DiNola was arrested. Following his arrest, DiNola implicated the petitioner and claimed a theft of services, which constituted the basis for the indictment. However, the indictment was dismissed.

Mr. Valenti also described the circumstances underlying the October 28, 1981 incident, as well as his entry of a plea. The charges concerned preprinted, but not completed, betting sheets for football games, similar to those found in many places. The petitioner was situated at a traffic circle and was selling toys out of his truck. Nate Lombardi, an elderly man known to the petitioner, was in the vicinity and was waiting for another person. Lombardi advised the petitioner that he could wait no longer and asked the petitioner to hold a package of papers for another person, whom Lombardi identified as a postal employee. The package of papers contained football betting sheets which had not been completed. The petitioner agreed. Two people later appeared and discussed toys with the petitioner. These people were acting in an undercover capacity. One person then asked for the football betting sheets, which the petitioner turned over. The petitioner was then arrested, although a companion of the arresting officer advised that the petitioner was not the person they were seeking. Subsequent to his arrest, the petitioner refused to identify Mr. Lombardi, whom the petitioner liked.

Concerning the incident of October 28, 1981, the Division offered what appears to be a summary of a police report prepared by two officers. The investigation was conducted by a New York State trooper together with a confidential informant. The trooper and informant met the petitioner at the petitioner's place of business, when the petitioner gave them either 100 or 500 betting sheets, which they could sell for profit. One entry indicates that the confidential informant would get a 20-percent commission on any sale. Thereafter, the petitioner was observed leaving his office and picking up two other persons. They proceeded to a bar and later to another premises. There the petitioner and another person were observed to pick up additional football betting sheets and then return to the petitioner's office, where the petitioner was arrested. Continued investigation revealed that the location where the petitioner picked up the football betting sheets was a mimeograph service.

The petitioner denied the events set forth in the report (R-4). Also, the petitioner agreed to a guilty plea to disorderly conduct for the same reasons he agreed to a similar plea in 1978. This was also disclosed on his PHDF-2A (R-2).

In order to resolve the issues in dispute, it is necessary to assess the petitioner's credibility. Initially, his position in this matter must be recognized. As an applicant for licensure, he has a direct interest in the outcome and a bias in these proceedings. His explanation of the circumstances underlying his plea to disorderly conduct in 1978 was reasonable and plausible in consideration of the economic factors. Also, his explanation was not refuted. Further, and as will be discussed infra, the petitioner's belief that he did not plead guilty to a crime was correct. Also, concerning the second offense in 1978, the petitioner's explanation was clear, included an admission of having made illegal bets, was not refuted by any evidence, and was supported by the dismissal of the charges. That portion of the petitioner's testimony which raises concerns involves the October 28, 1981 incident and which is in conflict with the police report (R-4).

The petitioner's testimony reflects a clear and concise recollection of the events and indicates no involvement in criminal activity. On the contrary, the police report suggests that the petitioner's actions were different and suggests that he was knowingly involved in criminal activity. However, the exhibit itself presents certain problems. Although it raises some doubt about the petitioner's testimony, as far as it is inconsistent therewith, that conflict also raises substantial doubts about the content of

the exhibit. More specifically, the exhibit is not a sworn statement and, although detailed to a degree, is internally confusing and vague. An example is that there is a statement that the petitioner gave 500 football betting sheets to the trooper and confidential informant. However, the exhibit also states that the trooper and informant left the scene with 100 football betting sheets and that the petitioner informed the confidential informant that he could earn a commission. These statements are substantially inconsistent. Also, there is no indication that the petitioner received any compensation for the betting sheets.

In essence, the statements contained on the report create many questions about what the petitioner knew or what was the significance of some of his actions. Also, the significance of the remainder of the events described in the report is unclear, is necessarily related to the earlier events, and is not explained. Although the exhibit raises questions concerning the petitioner's testimony, the contrary is also true; i.e., the petitioner's testimony raises questions concerning the meaning and significance of the report. Simply, the report creates tremendous confusion without any witness, other than the petitioner, being offered to explain its meaning. Therefore, the report is not entitled to any significant weight. Further, it became clear both during the hearing and during the review of the record that the petitioner testified truthfully, based on my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between the remainder of his testimony and the documentary evidence, and the absence of any persuasive evidence to the contrary. Although the petitioner's testimony was not strongly compelling or overwhelming, it was consistent, basically believable, and persuasive. In the final analysis, and in the absence of any persuasive evidence to the contrary, I am persuaded to accept and believe the petitioner's testimony.

The petitioner offered numerous letters to support his testimony concerning his reputation, business experience and the operation of junkets. Letters were submitted from Anthony Delvecchio, president of Jilly's Enterprises of East Stroudsburg, Pennsylvania, who was a junket patron; Jeffrey Geez, secretary-treasurer of S.S. Galileo Casino of the Harrington Corp., who has dealt with the petitioner concerning junket activities; Peter J. Corey, of Clifton Park, New York, an occasional junket patron; Guy Blasco, sales manager, Northeast Region, Dupont Plaza, San Juan, Puerto Rico, who has dealt with the petitioner concerning junkets sent to the Dupont Plaza Hotel and Casino; Joseph Salvaggio, of Troy, New York, an occasional junket patron; Peter Thomas, of Latham, New York, an occasional junket patron; David Buentello, consul at the American

Embassy, Santo Domingo, who dealt with the petitioner concerning the estate of a casino patron (P-1); and Dr. Edmond M. Nazarian, an occasional casino patron (P-2). The letters reveal that the petitioner is eligible to return to casinos where he has previously brought junkets, that the petitioner has been an excellent junketeer, and/or that the petitioner is well-regarded by people in the community.

After consideration of the entire record in this matter, I further **FIND** that:

1. The petitioner's explanation of the events underlying the charge and his guilty plea to disorderly conduct in 1978 was persuasive and believable, and is adopted fully as a finding of fact.
2. The petitioner's explanation of the circumstances underlying his indictment and the dismissal thereof in 1978 was persuasive and believable, and is adopted fully as a finding of fact.
3. The petitioner's explanation of the circumstances underlying his arrest, indictment and guilty plea to disorderly conduct in 1981, was persuasive and believable, and is adopted fully as a finding of fact.
4. On the two occasions when the petitioner pled guilty to disorderly conduct, he did so, in part, upon the belief that the offense did not constitute a crime.
5. There is no evidence sufficient to establish that the petitioner committed criminal misconduct. In addition, there is no evidence to establish the nature of the petitioner's conduct underlying his guilty pleas to disorderly conduct.
6. Exhibit R-4 is not entitled to any weight.
7. Former junket patrons and casino employees with whom the petitioner has dealt are of the opinion that he had successfully operated junkets during the past several years to various casinos in the Caribbean Islands.

8. The petitioner is well-regarded by former junket patrons and business associates.

## DISCUSSION OF LAW AND CONCLUSIONS

### (A) PRELIMINARY RULING

The petitioner contends that his two guilty pleas to violations of Section 240.20 of the New York Penal Law, disorderly conduct, are "violations," not criminal offenses.

In the definitional section of the Penal Law, and the comments thereto, it specifically states that a "violation" is not a criminal offense.

New York Penal Law Sec. 10.00 provides:

1. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.
3. "Violation" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed.
6. "Crime" means a misdemeanor or a felony.

The Comments to the definitions provide:

Subdivision 1 employs the term "offense" to describe any statutory breach for which a penal sanction may be imposed. The use of this term rather than the term "crime" to denote the broadest classification makes it possible to classify and define criminal and non-criminal offenses within an integrated system. All crimes are either "misdemeanors" or "felonies" and all non-criminal offenses are termed "violations." This, of course, eliminates the former necessity to create an individual exception for each non-criminal offense and has the advantage of providing a ready-made general category of non-criminal offense for future legislation.

Subdivision 2 defines the term "violation" which is used in the new law for classification of noncriminal offenses.

Subdivision 5. Under former law,\* the term "crime" was used as the generic description for any act that subjected a person to a penal sanction (former Penal Law, Sec. 2). This term was inaccurate because it included non-criminal offenses. Thus, while the laws of the state have always recognized the existence of the petty or quasi-criminal offense (see Duffy v. People 6 Hill 75, 78-79 [1843]; Steinert v. Soby, 14 App. Div. 505, 44 NY Supp 146 (2d Dept 1897); e.g., former Penal Law, Sec. 722; Code of Cr. Proc., Sec. 887-912), the definition of the term "crime" has prevented the integration of a non-criminal offense category as part of the formal statutory system of classification of offenses, one must have referred to the history of the offense in an increasing number of modern situations where criminal procedure and criminal sanctions are desirable for enforcement purposes, but where it would be impolitic to brand the offender with the stigma that accompanies conviction of a "crime." N.Y. CLS Annot. Sec. 10.00 Penal Law.

See, also, People v. Marsh, 260 N.Y.S. 2d 893, 895-896 (Crim. Ct. City of N.Y.); People v. Sly, 39 N.Y.S. 2d 474 (1942).

(B) N.J.S.A. 5:12-90b and N.J.S.A. 5:12-89b(2)

Under section 90b, which incorporates section 89b(2) by reference, Mr. Valenti was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino

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\* The Penal Law as it now stands was enacted in 1965, and became effective as of 1967. It therefore applied to the two disorderly conduct convictions in 1978 and 1982.

License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, at 2.

The Division has challenged the petitioner's qualifications under this section by reason of its contention that the charges and convictions for disorderly conduct in 1978 and 1981 against the petitioner were the result of his involvement in unlawful gambling activities. However, the Division's proofs, i.e., the documentary evidence, does not reveal the basis for the disorderly conduct charges. Further, the Division was unable to refute the petitioner's exculpatory explanations. Accordingly, there is no factual basis for the objections.

Nevertheless, the petitioner's explanations could have been more clear and more persuasive. However, in the absence of any sufficient evidence to the contrary, the petitioner's presentation was minimally sufficient to establish his qualifications. Also, I am persuaded that there is little likelihood that any future misconduct will occur.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity, under section 90b.

(C) N.J.S.A. 5:12-90b and N.J.S.A. 5:12-89b(3)

Under section 90b, which also incorporates section 89b(3) by reference, the petitioner was required to establish that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a casino employee-junket representative. Of concern were the petitioner's business history and the extent of his junket experience.

The petitioner's business experience reveals both positive and negative factors. The petitioner has owned and operated several businesses over the past 30-plus years, some of which were substantial in size, but has met with some failure. However, the petitioner has and continues to satisfy all financial obligations from that failure. The vast majority of his business experience is positive. Further, a single business failure should not reflect negatively upon his qualifications.

The petitioner's junket experience is also somewhat checkered. His tenure with Messrs. White and Durando raises some concerns about the petitioner's commitment to compliance with the regulatory scheme. However, at that time he was not a principal in the business and served in the capacity of an employee who had virtually no contact with New Jersey. Accordingly, his activities at that time should not reflect negatively upon his qualifications. Also, since January 1983, the petitioner has successfully conducted junkets to casinos in various regulated jurisdictions. The proofs indicate clearly that the petitioner conducted these junkets in full compliance with the regulatory scheme and in a manner entirely satisfactory to the various casinos. Although the extent of his experience is minimal, it is sufficient to establish the likelihood of his compliance with the regulatory scheme and success if he were to bring junkets to New Jersey. Again, the petitioner's proofs could have been stronger, but are minimally sufficient to establish his qualifications.

I **CONCLUDE** that the petitioner 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 junket representative.

**ORDER OF DISPOSITION**

It is **ORDERED** that the application of Ralph P. Valenti for licensure as a casino employee - junket representative, 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 8, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

August 11, 1986  
DATE

M. Bonczyk  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 13 1986  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Letter to Deputy Attorney General Stephen Cirillo from Jeffrey P. Blumstein, Esq., together with the following letters:
- Letter to Ralph Valenti from Anthony Delvecchio, dated March 15, 1985
  - Letter to Ralph Valenti from Jeffry Geez, dated July 3, 1985
  - Letter from Peter J. Corey, dated April 16, 1985
  - Letter to Ralph Valenti from Guy Blasco, dated May 19, 1986
  - Letter from Joseph Salvaggio, dated June 14, 1986
  - Letter from Peter Thomas, dated June 16, 1986
  - Letter from David Buentello (18 pages)
- P-2 Letter to the Casino Control Commission from Edmond M. Nazarian, D.D.S., dated June 27, 1986
- P-3 Letter from Armand R. Riccio, dated May 20, 1982 (redacted)
- R-1 Transcript of sworn Interview of Ralph P. Valenti, conduct by the Division of Gaming Enforcement on October 9, 1984 (113 pages)
- R-2 Casino Control Commission - Personal History Disclosure Form-2A, Ralph Peter Valenti, filed on May 3, 1983 (28 pages)
- R-3 The People of the State of New York v. Ralph P. Valenti, Supreme Court of New York, Saratoga County, Indictment no. W102-78, October 3, 1978; Order Dismissing Indictment no. W102-78, May 28, 1979; The People of the State of New York v. Ralph Valenti, Town Court of the Town of Clifton Park, Saratoga County, Certificate of Conviction, July 9, 1985 (6 pages)
- R-4 Statement prepared by Trooper J.E. Hines and Investigator K.T. Cook, dated October 28, 1981
- R-5 The People of the State of New York v. Ralph Valenti, Local Criminal Court, County of Albany, Town of Colonie, Information, October 28, 1981; Statement of Disposition, July 9, 1985; The People of the State of New York v. Ralph P. Valenti, Justice Court of the Town of Colonie, County of Albany, Certificate of Conviction, July 9, 1985 (3 pages)

WITNESS LIST

For the petitioner:

Ralph P. Valenti

For the respondent:

None

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-458  
OAL DOCKET NO. CCC 226-86  
LICENSE NO. 03981-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complainant, :  
V. :  
RONALD L. WILLIAMS, :  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 17, 1986,

IT IS on this 23<sup>rd</sup> day of October 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Ronald L. Williams is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, qualification or

approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that, notwithstanding the above, the respondent is not restricted from applying for a casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 226-86

AGENCY DKT. NO. 85-458

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**RONALD L. WILLIAMS,**

Respondent.

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**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Ronald L. Williams, respondent, pro se**

Record Closed: June 30, 1986

Decided: August 4, 1986

**BEFORE RICHARD L. VOLIVA, JR., ALJ:**

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Ronald L. Williams, respondent and the holder of casino employee license no. 3981-21, had committed criminal misconduct which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), under section 86c(4), and established that the respondent no longer possessed the requisite good character, honesty and integrity, pursuant to section 90b, for which the Division seeks revocation of his casino employee license, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that he was rehabilitated.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on November 25, 1985. By letter, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed on January 2, 1986, the respondent requested a hearing. On January 10, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 15, 1986. The matter was heard on June 30, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Williams is 37 years of age. He was born and raised in Atlantic City. He is married and is the father of three children, ages 18, 10 and 21 months. However, he is currently separated from his wife.

The respondent is a 1972 graduate of Norfolk State University, with a bachelor of arts degree in sociology.

From 1972 to 1975, he was employed as a social worker by the City of Baltimore.

From 1975 to 1979, the respondent was employed as a market representative by IBM in Baltimore, Maryland.

In 1977, he earned an MBA degree from the University of Baltimore.

In 1979, the respondent and his family returned to Atlantic City.

In 1979, the respondent successfully completed a craps dealer course of study at Casino Career Institute. In October 1979, the respondent received his casino employee license from the Commission (no. 3981-21).

In October 1979, the respondent commenced employment as a craps dealer with the Boardwalk Regency Corporation (BRC). In June 1980, he was promoted to boxperson. In January 1981, he was promoted to floorperson. The respondent earned excellent performance ratings during his tenure with BRC. In May 1985, the respondent voluntarily resigned.

On July 18, 1985, the respondent was arrested by the Egg Harbor Township Police Department and was charged with a violation of N.J.S.A. 2C:20-11, shoplifting (P-1). On August 5, 1985, he pled guilty to the charge and was sentenced to 15 days in jail, suspended upon the condition that he attend an anti-shoplifting course, and was fined \$250 and \$25 costs. The respondent attempted to steal 22 cartons of cigarettes with a value of \$221.06 (P-3).

On July 22, 1985, the respondent was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 2C:20-11, shoplifting (P-2). On August 20, 1985, he pled guilty to the charge, and was sentenced to a \$250 fine and \$25 costs. The respondent attempted to take three cabbage patch dolls and three shirts with a total value of \$147.55.

The respondent has not otherwise been charged with the commission of any other violations of the criminal laws as an adult.

In November 1985, the respondent admitted himself into the Institute for Human Development (Institute) in Atlantic City. The respondent is currently a patient in residence. This is a program for substance abusers which is supported, in part, from welfare benefits received by its residents and the state. The program consists of both individual and group counseling together with medical treatment. The program has a high rate of success. The respondent is a participant in the long-term residential program, which consists of three phases and can take as long as twenty-four months to complete. He is currently in phase II and will soon enter work status. Phase III consists of a street assignment and program participants live outside the Institute. The respondent attends Narcotics Anonymous meetings conducted at the Institute. He has progressed well to date. More specifically, he has progressed as expected, i.e., not the best, but not the worst. There have been no episodes of regression. The respondent concedes that he is a recovering drug addict. Also, the respondent performs services in the social services department of the Institute. His responsibilities are to assist other clients to complete

various items of paperwork, including resumes and employment applications. The respondent uses his educational background in this regard. In addition, he participates in a unit which performs role-playing skits at local primary schools in an effort to educate the students about substance abuse. The clients of the Institute earn privileges; to date, the respondent has earned three weekends (forty-two hours each). He has incurred no problem during these weekends. The respondent's progress was corroborated by the testimony of Brenda Denise Woodard, a primary counselor employed by the Institute for the past three plus months.

Mr. Williams desires to continue employment within the casino industry in an employee advisory service (EAS) capacity. He believes that his educational and employment background, as well as what he has learned from his negative personal experiences, will help him in this regard. Also, he desires to help others with problems similar to that which he has experienced. In this capacity, the respondent believes that he will be a benefit to the industry.

The respondent has not seen his children since July 1985. However, he has written to them and intends to see them in the near future.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the respondent's resignation from BRC and the circumstances underlying his criminal misconduct.

The respondent testified that his personal drug abuse was the cause of all of his problems. Drugs were available at work as well as after work. There was substantial peer pressure to use drugs and the respondent had sufficient funds available for that purpose. As the respondent began to use drugs more, his other problems became more serious, i.e., each affected the other in a negative manner. In March 1984, the respondent was hospitalized for a period of one week as a result of cocaine abuse. However, doctors were unable to identify the source of the problem. The respondent continued to deny that

he had a drug addiction problem. His continued use of drugs disrupted his family life and employment. In March 1985, he was again hospitalized after an illness at work. Nevertheless, the respondent continued to deny that he had a drug addiction problem.

The respondent resigned from BRC because of a discrepancy with his supervisor. He then had an argument at home and left his family. The respondent began to live in the "streets." He used cocaine and heroin, and he committed thefts in order to support his habit.

In November 1985 the respondent was on the boardwalk when he observed his oldest daughter walking there. Because of his condition, he hid from her. It was at this time that he recognized the seriousness of his drug problem and that he needed help. He then entered the Institute.

The respondent testified that he is embarrassed by his downfall; however, he is confident that he will not repeat his misconduct. He no longer drinks or uses drugs, is a changed person and is now able to handle his feelings. The respondent desires to use his experience in a positive manner in the future. He also cited his prior positive employment record and believes that he will again do well in employment endeavors.

Of primary concern was the respondent's credibility concerning his testimony about the circumstances underlying his difficulties. Initially, the respondent's position in this matter must be recognized. He is the holder of a casino employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with and corroborated by the documentary evidence and the fact that the respondent's explanation for his conduct revealed additional criminal misconduct beyond the knowledge the Division, I am persuaded to believe that he testified truthfully. His testimony was extremely candid, straightforward, consistent and believable. In the final analysis, I am persuaded to accept his testimony in all respects. I so **FIND**.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's criminal misconduct constitutes a disqualifying offense under section 86c(4) and, therefore, he cannot continue to hold a license.

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory

process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knigh v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders' International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985) cert. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means, "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's convictions of violations of N.J.S.A. 2C:20-11, shoplifting, together with the circumstances underlying his misconduct, render continued licensure to be inimical to the Act.

Although the respondent's convictions are not listed as disqualifiers under section 86c, such conduct when committed by a license holder raises serious concerns. Further, when the circumstances underlying the criminal misconduct are drug related, the offenses take on a far greater significance. Here, the respondent admitted candidly that he had a serious drug habit and committed criminal misconduct in order to support his habit. Also, Mr. Williams admitted the use of drugs during the course of his licensed employment. Accordingly, the scope of his misconduct is very severe.

Nevertheless, the respondent has made substantial rehabilitative efforts. His drug use occurred over a relatively short period, although his habit was severe and was life-threatening. Most important, the respondent had the presence of mind to seek

medical assistance. Since November 1985, he has undergone a complete alteration of his behavior and is well on his way to again being a constructive and contributing citizen. Further, the respondent's goals to work in the casino industry in a capacity in which he can help others are laudable. However, the respondent's program of recovery is not complete and has not been tested in the community or by time. Therefore, there is an insufficient basis upon which to conclude that the respondent no longer presents a risk to the industry. The respondent's rehabilitative efforts do not yet outweigh the seriousness of his misconduct. It appears likely that continued rehabilitation would, in the future, enable the respondent to overcome the negative aspects of the past few years and again qualify for relicensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Williams was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Aside from the respondent's conduct during the past two years, he appears to possess the requisite good character, honesty and integrity. However, because the respondent's rehabilitation is not complete and has not been tested, and because the nature of the misconduct is inimical to the policies of the Act, he has failed to establish that he currently possesses the degree of good character, honesty and integrity required to maintain licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite good degree of good character, honesty and integrity, pursuant to section 90b.

**(C) PENALTY**

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee;
- d. the prior history of the particular licensee involved with respect to gaming activity;
- e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. . . .

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes a disqualifying offense under section 86c(4) and that he no longer possesses the qualifications for licensure. Accordingly, the respondent's license must be revoked. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against the casino employee license of Ronald L. Williams be **GRANTED** and that license no. 3981-21 be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 4, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

August 6, 1986  
DATE

Doris J. Power  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 7 1986  
DATE

Ronald L. Parker/s  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 State of New Jersey v. Ronald Lynn Williams, Egg Harbor Township Municipal Court, Docket No. C-J10935, Complaint, dated July 18, 1985, and Disposition, dated August 5, 1985
- P-2 State of New Jersey v. Ronald Lynn Williams, Atlantic City Municipal Court, Docket No. C-07753, Complaint, dated July 22, 1985, and Disposition, dated August 20, 1985
- P-3 Photograph

WITNESS LIST

For the petitioner:

George Williamson

For the respondent:

Ronald L. Williams

Brenda Denise Woodard

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 85-CSI-15  
OAL DOCKET NO. CCC 7978-85

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APPLICATION OF WINSTON NETWORK, INC.

FOR A NON-GAMING RELATED CASINO  
SERVICE INDUSTRY LICENSE

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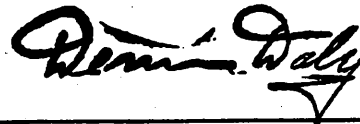
FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 23, 1986,

IT IS on this 7<sup>th</sup> day of August 1986, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Winston Network, Inc. for a non-gaming related casino service industry license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN



BY: \_\_\_\_\_

DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7978-85

AGENCY DKT. NO. 85-CSI-15

**WINSTON NETWORK, INC.,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,**

Respondent.

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**Kevin J. Coakley, Esq.,** for the petitioner (Connell, Foley & Geiser, attorneys)

**Patricia M. Wild, Deputy Attorney General,** for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: May 2, 1986

Decided: June 12, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the recommendation of the Division of Gaming Enforcement (Division), dated August 23, 1985, that the petitioner, Winston Network, Inc., not be licensed as a casino service industry pursuant to the provisions of N.J.S.A. 5:12-92c, based on the alleged failure of one of the petitioner's qualifiers, Marc E. Winston, to disclose certain information. No other questions were raised as to the qualifications of the petitioner. The Casino Control Commission (Commission) transmitted the matter to the Office of Administrative Law on December 16, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The prehearing conference was held February 3, 1986, and the parties agreed that the issues in this matter are:

- A. Whether the petitioner is disqualified from licensure due to the failure of one of its qualifiers, Marc E. Winston, to disclose an alleged criminal conviction.
- B. Whether the failure of Marc E. Winston to disclose the alleged criminal conviction was intentional.
- C. Whether the petitioner can show that it has a reputation for good character, honesty and integrity in light of Marc E. Winston's alleged failure to disclose.
- D. Whether Marc E. Winston, as an officer of the petitioner, is required to be qualified pursuant to N.J.A.C. 19:43-1.14.

The hearing took place on April 3 and 4, 1986, and after receipt of briefs, the record in the matter closed on May 2, 1986.

#### FACTUAL FINDINGS

Based on the testimony and exhibits admitted into evidence, I **FIND** that the facts in this matter are not in dispute.

The petitioner's business involves the sale of advertising space on bus and rail equipment, bus shelters and billboards (P-2, P-6). Its annual revenue is approximately \$100,000,000 (P-6). The principal office of the petitioner is located in New York and it has approximately 30 offices throughout the United States, including an office in northern New Jersey (P-9). The petitioner has approximately 700 employees.

The petitioner's primary source of revenue is the sale of advertising space on bus and rail equipment and it is the largest holder of public transit advertising franchises in the United States (P-6). These franchises are obtained through public bid or proposal

and often involve a revenue-sharing arrangement with the public agencies (P-2). The petitioner has a high rate of franchise renewals and has never been denied a franchise because of a question involving its integrity.

In New Jersey, the petitioner has contracts with New Jersey Transit and the Port Authority of New York and New Jersey and also owns approximately 17 billboards in the Atlantic City area, which it leases primarily to casinos (P-1, P-3). The money from the lease of these billboards represents less than 1 percent of the petitioner's revenue.

The petitioner was founded in the early 1950's by Irwin Winston and is presently a privately held company owned primarily by Irwin Winston and his family. Irwin Winston's son, Marc E. Winston, owns 25 percent of petitioner's stock and is the president of the company. As president, Marc E. Winston is responsible for company policy and planning and overall management (P-7, P-8). The person who is responsible for the everyday operation of the company is Craig Heard, the petitioner's executive vice president (P-7, P-8). The three regional sales managers report to Mr. Heard (P-7, P-8).

The leasing arrangements for the petitioner's Atlantic City area billboards are handled by Joseph Moderski, the sales manager of the petitioner's Philadelphia regional office (P-10), who reports to the regional sales manager, Robert Neuberger. Marc E. Winston usually does not get involved with the arrangements for the leasing of billboards to casinos; however, he attended several meetings regarding billboard advertising with Steven Wynn and other representatives of Golden Nugget Casino and Hotel and one meeting with Donald Trump of the Trump Casinos.

As part of its application for a license as a casino service industry, the petitioner submitted the Personal History Disclosure Form-4 (PHDF-4) for Marc E. Winston (R-1) and for eight other employees of the company. Question no. 8 on the PHDF-4 states, "Have you ever been convicted of a crime or disorderly persons offense in this State or in any other jurisdiction?" The response of Marc E. Winston to this question on his PHDF-4 is "No" (R-1).

During its investigation, the Division determined that Marc E. Winston was arrested on July 20, 1979, in Fishkill, New York, and was charged with the criminal possession of a controlled dangerous substance (hashish), the unlawful possession of

marijuana, and criminal impersonation (R-2, R-3, R-4). On that date, Mr. Winston was stopped for speeding on the Taconic State Parkway (R-4). He initially showed the police officer the Florida driver's license of his nephew, Matthew W. Greenhouse, and when questioned about the license by the police officer, he admitted that it was not his and that his own driver's license had expired. While Mr. Winston was looking for his expired license, the police officer observed a pipe containing marijuana residue and two packages, which were later identified as containing 7.7 grams of marijuana and 10.1 grams of hashish (R-4).

After consulting with Roland Butts, a New York attorney, on September 5, 1979, Mr. Winston pled guilty to a traffic violation and to the possession of less than 25 grams of marijuana; the other charges were dismissed (R-3, R-5). This marijuana conviction is comparable to a violation of N.J.S.A. 24:21-20a(4), which is a disorderly persons offense in New Jersey.

On January 24, 1984, Robert M. Barsony, an investigator employed by the Division, went to see Berton Miller, the senior vice president and general counsel of the petitioner, to review certain records of the company and, on the same date, Mr. Barsony interviewed Marc E. Winston (P-4). Mr. Barsony initially reviewed with Mr. Winston his responses on his PHDF-4 (R-1), and Mr. Winston affirmed his negative response to question no. 8, which relates to criminal convictions. After completing the review of Mr. Winston's responses on his PHDF-4, Mr. Barsony again read question no. 8 from the PHDF-4 and asked Mr. Winston if he understood the question. Mr. Winston indicated that he understood the question and again answered it in the negative.

Mr. Barsony then asked Mr. Winston if he was ever arrested or convicted specifically for the criminal possession of a controlled dangerous substance, the unlawful possession of marijuana, or criminal impersonation, and Mr. Winston responded in the negative. After being confronted with the FBI Record Report (R-2) and the New York State Criminal History Report (R-3), both of which reflected the 1979 criminal charges, Mr. Winston stated that the reports must be accurate. Mr. Winston then indicated that he had been arrested for a motor vehicle violation and that he thought that the charges were minor matters that did not have to be reported.

At the hearing, Mr. Barsony stated that he had asked Mr. Winston specifically whether he had been either arrested or convicted of any crime or disorderly persons

offense even though the PHDF-4 does not require a qualifier to give any information about arrests. Mr. Barsony stated that he usually interviews persons who fill out the other types of personal history disclosure forms, all of which require information regarding both arrests and convictions. It is Mr. Barsony's customary procedure to ask questions regarding both arrests and convictions, and when he interviewed Mr. Winston, he had forgotten that the PHDF-4 did not require information about arrests. Mr. Barsony did not recall whether he had asked Mr. Winston separate questions regarding arrests or whether he had combined arrests and convictions into one question.

At the time of the January 24, 1984 interview, Mr. Barsony thought that Mr. Winston had been both arrested and convicted of a crime in New York.

Mr. Roland Butts testified that pursuant to section 221 of the New York Penal Code, the possession of less than 25 grams of marijuana is not a "crime" and is a "violation" (P-11). According to Mr. Butts, there is no "disorderly persons" category of offenses in New York. Mr. Butts advised Mr. Winston that since he had pled guilty to a violation, he could respond in the negative if asked whether he had ever been convicted of a crime. During this conversation with Mr. Winston, Mr. Butts made no specific reference to the legal status of Mr. Winston's arrest and the charges that had been dismissed.

Marc E. Winston testified that at the time of the 1979 incident, he was going through a divorce and had just been made the petitioner's president; further, he was embarrassed about what had happened and had tried to forget the incident. While he was being interviewed by Mr. Barsony, Mr. Winston stated that he became confused since it was his understanding from his conversation with Mr. Butts that he had not been convicted of a crime and that the matter would not appear on any record. At the time of the interview, Mr. Winston thought a "disorderly persons offense" was a type of crime.

Marc E. Winston has been involved in a number of charitable activities sponsored by the advertising council and the petitioner has given millions of dollars worth of space at no charge for public service advertisements such as "Smokey the Bear" and "Don't Drive Drunk," and for the missing children campaign. The petitioner, through its chairman of the board, Irwin Winston, has received an award for community service from President Reagan.

On behalf of Marc E. Winston and the petitioner, Ellen Marshall, the assistant vice president of the National Westminster Bank in New York City, testified that she has handled the petitioner's account for approximately three years. According to Ms. Marshall, both Mr. Winston and the petitioner have a good reputation in the business community for good character, honesty and integrity.

#### CONCLUSIONS OF LAW

Kevin J. Coakley, Esq., on behalf of the petitioner, argued that because Marc E. Winston has limited involvement with the leasing of billboards to the casinos and the casinos' business represents a minute portion of the petitioner's revenue, Mr. Winston should not be required to be a qualifier. Mr. Coakley noted that the petitioner's employees who have regular dealings with the casinos have submitted the required forms and there are no questions regarding their qualifications.

In addition, Mr. Coakley argued that even if Mr. Winston were properly considered to be a qualifier, his response on the PHDF-4 to question no. 8 is accurate since he was not convicted of a crime, according to New York law, and since there are no disorderly persons offenses in New York. Mr. Coakley argued that even if Mr. Winston had not properly answered the questions regarding his 1979 arrest during the interview with Mr. Barsony, it was not an intentional omission and it was not about a material fact. Since the PHDF-4 does not require any information about arrests, Mr. Coakley argued that such information is not a material fact and the failure to reveal an arrest would not be a disqualifier pursuant to N.J.S.A. 5:12-86b, which provides that an applicant is disqualified for failing "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."

Lastly, Mr. Coakley argued that even if Mr. Winston is disqualified pursuant to N.J.S.A. 5:12-86b, he has shown his rehabilitation since the 1979 incident.

Deputy Attorney General Patricia M. Wild, on behalf of the Division, argued that Marc E. Winston, as a stockholder and the president of Winston Network, Inc., was properly designated as one of the persons who had to qualify in connection with petitioner's application. Ms. Wild relied primarily on N.J.A.C. 19:43-1.14, which in part provides:

- (a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission.

.....

- (2) In the case of casino service industry licenses issued in accordance with section 92c and d of the Act:
- i. The enterprise;
  - ii. If the enterprise is, or if it is to become a subsidiary; each holding company and each intermediary company which the Commission deems necessary to qualify or approve in order to further the purposes of the Act;
  - iii. Each owner of the enterprise who directly or indirectly holds any beneficial interest or ownership in excess of five percent;
  - iv. Each owner of a holding company or intermediary company who the Commission deems necessary to qualify or approve in order to further the purpose of the Act;
  - v. Each director of the enterprise except that a director who, in the opinion of the Commission, is not significantly involved in or connected with the management or ownership of the enterprise shall not be required to qualify;
  - vi. Each officer of the enterprise significantly involved in the conduct of business with a casino licensee and each officer whom the Commission may consider appropriate for qualification in order to insure the good character, honesty and integrity of the enterprise;
  - vii. Each officer of a holding company or intermediary company whom the Commission may consider appropriate for qualification in order to insure the good character, honesty and integrity of the enterprise;
  - viii. The management employee supervising the regional or local office which employs the sales representative soliciting business or dealing directly with a casino license.

- ix. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licenses.
- x. Any other person whom the chairman may consider appropriate for approval of qualification.

Pursuant to this regulation, Ms. Wild argued that Marc E. Winston is a qualifier since he owns in excess of 5 percent of the petitioner's stock (subsection iii), since he is significantly involved in the petitioner's business activities with the casinos as shown by his attendance at meetings with representatives of the Golden Nugget Casino and Hotel and the Trump casinos (subsection vi), and since Mr. Winston is responsible for determining the petitioner's policy, which makes him an appropriate person for "qualification in order to insure the good character, honesty and integrity of the enterprise" (subsection vi).

In addition, Ms. Wild argued that Mr. Winston's failure to disclose his 1979 conviction on his PHDF-4 and his failure to disclose his arrest and conviction during the interview with the Division's representative were intentional nondisclosures of material facts, a disqualification pursuant to N.J.S.A. 5:12-86b. Ms. Wild argued that Mr. Winston was given ample opportunity to express any reservations regarding the legal status of the 1979 incident and that he did not mention his conversation with Mr. Butts nor did he admit his arrest and conviction until confronted with the FBI and New York State reports by Mr. Barsony. In addition, Ms. Wild argued that the failure to disclose a criminal conviction is always considered a material fact in view of the public policy set forth in N.J.S.A. 5:12-1b(7).

Lastly, Ms. Wild argued that the failure of Marc E. Winston to list his conviction on the PHDF-4 and to reveal his arrest and conviction during his interview with Mr. Barsony directly impacts on the petitioner's reputation for good character, honesty and integrity.

Based on the facts in this matter, I agree with Ms. Wild's argument that Marc E. Winston was properly designated as one of the persons who had to be qualified in connection with the petitioner's application, pursuant to N.J.A.C. 19:43-1.14.

As to the issue of whether there was a disqualification pursuant to N.J.S.A. 5:12-86b, this section of the Casino Control Act requires a person to provide the Commission with all pertinent information needed for the review of the application.

In the Matter of Harl Lee Cooper, OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980). It was recognized by the Commission in the Cooper matter that not every nondisclosure necessitates disqualification and that there is a difference between mere inadvertence or ignorance and an intentional and willful omission done in bad faith. It is clear that if the nondisclosure resulted from a genuine misunderstanding of the nature of the criminal act or from forgetfulness, disqualification is not required; while on the other hand, if the applicant fails to disclose information out of fear that a license would be denied, disqualification is warranted. Cooper, supra; In the Matter of the Application of Steven M. Cohen, OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales, OAL DKT. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980). In order to determine whether the failure to disclose results from inadvertence or ignorance, it is necessary to look at the surrounding circumstances in each case. In the Matter of the Application of Ted's World of Flowers, Inc., OAL DKT. CCC 706-81 (Jan. 22, 1982), adopted, Casino Control Commission (March 15, 1982).

In this matter, I **CONCLUDE** that Marc E. Winston's response to question no. 8 on his PHDF-4 was not an intentional misrepresentation. From his testimony, it is clear that Mr. Butts assured Mr. Winston that he was not convicted of a crime, and there is no reason to believe that Mr. Winston knew when he prepared his PHDF-4 that his guilty plea to a marijuana violation in New York was equivalent to a disorderly persons offense conviction in New Jersey. Further, there is nothing in the wording of question no. 8 to alert a person to the fact that the Division expects a person to list as a conviction any matter which would be a crime or disorderly persons offense if committed in New Jersey, even if said act does not fall within either category pursuant to the laws of the state where the offense took place. In addition, since Mr. Barsony did not explain to Mr. Winston what was expected by the Division as an answer to question no. 8, I **CONCLUDE** that Mr. Winston's oral denial of a conviction was not an intentional misrepresentation.

As to the fact that Mr. Winston failed to tell Mr. Barsony that he was arrested in New York for certain criminal activities, I **CONCLUDE** that this was an unintentional failure to disclose based on his misunderstanding of the legal ramifications of the 1979 incident as well as his confusion during the interview. Mr. Barsony initially questioned Mr. Winston regarding his response to question no. 8 on the PHDF-4, which

deals only with convictions, and apparently later his questions to Mr. Winston dealt both with arrests and convictions. At the hearing, Mr. Barsony quite frankly admitted that he did not recall whether he asked separate questions regarding arrests or whether he encompassed both arrests and convictions in a single question. Therefore, I accept Mr. Winston's statement that he became confused during the interview. Further, I **CONCLUDE** that any information regarding arrests is not a material fact within the meaning of N.J.S.A. 5:12-86b, since the PHDF-4 does not require this information.

Therefore, I **CONCLUDE** that the petitioner is not disqualified for licensure pursuant to the provisions of N.J.S.A. 5:12-86b, N.J.S.A. 5:12-92d and N.J.A.C. 19:43-1.5. I should note that if I determined that there was a disqualification pursuant to N.J.S.A. 5:12-86b, the petitioner could not overcome said disqualification by a showing of the rehabilitation of Marc E. Winston. Rehabilitation as a defense is not applicable in matters involving a disqualification pursuant to N.J.S.A. 5:12-86b, nor is this defense available to those seeking licensure as a casino control industry. See, N.J.S.A. 5:12-90b and 5:12-91d.

As to the issue of the petitioner's reputation for good character, honesty and integrity, the Division's only negative comment was the alleged failure of Marc E. Winston to reveal information regarding the 1979 incident. In view of the fact that I have found that there was an unintentional failure to disclose the conviction and that the failure to disclose the arrest was an unintentional failure to disclose a fact that was not material to licensure, I **CONCLUDE** that the petitioner has shown its reputation for good character, honesty and integrity as required by N.J.A.C. 19:43-1.3(c).

Therefore, I **ORDER** that the application of Winston Network, Inc., for licensure as a casino service industry pursuant to the provision of N.J.S.A. 5:12-92c, be **GRANTED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

June 12, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

6/16/86  
DATE

Amy Linde  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 17 1986  
DATE

Ronald J. Parker, Jr.  
OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Business Entity Disclosure Form-3 filed by Winston Network Inc.
- P-2 Audits of Winston Network Inc., performed by Transit Authorities
- P-3 List of casino accounts of Winston Network Inc.
- P-4 Letter from Juliet H. Arocha to the Division of Gaming Enforcement, dated February 22, 1985
- P-5 Report of the Division of Gaming Enforcement regarding Winston Network Inc., prepared by Robert M. Barsony, dated May 8, 1985 (sealed exhibit)\*
- P-6 Financial Report regarding Winston Network Inc., prepared by Dillon, Reed and Company, Inc., dated November 1985
- P-7 Regional Team Organization Chart for Winston Network Inc.
- P-8 Corporate Organization Chart for Winston Network Inc.
- P-9 List of regional offices of Winston Network Inc.
- P-10 Sample of billboard contract with Winston Network Inc.
- P-11 Section 10.00 and Section 221.05 of the New York Penal Code

For the Respondent:

- R-1 Personal History Disclosure Form-4 for Marc E. Winston
- R-2 FBI Record Report for Marc E. Winston
- R-3 New York State Criminal History Report for Marc E. Winston
- R-4 New York State Police Investigation Report, dated July 20, 1979, New York State Police Arrest Reports, dated July 30, 1979 and October 9, 1979, and two reports of the New York State Police Mid-Hudson Regional Laboratory, both dated July 31, 1979.
- R-5 New York Criminal Docket Calendar for a matter involving Marc E. Winston

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\* At the request of Deputy Attorney General Wild, Exhibit P-5 was admitted into evidence subject to a protective order which provided that the entire report shall be sealed and shall be made available only to the Casino Control Commission for purposes of rendering a final decision in this matter, and if there is an appeal, to any court having jurisdiction in the matter (see, R. 1:38, and R. 3:13-3(d)).

WITNESSES

For petitioner:

Marc E. Winston

Craig P. Heard

Ronald Butts

Ellen Marshall

For respondent:

Robert M. Barsony

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-45  
OAL DOCKET NO. CCC 1316-85  
REGISTRATION NO. 21957-40

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STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND PUBLIC SAFETY,  
DIVISION OF GAMING ENFORCEMENT,

FINAL ORDER

Complainant,

v.

HARRY WOODALL,

Respondent.

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 16, 1985.

IT IS on this 1st day of July 1986, ORDERED that the ALJ's recommendation to dismiss the complaint is rejected for the following reason:

The ALJ concluded that the respondent's possession on April 10, 1984, of CDS is not inimical. (Init. dec. at 5). According to the respondent's testimony, he had purchased the CDS before going to work at Caesar's, placed it in his coat pocket and went to work. We find the respondent's admitted possession of controlled dangerous substance on casino premises on April 10, 1984, is an inimical offense requiring disqualification pursuant to sections 86(c)(4) and (g).

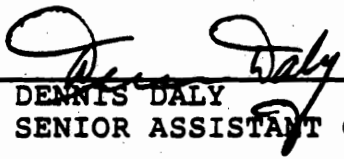
IT IS FURTHER ORDERED that Harry Woodall is disqualified for the reasons stated herein; and

IT IS FURTHER ORDERED that Harry Woodall's disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Harry Woodall is prohibited from applying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Harry Woodall, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY:   
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1316-85

AGENCY DKT. NO. 85-45

**DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**HARRY WOODALL,**

Respondent.

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**William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin L. Kimmelman, Attorney General of New Jersey, attorney)**

**Harry Woodall, respondent, pro se**

Record Closed: July 25, 1985

Decided: September 9, 1985

**BEFORE JOSEPH F. FIDLER, ALJ:**

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement (Division) filed with the Casino Control Commission on February 13, 1985, seeking judgment revoking the respondent's casino hotel employee registration, pursuant to sections 86c and g, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's indictment on April 24, 1984, for possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), his arrest on March 9, 1983, for shoplifting, in violation of N.J.S.A. 2C:20-11, and his arrest on April 16, 1981, for theft by receiving stolen property, in violation of N.J.S.A. 2C:20-7. The issues to be determined in this matter are as follows:

1. Whether the respondent has committed an offense which would indicate that his continued casino hotel employee registration would be inimical to the policy of the Casino Control Act, or which would be an automatic disqualifier, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(1), (3), (4) and 86g of the Act, thereby requiring revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the Act.
2. Whether the respondent, if he has committed an automatically disqualifying offense, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d of the Act.

#### PROCEDURAL HISTORY

On March 1, 1985, the Casino Control Commission received the respondent's request for a hearing on the complaint of the Division of Gaming Enforcement. The Commission thereafter transmitted the matter to the Office of Administrative Law on March 8, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on April 24, 1985. The matter was subsequently heard on June 27, 1985. At the request of the respondent, the record in this matter was held open following the hearing to afford him an opportunity to submit letters of reference in addition to those admitted at the hearing. The record was subsequently closed on July 25, 1985.

#### FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is 22 years old and he is a lifelong resident of Atlantic City, New Jersey. Since August 18, 1982, the respondent has been employed on a full-time basis by Caesars Boardwalk Regency Casino Hotel as a uniform locker attendant (exhibit R-1). In addition to supporting himself and his daughter, the respondent also provides support for his unemployed mother.

On April 16, 1981, the respondent was charged with the offense of theft by purposely receiving movable property (a 1979 Chevrolet station wagon), in violation of N.J.S.A. 2C:20-7 (exhibit P-1). On May 7, 1981, the charge was dismissed on the basis of insufficient evidence to warrant an indictment. The respondent explained that he had been a passenger in a car being driven by a juvenile and he did not know that the vehicle had been stolen. When the vehicle had been stopped by the police, the juvenile had been released and the respondent was locked up. The respondent agreed that the charge against him was subsequently dismissed.

On March 9, 1983, the respondent was arrested and charged with shoplifting a bottle of perfume valued at \$19 from a Sear's Department Store in Egg Harbor Township, contrary to N.J.S.A. 2C:20-11 (exhibit P-2). According to the respondent, he had been drinking and he walked out of the store with the merchandise, even though he had enough money with him to pay for it. The respondent described it as an act of selfishness. On June 6, 1983, the respondent pled guilty to the offense and he was fined \$150 and ordered to pay \$25 costs (exhibit P-2).

On April 10, 1984, the respondent was in a car parked in the vicinity of Columbus Park, Atlantic City, when he was arrested and charged with the offenses of possession of a controlled dangerous substance (cocaine) and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-20a(1) and 24:21-19a(1). The respondent was also charged with possession of narcotics paraphernalia, contrary to N.J.S.A. 24:21-47 and possession of a prohibited weapon (three .22 caliber dum-dum bullets), contrary to N.J.S.A. 2C:39-3 (exhibit P-3). The respondent was indicted for these offenses on April 24, 1984.

It was the credible testimony of the respondent that the narcotics paraphernalia which he had in his possession consisted of a couple of empty glassine bags, a razor, and a straw. The respondent was carrying cocaine in two other glassine bags on his person. The respondent testified that the cocaine was valued at about \$150, and that it was for his own use. He had been a cocaine user for three or four months at the time of his arrest, but he has never sold narcotics. The respondent stated that he had been on his way home from work at the time of his arrest and that he had just cashed a paycheck for \$198.

The respondent acknowledged that the arresting officer had found three .22 caliber bullets in the glove compartment of the respondent's vehicle. According to the respondent, they were not hollow point bullets. The respondent had found them under the back seat of his car when it was purchased and he had simply put them in his glove compartment.

The respondent stopped using cocaine following his arrest. On June 18, 1984, the respondent was enrolled in the Atlantic County Pre-trial Intervention Program. He was required to report to the Probation Department monthly, complete 75 hours of volunteer work, and to submit to a monthly urine test (exhibit R-4). As a result of his successful participation in the Pre-trial Intervention Program, the charges against him were dismissed on January 21, 1985 (exhibit R-3). According to the respondent's Principal Probation Officer Betty Lou Sochocky, the respondent reported regularly and on time, expressed remorse concerning the incident, and a willingness to do any and all requirements to receive a dismissal of the charges. Noting that the respondent maintained his employment at Caesars Boardwalk Regency, it was the opinion of Ms. Sochocky that the respondent should be given all possible consideration concerning his casino career, based upon his attitude and willingness to improve his life (exhibit R-4).

It was the sincere and credible testimony of the respondent that he has learned his lesson and that he no longer has any desire or use for illegal drugs. He wishes to maintain his casino hotel employee registration so that he will be able to provide for himself, his daughter and his mother. He regrets his previous drug involvement and it is his wish to maintain his employment and continue his education.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

#### CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86c and g of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant who has committed an offense which would indicate that continued registration would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not been or may not be prosecuted under the laws of New Jersey. The respondent's only conviction is for shoplifting, contrary to N.J.S.A. 2C:20-11. This conviction was entered on June 6, 1983, upon the respondent's plea of guilty. While this conduct places into question the respondent's suitability for continued registration, it is not of such a nature as to justifiably erode the public's confidence in the integrity of the regulatory process. Therefore, I **CONCLUDE** that the respondent's conviction of shoplifting does not indicate that his continued registration would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(4) of the Act.

Following his indictment for possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1), the respondent was admitted into and successfully completed the Pre-trial Intervention Program. The credible evidence in the record establishes that the respondent did not possess the cocaine with intent to distribute. Rather, the cocaine was for his personal use. The offense of possession of a controlled dangerous substance is not listed in the Casino Control Act as an automatic disqualifier from licensure. Given the nature of the respondent's offense and his cessation of cocaine use, as well as his continued employment and constructive attitude, I **CONCLUDE** that the respondent's conduct would not justifiably erode the public's confidence in the integrity of the regulatory process. Having considered the risk to the public and to the integrity of gaming operations, the seriousness of the conduct, the respondent's explanation for the conduct and his corrective action to prevent future misconduct, I **CONCLUDE** that the respondent's conduct does not render continued casino hotel employee registration inimical to the policy of the Casino Control Act and to casino operations, pursuant to sections 86c(4) and (g) of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Harry Woodall be and hereby is **DISMISSED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 9, 1985  
DATE

Joseph F. Fidler  
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

September 10, 1985  
DATE

Bernadette J. Frigen  
CASINO CONTROL COMMISSION

Mailed to Parties:

September 12, 1985  
DATE

Ronald J. Parker / s.s.  
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

- P-1 Complaint, dated April 16, 1981
- P-2 Arrest report, dated March 9, 1983
- P-3 Investigation report, dated April 10, 1984
- P-4 Indictment, dated April 24, 1984

FOR THE RESPONDENT:

- R-1 Ledger, dated June 10, 1985
- R-2 Earning report
- R-3 Pre-trial Intervention Completion and Dismissal of Indictment
- R-4 Ledger, dated July 8, 1985

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Harry Woodall

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NOS. 85-EA-208  
AND 86-40  
OAL DOCKET NO. CCC 1636-86  
REGISTRATION NO. 07701-40  
APPLICATION NO. 58472-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW AND PUBLIC SAFETY, :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

FINAL ORDER

v.

AUDREY F. WOODS, :

Respondent. :

AND

APPLICATION OF AUDREY F. WOODS :  
FOR A CASINO EMPLOYEE LICENSE :

---

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision on September 4, 1986; and the Commission having considered the entire record of these proceedings at its public meeting of September 17, 1986,

IT IS on this 7<sup>th</sup> day of November 1986, ORDERED that the initial decision of the Office of Administrative Law is modified as follows:


1. The Commission finds that because respondent's offense of theft in violation of N.J.S.A. 2C:20-3 took place on the premises of a casino hotel, this offense renders her licensure and continued registration inimical to the Casino Control Act and gaming operations pursuant to N.J.S.A. 5:12-86(c)(4) and (g). However, in the interests of justice the Commission hereby waives the respondent's disqualification pursuant to N.J.S.A. 5:12-91(e) to permit her to retain her casino hotel registration.
  
2. That portion of the initial decision which imposes a \$500 civil penalty is rejected. The Commission has consistently held that to the extent a criminal act is considered disqualifying under N.J.S.A. 5:12-86, absent rehabilitation or waiver, the only appropriate sanction is denial or revocation of licensure.

IT IS FURTHER ORDERED that the application of Audrey F. Woods for a casino employee license is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Audrey I. Woods is prohibited from applying for any license, qualification or

approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIR

BY:   
\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 1636-86

AGENCY DKT. NOS. 86-40

and 85-EA-208

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**AUDREY F. WOODS,**

Respondent.

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**AUDREY F. WOODS,**

Petitioner,

v.

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Respondent.

---

**Joanne Cocchiola Ciancimino, Deputy Attorney General, for the  
petitioner/respondent (W. Cary Edwards, Attorney General of New Jersey,  
attorney)**

**Audrey F. Woods, respondent/petitioner, pro se**

Record Closed: July 8, 1986

Decided: August 6, 1986

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This proceeding involves two matters. First, the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner/respondent, charged that Audrey F. Woods, respondent/petitioner, and the holder of casino hotel employee registration no. 7701-40, had committed a criminal offense which rendered continued registration to be inimical to the policies of the Casino Control Act (Act), under section 86c(4), for which the Division seeks revocation of her registration, pursuant to sections 129 and 130. The respondent/petitioner opposed the action. Second, Ms. Woods applied to the Casino Control Commission (Commission) for licensure as a casino employee (casino teller), pursuant to N.J.S.A. 5:12-90. The Division opposed licensure because of its contention that the respondent/petitioner had committed a disqualifying criminal offense under section 86c(4), and because she did not possess the requisite good character, honesty and integrity under section 90b.

PROCEDURAL HISTORY

Ms. Woods filed her Personal History Disclosure Form-2A (PHDF-2A) with the Commission on December 10, 1984 (J-1). On January 31, 1986, the Division filed its complaint with the Commission. By letter, the Commission advised the respondent/petitioner that, based upon information received in a report from the Division, dated November 19, 1985, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. The Commission also advised the respondent/petitioner of the Division's complaint. By letter filed with the Commission on February 28, 1986, the respondent/petitioner requested a hearing. On March 11, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on April 15, 1986. The matter was heard on July 8, 1986, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Audrey F. Woods is 32 years of age and is a resident of Atlantic City (J-1). She is a 1972 graduate of Dickinson High School, Jersey City, New Jersey.

On August 29, 1975, the respondent/petitioner was arrested by the Jersey City Police Department and was charged with a violation of N.J.S.A. 2A:139-1, receiving stolen property, which is analogous to N.J.S.A. 2C:20-7 (P-2). On April 6, 1976, the respondent/petitioner and another person were indicted on the charge (P-3). On October 28, 1977, a Judgment of Dismissal of the indictment was entered as to the respondent/petitioner only.

In July 1979, the respondent/petitioner received casino hotel employee registration no. 7701-40 from the Commission.

From July 1979 until her termination on December 23, 1983, the respondent/petitioner was employed as a housekeeping dispatcher by the Boardwalk Regency Corporation (BRC). A housekeeping dispatcher is responsible to issue work assignment slips to guest room attendants, to schedule rooms to be cleaned, and has access to linens and other supplies, which are stored in cages outside the housekeeping office. The respondent/petitioner was terminated by reason of her involvement in an incident on December 22, 1983 (P-1).

In February 1982, the respondent/petitioner was arrested by the Atlantic City Police Department and was charged with shoplifting. Although there is no record of the charge or disposition, the respondent/petitioner believes that the matter was dismissed. The respondent/petitioner stated that she was with another person who committed the offense, although the respondent/petitioner assisted after the fact.

On December 22, 1983, Steven Metz was BRC's executive housekeeper; he is currently director of support services at BRC. The respondent/petitioner worked under Mr. Metz's supervision. Mr. Metz was notified by another employee that the respondent/petitioner was about to leave the hotel with BRC property in her possession. Mr. Metz notified BRC security. Investigator Russell Ayers and Lieutenant Pacentrilli

observed the respondent/petitioner about to exit the hotel with a plastic shopping bag. At the request of the investigator and lieutenant, the respondent/petitioner returned with them to Mr. Metz's office. The bag was emptied and was found to contain the following BRC property:

- 1 bath towel
- 4 wash cloths
- 15 small plastic bags
- 4 trash cans
- 1 32-oz. bottle of Sun Bath Cleaner
- 1 32-oz. spray can of Brown's Trouble Spot Remover
- 2 1-1/2-oz. boxes of Raisin Bran cereal
- 1 1-1/2-oz. box of Corn Flakes cereal
- 2 1-1/2-oz. boxes of Rice Krispies cereal
- 6 12-oz. cans of 7-Up
- 6 12-oz. cans of Coca-Cola
- 5 bananas

Next, the respondent/petitioner assented to a request to examine her locker. Sergeant of Security Marie Jerdan (now Lieutenant of Security) escorted the respondent/petitioner to the locker room. All of the items in the locker were taken to Mr. Metz's office. The items were as follows:

- 100 packets of BRC sugar
- 3 king-size sheets
- 4 6-oz. cans of orange juice
- 1 box of Kleenex tissues
- 1 roll of toilet paper
- 6 12-oz. cans of Coca-Cola
- 6 12-oz. cans of 7-Up

Although the respondent/petitioner was cooperative during the investigation, she made no statements.

Mr. Metz placed the respondent/petitioner on "investigative suspension" status. Her employment was terminated on December 23, 1983 (P-1).

Although the respondent/petitioner admitted her misconduct, some of the circumstances underlying the incident were in dispute, and will be discussed, infra.

In December 1984, the respondent/petitioner successfully completed a pit clerk course of studies at the Casino Career Institute. The tuition for this course was paid for by the Atlantic County Welfare Department.

From December 1983 until August 1985, the respondent/petitioner was unemployed and supported herself with welfare.

From August 1985 until the present, the respondent/petitioner has been employed as a dispatcher for valet parking by the Greate Bay Hotel and Casino, Inc. (Sands). The respondent/petitioner does not have access to motor vehicles or hotel property, but does handle money. She has had no difficulty with this employment.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

#### (B) DISPUTED FACTS

In dispute were the circumstances underlying the 1975 charges, some of the circumstances underlying the incident on December 22, 1983, and the respondent/petitioner's good character, honesty and integrity.

The respondent/petitioner described the circumstances underlying the charges in 1975. During the process of his moving, an upstairs neighbor, Gregory Johnson, asked the respondent/petitioner to hold several boxes for him and his wife. The respondent/petitioner agreed. Thereafter, the police searched the respondent/petitioner's apartment for stolen property, which they discovered in the boxes. The respondent/petitioner had no knowledge of the contents of the boxes. She advised the police of the events which had transpired. Ultimately, the charges against her were dismissed. The respondent/petitioner's version of the incident is fully consistent with the explanation she provided to Division Agent David Pacera during a telephonic interview on August 14, 1985. In addition, her explanation is consistent with the details included on the arrest report; i.e., the items were brought to the respondent/petitioner's apartment by Gregory Johnson (P-2).

The respondent/petitioner also described the circumstances underlying the December 22, 1983 incident. Although she did not deny that she attempted to remove BRC property from the hotel, she denied that she intended to take the items found in her locker. More specifically, the respondent/petitioner used the sheets to press work clothing, used the washcloths for personal cleaning, and used the sugar for coffee. She did not know if such practices were specifically permitted, but all employees did it with the knowledge of supervisors. In addition, the respondent/petitioner testified that the various food items found in her bag and in the locker were available to her as an employee, but that she had not consumed the items during her workday. Therefore, she was merely taking home that which she believed was hers. Also, the towels were rags which the respondent/petitioner intended to use for cleaning. She further explained that she had recently relocated and had taken the rags and cleaning compounds in order to clean her new apartment. She removed most of the items from the supply and linen rooms. When asked why she did not defend herself at the time of her dismissal, the respondent/petitioner replied that she "just didn't."

The respondent/petitioner also testified that she will not repeat her misconduct and has learned her lesson from the extensive period of unemployment which ensued.

Prior to making a finding, it is necessary to assess Ms. Wood's credibility. Initially, her position in this matter must be recognized. As a holder of a registration and an applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. Essentially, her testimony was not refuted. Also, her testimony concerning the incident in 1975 was consistent with her statements to Agent Pacera, and was consistent with the documentary evidence. Concerning the December 22, 1983 incident, the respondent/petitioner's testimony was consistent with the Division's proofs, except for her contention that she did not intend to take some of the items found in her locker and that she was permitted to consume some of the food items. Nevertheless, her admission to taking many of the items was against interest and was sufficiently consistent with the Division's proofs. It was evident that the respondent testified truthfully, based on my observations of her demeanor during the hearing, and based on my review of the record. There was consistency between her testimony and prior statements, as well as consistency between her testimony and the documentary

evidence, and her testimony was plausible. Although not overwhelming, her testimony was sufficiently candid, consistent, believable and persuasive. In the final analysis, I am persuaded to accept her testimony.

After consideration of the entire record in this matter, I further find that:

1. The respondent/petitioner's testimony contained admissions against interest, and was plausible, believable and persuasive.
2. The respondent/petitioner committed no criminal misconduct in 1975.
3. On December 22, 1983, the respondent/petitioner knowingly attempted to remove BRC property for personal use.
4. The respondent/petitioner attempted to remove the items from BRC in order to clean her apartment.
5. The respondent/petitioner did not intend to remove the majority of the items found in her locker.
6. The substantial period of unemployment which ensued from the incident has had a significant impact on the respondent/petitioner.

#### DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Section 86g provides that a person be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of

the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent/petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3, theft, which, under the circumstances, renders continued licensure to be inimical to the Act.

N.J.S.A. 2C:20-3a defines the crime of theft as follows:

A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

This statute preserves the elements of larceny as defined at common law. State v. Comariati, 186 N.J. Super. 375 (Law Div. 1982), aff'd. 192 N.J. Super. 131 (App. Div. 1983).

The first element of theft is the "wrongful or fraudulent taking and carrying away." State v. Leicht, 124 N.J. Super. 127, 131 (App. Div. 1973). It is well settled that if one takes the goods of another out of the place where they were put, though he is detected before they are carried away, the larceny was complete. State v. Wilson, 1 N.J.L. 502 (1793).

The second element is that there must be a taking of property of another. State v. D'Agostino, 176 N.J. Super. 49 (App. Div. 1980). Initially, it is not an element of larceny that the defendant knows that he is taking another's property. The only time that knowledge is relevant is where the defendant raises the affirmative defense of a claim of

agent, however guilty may be the taker's intent." State v. Green, 170 N.J. Super. 292, 295 (App. Div. 1979).

The fourth element is that the defendant takes "with a fraudulent intent to deprive the owner of his property." State v. Leicht at 133. Larceny has not been committed where the taker intends to return the property to the owner. Further, if the taker has valid title to the property while the holder merely has possession, the taker does not have the "intent to deprive," but merely the lawful intent to obtain that which is rightfully his. Ibid.

It was not disputed that the majority of the property in the respondent/petitioner's shopping bag belonged to BRC and that she had, through her position at BRC, taken the property to which she was not entitled for her own purposes. Further, it is apparent that some of the property found in the respondent/petitioner's locker was BRC property to which she was not entitled. The respondent/petitioner attempted to remove the property from the BRC, which establishes an intent to deprive the owner thereof without its knowledge. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent/petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3.

The remaining issue is whether the conduct is inimical to the Act. The circumstances underlying the incident establish that the respondent/petitioner used the access to BRC's property available to her in her position as a means to take supplies and attempt to remove them from the hotel. Although the value of the property taken was minimal, this only mitigates the seriousness of the misconduct to a minor degree. The respondent/petitioner's misconduct constitutes a breach of the criminal laws of this state, the regulations governing the casino industry, and the trust reposed within her by BRC. In addition, the respondent/petitioner was involved in a theft-related offense in 1982, which reflects negatively upon her. Nevertheless, the issue is complicated by the respondent/petitioner's current and apparently positive employment at the Sands. This is also a position of trust as she is responsible for monies, and she has apparently not incurred any problems.

There is no doubt that the respondent/petitioner's misconduct was inimical to continued registration and potential licensure prior to her employment with the Sands.

reflects negatively upon her. Nevertheless, the issue is complicated by the respondent/petitioner's current and apparently positive employment at the Sands. This is also a position of trust as she is responsible for monies, and she has apparently not incurred any problems.

There is no doubt that the respondent/petitioner's misconduct was inimical to continued registration and potential licensure prior to her employment with the Sands. However, her conduct since her termination and specifically during her employment at the Sands constitutes substantial evidence of rehabilitation and it is minimally sufficient to mitigate and outweigh the seriousness of her prior misconduct.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that continued registration and/or potential licensure of the respondent/petitioner would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Woods was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc., for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The conclusion that the potential licensure of the respondent/petitioner is not inimical to the policies of the Act is not dispositive of whether she possesses the requisite good character, honesty and integrity.

Serious concerns remain regarding the respondent/petitioner's application for licensure. More specifically, her conduct in 1982 is substantially similar to her conduct which led to her dismissal from BRC in 1983. Although the respondent/petitioner's testimony that she would not repeat her misconduct was persuasive and was corroborated by her conduct during the past two years, the degree of assurance was minimal. Also, the respondent/petitioner did not produce witnesses or written testimonials to corroborate her good character, honesty and integrity. Although written testimonials are entitled only to minimal weight, the absence of such evidence is significant and cannot be ignored. Further, the fact that the respondent/petitioner, as a registration holder, committed misconduct in a casino and during the scope of her licensed employment, and which involved a violation of the trust with which she was reposed, raises substantial doubts about her qualifications for licensure for a position which requires an enhanced degree of trust and which is directly involved in gaming activity.

I CONCLUDE that the respondent/petitioner has not established, by clear and convincing evidence, that she possesses the requisite degree of good character, honesty and integrity, pursuant to section 90b.

(C) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of the respondent's casino hotel employee registration .

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

- b. the seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. any justification or excuse for such conduct by the licensee or registrant;
- d. the prior history of the particular licensee or registrant involved with respect to the gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring. . .

Although the respondent/petitioner's prior misconduct may not now render continued registration to be inimical to the policies of the Act, it is clear that such misconduct was inimical prior to her employment with the Sands and, as such, constitutes a violation of the Act. On any occasion when a registration holder commits an offense in the scope of licensed employment and in a casino, there is an inherent risk to the integrity of gaming operations. Because this misconduct did not involve any patrons of the hotel, there was no risk to the public. The misconduct is not irreparable. With the exception of this incident, the respondent/petitioner's employment history within the casino industry is positive. Nevertheless, and in order to ensure that the respondent/petitioner recognizes her misconduct and that she will not repeat it in the future, and in order to enhance "the public confidence and trust in the efficacy and integrity of the regulatory process," N.J.S.A. 5:12-1b(6), the imposition of a penalty is warranted. Because it would serve no useful purpose to suspend the respondent/petitioner's registration and thereby cause a termination of her current employment, a monetary penalty should be imposed. A penalty in the amount of \$500 should ensure future compliance with the regulatory scheme.

I **CONCLUDE** that the respondent/petitioner should pay a monetary penalty in the amount of \$500.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against the casino hotel employee registration no. 7701-40 be **GRANTED**, and that a monetary penalty in the amount of \$500 be imposed against the respondent/petitioner, which penalty shall be payable within 180 days of the date of the final order. It is further **ORDERED** that the application of the respondent/petitioner for licensure as a casino employee (casino teller) 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 6, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

August 7, 1986  
DATE

Nelores Zayas  
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 8 1986  
DATE

Ronald J. Parker / s.  
OFFICE OF ADMINISTRATIVE LAW

ks/ee

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Casino Control Commission - Personal History Disclosure Form-2A, Audrey Frances Woods, filed with the Casino Control Commission on December 10, 1984 (24 pages)
- P-1 Boardwalk Regency Corporation - Personnel Action Form, Audrey F. Woods, dated December 23, 1983
- P-2 Jersey City Police Department - Arrest Report, prepared by Detectives Roth and Calabrese, dated August 29, 1975
- P-3 State of New Jersey v. Audrey Woods, Superior Court of New Jersey, Hudson County, Law Division - Criminal, docket no. 794-75, Indictment, dated April 6, 1976; Judgment of Dismissal, dated October 28, 1977 (4 pages)

WITNESS LIST

**For the Division:**

**Russell Ayers  
Marie Jerdan  
Steven Metz  
David Pacera**

**For Ms. Woods:**

**Audrey F. Woods**

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
DOCKET NO. 84-414  
OAL DOCKET NO. CCC 7125-85  
LICENSE NO. 47136-21

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STATE OF NEW JERSEY, DEPARTMENT :  
OF LAW & PUBLIC SAFETY, DIVISION :  
OF GAMING ENFORCEMENT, : FINAL ORDER  
Complainant, :  
V. :  
CHRISTOPHER ZIELSKI,  
Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision and the Division of Gaming Enforcement having filed a reply thereto; and the Commission having considered the entire record of these proceedings at its public meeting of September 3, 1986,

IT IS on this 15<sup>th</sup> day of September 1986, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino employee license held by Christopher Zielski is revoked substantially for the

reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: 

\_\_\_\_\_  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CCC 7125-85

AGENCY DKT. NO. 84-414

**DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC SAFETY,**

Petitioner,

v.

**CHRISTOPHER ZIELSKI,**

Respondent.

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**John J. Sheehy**, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney; **Norma Plenty**, Law Clerk, appeared at the prehearing conference, appearing pursuant to R. 1:21-3c)

**Lorraine Gormley, Esq.**, for the respondent (Cape-Atlantic Legal Services, attorney)

Record Closed: May 19, 1986

Decided: July 2, 1986

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

**STATEMENT OF THE CASE**

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged Christopher Zielski, respondent and the holder of casino employee license no. 47136-21, with the commission of a criminal offense which disqualifies him from continued licensure under N.J.S.A. 5:12-86c(4) and/or N.J.S.A. 5:12-89b(2), for which the Division seeks revocation of his casino employee license, pursuant to sections 129 and 130 of the Casino Control Act (Act). The respondent denied the charge.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission). By notice of defense filed with the Commission on October 22, 1985, the respondent requested a hearing. On November 8, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 3, 1986. The matter was heard on March 11 and April 22, 1986. The record was closed on May 19, 1986, upon admission into evidence of the final document.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Zielski is 28 years of age and resides in Tuckerton, New Jersey. He attended Essex County College for two years and has completed an additional year of study at Bloomfield College, where he majored in English and was on the dean's list. The respondent left school for financial reasons. As a child, the respondent suffered a nervous breakdown. The respondent's parents are divorced. The respondent lives in a house owned by his mother, for which the respondent pays rent. The respondent's mother currently resides in Irvington.

The respondent relocated to the Atlantic City area in 1983. Also in 1983, the respondent received his casino employee license from the Commission.

From September through October 1983, the respondent was employed as a change person by the Greate Bay Hotel and Casino, Inc. (Sands). He resigned from this employment because he did not like the position. However, the respondent had been cited twice for lateness.

From April through July 1984, the respondent was employed as a security guard by the Tropicana Hotel Casino (Tropicana). His employment was terminated at the end of his probationary period because of a poor evaluation. The respondent testified that he had no problems with the work and that his evaluation was the result of a difference of opinion between two superior officers.

From July to November 1984, the respondent was employed as a change person on the casino floor of the Claridge Hotel and Casino (Claridge). The respondent's probationary period was extended one month because of nervousness on the job (P-1). In addition, the respondent received one written warning, although he disputes the circumstances cited. Also, the respondent was allegedly involved in an incident at the Claridge on October 28, 1984, which is the basis for this action.

Susan Jarvie was employed as a slot booth cashier by the Claridge in February 1984, which was her first job as a cashier. She is currently a craps dealer. As a slot booth cashier, Ms. Jarvie sold change to customers and/or Claridge change persons. Also, a slot booth cashier would "count down" change persons at the end of their shifts. Ms. Jarvie and the respondent knew each other as co-employees.

Although the alleged incident on October 28, 1984 is in substantial dispute, it is apparent that Ms. Jarvie "counted down" the respondent at the end of his shift at approximately 8:00 p.m. The respondent balanced out evenly.

Thereafter, Ms. Jarvie "counted down" at the end of her shift at approximately 9:00 p.m. She was \$50 short. She believed her shortage resulted from a change transaction between herself and the respondent. Although she had shortages on other occasions, none had been this substantial and shortages usually occurred at customer windows, not with co-employees. Employees who have overages and/or shortages can receive written warnings which can lead to additional disciplinary action.

Ms. Jarvie discussed the incident and her suspicions with co-workers that evening. However, because her supervisor had left work earlier, she was unable to report the incident until the next morning.

In late October/early November, the respondent was questioned concerning the reputed incident by Larry Lewis, assistant slot manager for the Claridge. The respondent denied involvement in any such incident.

On the afternoon of November 8, 1984, Arnold Monahan, investigator, and Arthur Fletcher, chief of investigations, both of the Claridge, upon information received from Mr Lewis, interviewed the respondent at the security office, which is separate and apart from the casino-hotel facility. The interview took approximately 25 minutes.

During the interview, the respondent was extremely nervous and upset. The remainder of the interview was in dispute.

Thereafter, and also on November 8, 1984, Stanford Fitrakis, director of surveillance for the Claridge, requested Leonard Paccione and Patrick R. Gerbig, both agents with the Division, to investigate a possible theft on October 28, 1984. Paccione is currently an agent with the Drug Enforcement Administration of the United States Department of Justice.

As a result of information received from Mr. Fitrakis, agents Paccione and Gerbig questioned the respondent in the Division's office at the Claridge. The agents advised the respondent of the nature of the investigation and identified specifically the alleged incident. Following preliminary questions, the respondent was given Miranda warnings, which he acknowledged verbally and he also signed a Miranda card. The agents observed that Mr. Zielski was very upset and nervous, more so than most suspects. He occasionally cried, his hands shook and he appeared to be upset. Also, the respondent stated that he was upset and nervous. Nevertheless, the agents believed that they were able to calm the respondent sufficiently to continue the interview. Following further discussion concerning the alleged incident, the respondent expressed concern with the potential consequences; more specifically, he was worried about the result of a potential criminal charge, i.e., possible incarceration, the status of his casino employee license, and family repercussions. The agents indicated that any criminal charges would be prosecuted in a municipal court, with the potential penalty of a fine. The agents also advised that the respondent's casino employee license was probably in jeopardy if he was found guilty of the charges. Although the respondent now denies the truthfulness of his statement, he admitted to the agents that he had received an extra \$50 from a change transaction with Ms. Jarvie. He recognized the overage during a private count down in the locker room. The respondent decided to keep the money for personal reasons of a domestic nature. More specifically, the respondent gave the money to his mother because she had difficulty with her mortgage payments. The respondent also offered to make restitution. At the conclusion of the interview, the respondent was arrested and was charged with a violation of N.J.S.A. 2C:20-6, theft (R-1). The respondent was given a copy of the complaint and released.

The matter was scheduled to be heard in the Atlantic City Municipal Court on numerous occasions. When the respondent disputed the voluntary nature of his admission,

the municipal court judge requested the respondent submit to a psychiatric evaluation. The evaluation was submitted to the municipal court.

On June 11, 1985, the charge against respondent was dismissed without prejudice upon an agreement by the respondent, to which the Division's agents consented, that the respondent would not sue either the Claridge or the the Division and that the respondent would not return to or seek employment with the Claridge (R-1). Agent Paccione testified that he believed the settlement would not impact negatively on the respondent's casino employee license. The respondent has complied with the conditions of the dismissal, although he believes that they are unfair.

During early 1985, the respondent was employed as a night security guard by Ocean I Mall for a period of approximately five months.

From July 22, 1985 to March 25, 1986, the respondent was employed as a slot booth cashier by Resorts International Hotel, Inc. (Resorts). On November 15, 1985, the respondent received an "on-the-spot courtesy cash reward" because of his courtesies toward customers (R-2). The respondent had no difficulties in this employment. Nevertheless, on March 29, 1986, the respondent was suspended and ultimately terminated from this employment. Although the respondent testified that he believed the Claridge had contacted Resorts concerning his prior employment, the respondent acknowledged that he had not included his Claridge employment on his Resorts application. He testified that he forgot to include his prior employment, but did not want any trouble because of his prior employment. The respondent believes that he is eligible for reemployment with Resorts, dependent upon a favorable outcome in this proceeding.

The respondent has not been charged with any other violations of the criminal laws.

The respondent desires a career in the casino industry.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the alleged incident of October 28, 1984.

Susan Jarvie testified on behalf of the Division. On the day of the incident she was conducting transactions only with Claridge change persons and was very busy. Change transactions are conducted in a very speedy manner. The respondent appeared at her window, asked for \$180 in quarters and gave her \$180 in currency. This amount was unusual because change was usually purchased in \$50 increments. Ms. Jarvie placed \$150 in quarters on the counter. Needing more change, she then emptied a new can of quarters, which contained \$250. The witness then placed \$80 in quarters (\$40 in each hand) on the counter, which was taken by the respondent. More specifically, Ms. Jarvie received \$180 from the respondent and gave him \$230 in quarters in return. Ms. Jarvie opined that she placed the additional \$80 on the counter because she focused upon the \$80 as an unusual amount. Ms. Jarvie stated that she sensed something was amiss at the time of the transaction, but could not identify it immediately. The witness counted down the respondent prior to 8:00 p.m., at which time he balanced. At approximately 8:45 p.m., the witness cashed out her window and discovered that she was \$50 short. It is unusual to be \$50 short at an employee window. The witness reflected upon her day's work and recalled the transaction with the respondent. She testified that she had and continues to have a vivid and specific recollection of the overpayment. Ms. Jarvie also testified that the \$50 shortage was the most she had ever experienced. The witness expressed pride in her record of accuracy.

The respondent testified that Ms. Jarvie had a snobbish attitude toward change persons. Further, she complained to the respondent's supervisor that he did not carry enough nickels and, as a consequence, he was required to carry more. Also, Ms. Jarvie was not polite and was unfriendly toward the respondent. Mr. Zielski also testified that he had prior but unspecified problems with Ms. Jarvie. Because of these experiences the respondent does not like Ms. Jarvie. The respondent indicated an absence of a recollection of the incident. When he was questioned by Larry Lewis, he indicated that he did not recall the incident. The respondent stated that it is convenient for a cage booth cashier to blame someone else for a shortage.

Inspector Monahan also testified on behalf of the Division. During the interview of November 8, 1984, he observed the respondent to be extremely nervous. The respondent expressed no concern that Ms. Jarvie might face possible disciplinary action. Further, the respondent twice verbally admitted that he received and kept the \$50 from Ms. Jarvie, although he refused to make a written statement.

The respondent also testified to the interview by Inspector Monahan. The inspector was rude toward the respondent concerning any possible disciplinary action for Ms. Jarvie. Also, the inspector stated that the transaction was recorded on film. Next, the inspector advised the respondent that he had already lost his job; however, if he admitted the allegations and resigned, then he would not go to jail. The respondent stated that despite several threats and offers of assistance from the inspector, he never made any admission to the security officers. Thereafter, the respondent returned to the hotel and was advised by his supervisor that he had been suspended.

The Division next called agents Paccione and Gerbig, whose versions of their interview of the respondent were consistent. The respondent was escorted to the Division office by Claridge personnel. He was interviewed for approximately 30 to 40 minutes. Agent Paccione conducted the interview. Ultimately, the respondent admitted that he discovered the overage while in the locker room, and identified Ms. Jarvie as the source. He placed the money in his shoe. The respondent further stated that he took the money for personal reasons, i.e., to help his mother make her mortgage payments. He then offered to make restitution. The agents testified that the admissions were voluntary and that there was no duress nor incentives to the respondent for his cooperation. Agent Paccione further testified that his agreement to the dismissal of criminal proceedings was made with the intent to help the respondent retain his casino employee license.

The respondent testified that he was very upset during his interview by Division agents. He thought mostly of his family and the disgrace which the incident would cause. The respondent recalled that Agent Paccione stated that the incident was not a major crime, the evidence looked bad and if the respondent would help the agents they, in turn, would help him. Also, the agent stated that the respondent's casino employee license would probably be revoked, but that they would attempt to help the respondent in municipal court. He first denied the allegations because of his fear that he would lose his casino employee license and employment. However, the agents did not

accept his denials. Therefore, the respondent admitted the allegation and fabricated an excuse for the alleged misconduct, i.e., his mother's mortgage payments. In addition, the respondent agreed to and has complied with the conditions for dismissal of the criminal charge. However, the respondent believes the conditions are unfair because he cannot accompany relatives who go to the Claridge.

The outcome of this matter rests upon a resolution of the substantial and significant conflict in the proofs, i.e., the credibility of the various witnesses.

Although Ms. Jarvie did not have an interest in the outcome of these proceedings, she did have an interest contrary to that of the respondent at the time the incident occurred. However, her testimony was candid insofar as it contained an admission of an error in the performance of her duties. In addition, Ms. Jarvie's demeanor and the plausibility of her testimony must be noted. More specifically, I was most impressed by the means with which the witness recollected the transaction. Although she did not recognize the error when it occurred, the unusual nature of the transaction later enabled her to recall the event in detail. This is a very normal occurrence in human experience. Further, it appeared that Ms. Jarvie testified truthfully. It is also important to note that the witness' version of the incident is entirely consistent with the version she reported to her superiors soon after the event. Ms. Jarvie's testimony was most persuasive.

Inspector Monahan and Agents Paccione and Gerbig did not have an interest in the outcome of the proceedings. Inspector Monahan's testimony was substantially at variance with the testimony of the respondent. In fact, the respondent took the greatest exception to the inspector's testimony. However, this conflict need not be resolved because of the resolution of the conflict between the agents' testimonies and the respondent's. More specifically, Agents Paccione and Gerbig each corroborated the testimony of the other, which were essentially compatible with that of the respondent. The only dispute was whether the respondent's confession was made voluntarily. Again, the respondent's testimony supports the testimony of the agents, which, collectively, establish that the respondent's confession appeared to be voluntary and truthful in all respects. The agents' testimonies were clear, detailed and specific, and were, essentially, corroborated by the respondent. Accordingly, I am persuaded to believe their testimonies in full.

The respondent's position in this matter must be recognized. He is the holder of a casino employee license and the respondent, and, as such, he has a direct interest in the outcome and bias in these proceedings. The respondent's testimony, in which he denied the incident occurred, was the exact opposite of his admission to the Division agents, which was found to be voluntary and trustworthy. The respondent's testimony also contained internal inconsistencies. First, when respondent was interviewed by the Division agents he expressed a deep concern that his family would be embarrassed by the allegations; nevertheless, he used his mother as an excuse for the commission of criminal misconduct. Second, although the respondent expressed deep concern for the potential loss of his license and employment, he admitted the misconduct with the knowledge that he would lose both. Third, and assuming arguendo the confession was untrue, the respondent knowingly provided false information to Division agents during the course of an official investigation, which information he knew was against his interests and would lead inevitably to criminal and/or administrative actions. In conclusion, I am not persuaded to accept the respondent's version of the incident as contained in his testimony and as it is inconsistent with his prior admissions.

The credible evidence indicates clearly that the respondent, through no fault of his own, came to possess \$50 by means of an inadvertent overage during a change transaction with Ms. Jarvie. Upon realizing that he had received additional monies, the respondent decided to keep the money. The respondent knew that he was not entitled to retain the money.

After consideration of the entire record, I further **FIND** that:

1. The testimony of Ms. Jarvie was candid and persuasive.
2. The testimonies of Agents Paccione and Gerbig were candid, believable and persuasive.
3. The respondent's testimony was inconsistent with his confession to the Division's agents on November 8, 1984, and was internally inconsistent. Accordingly, the respondent's testimony was neither believable nor persuasive.

4. On October 28, 1984, the respondent came into possession of \$50 as the result of an inadvertent error in a change transaction with Ms. Jarvie.
5. The respondent decided to keep the \$50 for himself.
6. The respondent secreted the money out of the casino.
7. During an interview by Division agents on November 8, 1984, the respondent confessed to receipt and retention of the \$50.
8. This confession was made voluntarily and was trustworthy.

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 129a provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Zielski's alleged violation of N.J.S.A. 2C:20-6, theft, constitutes a violation of section 86c(4) per section 86g, and, accordingly, establishes that his casino employee license should be revoked.

(A) N.J.S.A. 5:12-86g  
and N.J.S.A. 5:12-86c(4)

Section 86g provides that an applicant can be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, \_\_\_\_\_ N.J. Super. \_\_\_\_\_ (App. Div., July 11, 1985) (Slip. Op. at 17 and 18), the Appellate Division held that inimical means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-6, theft of property lost, mislaid, or delivered by mistake, which, under the circumstances, renders continued licensure inimical to the Act.

It is well-settled that a confession, if found to be voluntary and trustworthy, is inculpatory proof of the highest order. State v. Whittington, 142 N.J. Super. 45, 50 (App. Div. 1976). The finding that the respondent's confession was voluntary and trustworthy establishes each of the elements of the charged offense. Further, the respondent's confession was corroborated by the testimony of Ms. Jarvie. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-6.

The remaining issue is whether the conduct is inimical to the Act. The circumstances underlying the incident establish that the respondent came into possession of the \$50 as a result of an inadvertent change transaction; however, the respondent recognized that he was not entitled to the money and secreted the money from the casino. The respondent's exculpatory testimony was not persuasive. This conduct was by a licensee during the course of his employment. In essence, the respondent acted in knowing and contumacious disregard of the criminal laws of this State and the regulations governing the casino industry. This misconduct is related directly to the operations of the casino and would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact upon the public perception of the integrity of the casino industry.

Although the respondent's conduct otherwise and since the incident has been proper in every regard, including employment within the industry in an equally sensitive position, the fact that he attempted to hide the true nature of his misconduct by giving misleading testimony offsets any potential mitigation of the seriousness of the offense from the passage of time.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Zielski was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

Aside from the respondent's conduct during the incident and his testimony in this proceeding, he appears to possess the requisite good character, honesty and integrity. However, because the nature of the offense strikes at the heart of the policies of the Act, and in consideration of the respondent's failure to acknowledge candidly and truthfully the nature of his misconduct during herein, he has failed to establish that he continues to possess the degree of good character, honesty and integrity required to maintain licensure.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-90b.

(C) Penalty

Sections 129 and 130 provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 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. Further, the misappropriation of casino monies by a licensed casino employee, with full knowledge that such actions are improper, is very serious. Given the fact that the respondent does not now possess the qualifications for licensure and there being no mitigating factors, the respondent's license must be revoked. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that casino employee license no. 47136-21, held by Christopher Zielski, 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 2, 1986  
DATE

Richard L. Voliva, Jr.  
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

7-3-86  
DATE

Amy Linde  
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 8 1986  
DATE

Ronald J. Parkes, Jr.  
OFFICE OF ADMINISTRATIVE LAW

bc/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Del Webb Hotel - Employee History Sheet, Christopher Zielski; Affidavit of Marlene Baichl, dated April 28, 1986 (2 pages)
- R-1 The State of New Jersey v. Christopher Michael Zielski, Atlantic City Municipal Court, Dkt. No. C-11775, Complaint and Disposition
- R-2 Letter to Chris Zielski from R. L. Gensamer, dated November 15, 1985
- R-3 Resorts International Hotel, Inc., Non-Exempt Non-Union Employee Performance Appraisal, Christopher Zielski

WITNESS LIST

For the petitioner:

Patrick R. Gerbig  
Susan L. Jarvie  
Arnold Monahan  
Leonard Paccione

For the respondent:

Christopher M. Zielski

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION  
AGENCY DOCKET NO. 85-188  
OAL DOCKET NO. CCC 4424-85  
LICENSE NO. 29366-21  
REGISTRATION NO. 21716-40

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STATE OF NEW JERSEY, :  
DEPARTMENT OF LAW & PUBLIC SAFETY :  
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

FINAL ORDER

FRANK A. ZIMMERMAN, :

Respondent. :

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A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of May 7, 1986,

IT IS on this <sup>6<sup>th</sup></sup> day of June, 1986, ORDERED that the initial decision is modified as follows:

The conclusion that the respondent's casino hotel employee registration be revoked is rejected. The Commission finds that the respondent's evidence concerning his efforts to deal with his alcoholism supports a finding that the interest of justice would be served by waiving his disqualification pursuant to N.J.S.A. 5:12-91(e) to permit him to

retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the casino employee license held by Frank A. Zimmerman is revoked substantially for the reason stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e) for good cause shown, to permit him to retain his casino hotel employee registration and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for any other license, registration, qualification or approval under Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED the copies of this final order be served upon Frank A. Zimmerman, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten days of the day hereof.

NEW JERSEY CASINO CONTROL COMMISSION  
WALTER N. READ, CHAIRMAN

BY: \_\_\_\_\_

  
DENNIS DALY  
SENIOR ASSISTANT COUNSEL



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**FILED**

APR 3 - 1986

CASINO CONTROL COMMISSION  
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 4424-85

AGENCY DKT. NO. 85-188

DIVISION OF GAMING ENFORCEMENT,  
DEPARTMENT OF LAW & PUBLIC  
SAFETY,

Petitioner,

v.

FRANK A. ZIMMERMAN,

Respondent.

William E. Mountford, Deputy Attorney General, for the petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Frank A. Zimmerman, respondent, pro se

Record Closed: February 21, 1986

Decided: March 26, 1986

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on May 7, 1985, seeking the revocation of the respondent's license as a casino employee and his registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The license and registration of Mr. Zimmerman were suspended by the Commission on June 11, 1985. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for a hearing pursuant to N.J.S.A. 52:14F-1 et seq.

PROCEDURAL HISTORY

The prehearing conference was held by way of a telephone conference call on September 10, 1985, and the Division was represented by Norma Plenty, Law Assistant. At that time, the parties agreed that the issues in this matter are:

- A. Whether the respondent is disqualified from licensure and/or registration based on certain criminal activities pursuant to N.J.S.A. 5:12-86c(1) or 5:12-86g.
- B. Whether the respondent's alleged criminal activities would render his continued licensure and/or registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).
- C. Whether the respondent can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee pursuant to N.J.S.A. 5:12-90b.
- D. Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h and/or 5:12-91d.

At the hearing, the Division was represented by Deputy Attorney General William E. Mountford.

After the first day of the hearing and at the joint request of the parties, I agreed to place the matter on the inactive list for a period of three months in order to give Mr. Zimmerman additional time to prepare his presentation. The second day of the hearing was held on February 21, 1986, and the record closed on that date.

FACTUAL FINDINGS

On April 9, 1985, at approximately 3 p.m., Albert Paris, a surveillance operator employed by Trump Plaza Hotel Casino (Trump), observed Mr. Zimmerman, a slot change cashier, opening the cash drawer (even though a customer was not present) and removing what appeared to be a folded paper. Mr. Zimmerman then placed this paper into his pocket. Mr. Paris felt this action was suspicious and he decided to watch

Mr. Zimmerman and to have his movements recorded by the television monitor. In addition, John E. McLaughlin, a Casino Control Commission employee, who was present at the casino, was notified about the incident.

A few minutes later, Mr. Paris saw Mr. Zimmerman, while looking around and without looking at his hands, remove one coin from a roll of dollar tokens and repeat the procedure with another roll. These rolls are to have each 20 tokens and are sold for \$20. After removing the coins, Mr. Zimmerman placed the altered rolls in a rack for sale. Mr. Paris saw Mr. Zimmerman sell one of these altered rolls for \$20.

At approximately 3:15 p.m., Mr. Paris saw Mr. Zimmerman repeat the procedure and remove a token from another \$20 roll and he observed the respondent sell this roll to a customer for \$20. At approximately 3:21 p.m., Mr. Paris saw Mr. Zimmerman repeat the procedure with three other \$20 rolls and he saw him sell another altered roll.

According to Mr. Paris, the respondent was adept in removing the tokens; specifically, he stated that the respondent worked quickly, did not look at his hands while he was removing the tokens, and was able to reseal the roll so that it did not appear to be altered.

After he was notified, Mr. McLaughlin observed Mr. Zimmerman on the television monitor in Trump's surveillance room. At approximately 3:15 p.m., Mr. McLaughlin saw Mr. Zimmerman remove a coin from a roll, and he saw Mr. Zimmerman remove another coin when the monitoring tape was rerun for him. Mr. McLaughlin left the surveillance room and headed for Mr. Zimmerman's slot change booth. While on his way, Mr. McLaughlin was informed by radio that Mr. Zimmerman had sold the roll of coins he saw altered and that the respondent had altered two more rolls of coins. At that point, Mr. McLaughlin entered the cashier booth, closed it, and had a supervisor, in Mr. McLaughlin's presence, count the coins in the rolls in the sale rack. This count revealed that two of the rolls were each one coin short. Mr. McLaughlin then ordered a complete countdown of the monies in the booth and it was determined that there was an overage of \$13.

After reading the respondent his rights, Mr. McLaughlin questioned Mr. Zimmerman and the respondent admitted that he had removed coins from some rolls

but was not sure of the number. According to Mr. McLaughlin, the respondent also stated that he would take the amount of the overage at the end of his work day.

Mr. McLaughlin took a folded \$20 bill from Mr. Zimmerman's pocket and Mr. Zimmerman stated that it was his own money. Mr. McLaughlin had no evidence to disprove this statement.

Based on his observations, Mr. McLaughlin filed a criminal complaint against the respondent at the Atlantic City Municipal Court and alleged the unlawful taking of the \$13, with intent to deprive the owner, a violation of N.J.S.A. 2C:20-3. Mr. Zimmerman entered a plea of guilty to the offense and was fined \$75.

Mr. Zimmerman testified that he had an alcoholic problem at the time of the April 9, 1985 incident and that he now recognizes that he is an alcoholic. Mr. Zimmerman stated that he used to drink alcoholic beverages at various times during the day and that he was subject to blackouts. The respondent felt that because of his alcohol consumption, he used to do things without thinking. Since the April 9, 1985 incident, Mr. Zimmerman has attended a 28-day rehabilitation program at the Riverside House in Philadelphia, Pennsylvania (R-1) and attends AA meetings approximately three times a week (R-2, R-8). Recently, Mr. Zimmerman has completed a course to be a tour agent (R-11) and has received vocational counseling. If his casino license is not revoked, Mr. Zimmerman plans to attend school to become a dealer.

As to the April 9, 1985 incident, Mr. Zimmerman stated that he thought he had overpaid a customer and since he did not want to have a shortage, he removed several coins from the rolls in his booth. Mr. Zimmerman stated that he only removed three coins before his booth was closed by Mr. McLaughlin. Also, Mr. Zimmerman denied that he told Mr. McLaughlin that it was his intent to keep the amount of the overage for himself.

In addition, the respondent stated that he was never told by Trump that he could not have his own money in his pocket while working as a cashier. It was Mr. Zimmerman's custom to have some money so that he could purchase items such as cigarettes or mints during his break.

Prior to his employment with Trump, Mr. Zimmerman was employed for one year as a housekeeper by the Brighton Hotel and Casino in 1980. After completing a

course to be a cashier, the respondent worked for approximately one and a half years at the Claridge Hotel and Casino (Claridge) as a booth cashier. After leaving the Claridge, Mr. Zimmerman worked for a while in the Hammonton, New Jersey area. Thereafter, for a six-month period in 1983, Mr. Zimmerman worked as a booth cashier for the Playboy Hotel and Casino and left this job after he was involved in a car accident. Mr. Zimmerman was employed as a cashier by the Sands Hotel and Casino for approximately one and a half years until he was laid off. Thereafter, the respondent worked as a cashier for Trump until he was fired. Before the April 9, 1985 incident, Mr. Zimmerman had received good evaluations from Trump. Currently, Mr. Zimmerman is employed as a jewelry salesman.

On behalf of the respondent, Thomas P. Quinn, a blackjack dealer employed by Trump, wrote a letter (R-5) and testified that he has known the respondent for approximately two years and has been his roommate for one and a half years. Mr. Quinn confirmed that the respondent had a drinking problem until shortly after April 9, 1985. According to Mr. Quinn, the respondent drank alcoholic beverages but it was difficult to determine when the respondent was drunk since he did not visibly show any of the indicia of drunkenness. Mr. Quinn stated that the respondent is a nice person and that he regularly pays his share of the rental expenses.

Sometime after the April 9, 1985 incident, Mr. Zimmerman admitted to Mr. Quinn that he had an alcoholic problem and needed help. Mr. Quinn confirmed that the respondent attended a rehabilitation program (R-1), and now regularly attends AA meetings (R-2, R-8). To the best of Mr. Quinn's knowledge, the respondent no longer drinks any alcoholic beverages. It is Mr. Quinn's opinion that the respondent can now handle the pressures of life without drinking alcoholic beverages. It is also Mr. Quinn's opinion that the respondent's drinking problem was responsible for the April 9, 1985 incident.

In addition, a number of his other friends submitted letters in which they stated that the respondent is a person of good character, honesty and integrity (R-3, R-4, R-6, R-7, R-11, R-12, R-14). The respondent also had admitted into evidence a letter from his landlady indicating that he was a good tenant (R-13).

I **FIND** that the facts as stated above are not in dispute except for the testimony as to coins that Mr. Zimmerman had removed from the rolls on April 9, 1985.

Based on the testimony at the hearing, I **FIND** that Mr. McLaughlin was a credible witness and that the amount of money involved was \$13 rather than \$3 as alleged by the respondent. In addition, I **FIND** that the respondent admitted that at the end of his work day, he would take the overage. Although I do not disbelieve Mr. Zimmerman's statement that he initially began to take coins on April 9, 1985, from the rolls because he thought that he would have a shortage, clearly Mr. Zimmerman would have pocketed any excess of money for the converse reason; namely, to avoid having an overage.

CONCLUSIONS OF LAW

In closing, Mr. Mountford acknowledged that the Division had not shown that the respondent was guilty of a statutory disqualifier pursuant to either N.J.S.A. 5:12-86c(1) or 5:12-86g. However, he stated that the April 9, 1985 incident could render the respondent's continued licensure and registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). Mr. Mountford noted that in order to determine the issue of inimicality, it is necessary not only to consider the nature of the criminal offense, but also the factors normally considered when deciding the issue of rehabilitation, pursuant to either N.J.S.A. 5:12-90h or 5:12-91d. See, Donna Davis v. Division of Gaming Enforcement, OAL DKT. CCC 2008-85 (August 12, 1985), modified, Commission (Dec. 27, 1985).

In this matter, the criminal activities of Mr. Zimmerman occurred in a casino and involved the altering of coin rolls to be sold to the public. If this were made known to the customers, such action by a cashier could affect the public confidence and trust in the integrity of casino operations. Balanced against this factor, I recognize that the fact that Mr. Zimmerman was an alcoholic may have affected his judgment on April 9, 1985, and the fact that since April 9, 1985, he has made a sincere effort to abstain from alcoholic beverages.

However, based on the nature of the offense and the fact that the offense in issue took place approximately one year ago, I **CONCLUDE** that insufficient time has lapsed to show that Mr. Zimmerman is rehabilitated. Therefore, I **CONCLUDE** that at this time Mr. Zimmerman's continued licensure and registration would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). Also for the same reasons, I **CONCLUDE** that the respondent cannot show at this time, by clear and

convincing evidence, his reputation for good character, honesty and integrity as required for licensure as a casino employee, pursuant to N.J.S.A. 5:12-90b.

DISPOSITION

Finally, I **ORDER** that the license of Frank A. Zimmerman as a casino employee and his registration as a casino hotel employee be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 26, 1986  
DATE

Beatrice S. Tylutki  
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 27, 1986  
DATE

Bernadette P. Friedman  
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 1 1986  
DATE

Ronald J. Parker / x.s.  
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

None.

FOR THE RESPONDENT:

- R-1 A letter from Stan Shore of the Riverside House, dated October 22, 1985
- R-2 Acknowledgment of attendance at the AA meeting on November 11, 1985
- R-3 Letter from Stan Shore, dated October 23, 1985
- R-4 Letter from Ms. Kathryn Ryan
- R-5 Letter from Thomas Quinn, dated November 12, 1985
- R-6 Letter from Cheryl Buxton, dated September 12, 1985
- R-7 Letter from John T. Williams, dated September 25, 1985
- R-8 Acknowledgment of attendance at 11 AA meetings between November 1, 1985 and January 31, 1986
- R-9 Schedule for AA meetings
- R-10 Letter from Fred Hauber of Associated Business Careers
- R-11 Letter from Matthew C. Calabria, dated February 10, 1986
- R-12 Letter from Christine Selepato, dated February 17, 1986
- R-13 Letter from Estelle Araffican, dated November 16, 1985
- R-14 Letter from Tom Prstit, dated February 18, 1986

WITNESSES

**FOR THE PETITIONER:**

Albert Paris

John E. McLaughlin

**FOR THE RESPONDENT:**

Thomas P. Quinn

Frank A. Zimmerman