1980 (JANUARY - JUNE)

OPINIONS OF THE CASINO CONTROL COMMISSION

NAME OF CASE	DOCKET NO.	DATE OF DECISION
In the Matter of the Application of Robert J. Alois for gaming school resident director license	78-EA-8	1-30-80
In the Matter of the Application of Seymour Alter for licensure as a casino key employee	79-EA-60 OAL CCC 2085-79	5-20-80
In the Matter of the Application of Gary W. Brummond for licensure as a casino employee (floorperson)	79-EA-112 OAL CCC 3920-79	5-08-80
In the Matter of the Application of Charles Clentchscale for licensure as a casino employee	79-EA-113 OAL CCC 3714-79	4-22-80
In the Matter of the Application of Steven M. Cohen for licensure as a casino employee (dealer)	79-EA-91 OAL CCC 3133-79	1-30-80
In the Matter of the Application of Harl Lee Cooper for licensure as a casino employee	79-EA-34 OAL CCC 1276-79	2-07-80
In the Matter of the Application of Frank Cruz for licensure as a casino employee (dealer)	79-EA-42 OAL CCC 1274-79	4-15-80
In the Matter of the Application of Archie Curtis for licensure as a casino employee (floorperson)	79-EA-73 OAL CCC 3714-79	5-07-80
In the Matter of the Application of James J. DeSantis for licensure as a casino employee (alcoholic beverage employee)	79-EA-93 OAL CCC 3176-79	5-29-80
In the Matter of the Application of Romeo DiStefano for licensure as a casino hotel employee (musician)	79-EA-59 OAL CCC 1882-79	5-21-80
In the Matter of the Application of Frank W. Dragoni, Sr. for licensure as a casino employee (bar manager)	80-EA-3 OAL CCC 1052-80	5-29-80

NAME OF CASE	DOCKET NO.	DATE OF DEC
In the Matter of the Application of Mark L. Francis for a casino employee license (dealer)	79-EA-66 OAL CCC 2256-79	1-14-80
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Gary S. George	79-10	1-21-80
In the Matter of the Application of Harold K. Good for licensure as a casino employee (dealer)	79-EA-45 OAL CCC 1045-79	5-14-80
In the Matter of the Application of Christine Hillard for licensure as a casino employee (alcoholic beverage employee)	79-EA-76 OAL CCC 2655-79	5-29-80
In the Matter of the Application of Lynn A. Holopigian for licensure as a casino employee (dealer)	79-EA-46 OAL CCC 1277-79	1-14-80
In the Matter of the Application of Zelbra A. Issac for licensure as a casino employee (dealer)	79-EA-150 OAL CCC 4749-79	5-02-80
In the Matter of the Application of Carroll A. Johnson for licensure as a casino hotel employee.	79-EA-133 OAL CCC 4284-79	6-02-80
In the Matter of the Application of Ronald S. Jones for licensure as a casino security employee	79-EA-25 OAL CCC 1358-79	3-21-80
In the Matter of the Application of Benjamin W. Kirk for licensure as a gaming school instructor	79-EA-24 OAL CCC 755-79	9-21-79 & 4-21-80
In the Matter of the Application of Walter J. McDevitt, Jr. for licensure as a casino employee (dealer)	79-EA-99 OAL CCC 3177-79	3-20-80
In the Matter of the Application of Alexander Mironov for licensure as a casino employee (dealer)	79-EA-56 OAL CCC 1636-79	1-14-80

NAME OF CASE	DOCKET NO.	DATE OF DECISION
In the Matter of the Application of John William Monahan for licensure as a casino employee (alcoholic beverage employee)	79-EA-47 OAL CCC 1376-79	1-14-80
In the Matter of the Application of John A. Negron for licensure as a casino employee casino security officer.	79-EA-100 OAL CCC 3526-79	4-18-80
State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcment v. Kevin Noel	79-4	5-06-80
In the Matter of the Application of Frank Passio for licensure as a casino employee (dealer)	79-EA-29 OAL CCC 683-79	1-14-80
In the Matter of the Application of Michael L. Preston for licensure as a casino employee (count employee)	79-EA-124 OAL CCC 4173-79	5-08-80
In the Matter of the Application of Frank C. Ruiz for licensure as as a casino employee	79-EA-162 OAL CCC 5211-79	5-29-80
State of New Jersey Department of Law and Public Safety, Division of Gaming Enforcement v. Economics Laboratory, Inc. et al. See # 34	78-29	3-17-80
In the Matter of the Application of Gilbert L. Smith for licensure as a casino employee (dealer)	79-EA-70 OAL CCC 2252-79	3-20-80
In the Matter of the Application of Loretta F. Stoute for licensure as a casino employee (dealer)	79-EA-38 OAL CCC 756-79	3-28-80
In the Matter of the Application of John J. Taylor for licensure as a casino key employee	79-EA-107 OAL CCC 4044-79	5-08-80
In the Matter of the Application of Bradford Woodard, Jr. for licensure as a casino hotel employee (kitchen helper)	79-EA-50 OAL CCC 1481-79	4-18-80
State of New Jersey, Department of Law Public Safety, Division of Gaming Enforcement v. SEG Sales Casino Sales Co. et. al.	78-28	3-17-80

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 78-EA-8

IN THE MATTER OF THE APPLICATION :
OF ROBERT J. ALOIS FOR A GAMING :
SCHOOL RESIDENT DIRECTOR :
LICENSE. :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Robert J. Genatt, Hearing Examiner, and the Commission having considered the record of that hearing and the Report and Recommendation of the Hearing Examiner, and the Commission having resolved at its public meeting of January 23, 1980 to affirm and adopt the Report and Recommendation of the Hearing Examiner and to deny licensure,

It is on this 30th day of January, 1980

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

It is further ORDERED that the licensure of Robert J. Alois be and is hereby denied based upon the reasons stated in the said Report and Recommendation which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi, Chairman

DATE: January 30, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 78-EA-8

IN THE MATTER OF THE APPLICATION :
OF ROBERT J. ALOIS FOR A GAMING :
SCHOOL RESIDENT DIRECTOR LICENSE. :

REPORT AND RECOMMENDATION

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

I. INTRODUCTION

Robert J. Alois (the Applicant) submitted a Personal History Disclosure Form - 1 to the Commission in support of his application for licensure as a gaming school resident director. The application was forwarded to the Division of Gaming Enforcement (the Division) for the appropriate investigation. Thereafter, the Division filed with the Commission a letter-report dated October 23, 1978, in which the Division lodged an objection to licensure based upon certain activities of the Applicant and upon the Applicant's failure to disclose many of these activities either in the disclosure form or in telephone conversations with a Division investigator. (J-2; T132-19 to 133-14).[1]

1. Documents and other materials received into evidence at the hearing will be identified by either an "A" for Applicant, a "D" for Division or a "J" for jointly offered items.

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

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

2T refers to the transcript for Monday, December 18, 1978.

At the pre-hearing conference, the Division expanded the grounds of its objection to include the Applicant's 1952 Michigan conviction for larceny by conversion. The Division asserted that such an offense constituted a per se disqualification under the Casino Control Act. See N.J.S.A. 5:12-86(c), 90(e) and 92(b). This matter and all the other factual issues were set forth in Part B of the Pre-Hearing Conference Order, which is attached hereto and made a part hereof.

This report will focus first on those matters which occurred prior to the Applicant's initial contact with the Commission or the Division. As will be seen, there is actually little factual dispute as to those areas. Rather, the first issue is whether the Applicant's personal history up to the time of his application demonstrates either a lack of good character, honesty or integrity (N.J.S.A. 5:12-90(b), 89(b)) or the existence of a disqualifying offense. N.J.S.A. 5:12-86(c). Secondly, attention will be directed to the allegation that the Applicant omitted material information from the personal history disclosure form and failed to advise the Division investigator of such omissions when first provided an opportunity to do so. If proven, such conduct may constitute cause for disqualification and denial under N.J.S.A. 5:12-86(b) and may also reflect adversely on the overall character and integrity of the Applicant.

II. EVENTS PRIOR TO APPLICATION

Now 48 years old, the Applicant testified that he had sustained two criminal convictions in his early adult years. (T37-10 to 38-15; T62-7 to 63-14). The first of these convictions was

for the federal offense of interstate transportation of a stole motor vehicle in 1951. A sentence of 12 months imprisonment was imposed and the Applicant actually served 9 months in custody. (T37-22 to 38-6; D-5). At the hearing, the factual circumstances of the federal conviction were not developed. However, considerable testimony and evidence were adduced regarding the Applicant's second conviction for the 1952 Michigan offense of larceny by conversion. As noted, the Division asserted that this offense constituted a statutory disqualification under Section 86 of the Act, N.J.S.A. 5:12-86.

With regard to the Michigan conviction, the Applicant stated he and some friends had travelled to Michigan in 1952 in search of employment. In Michigan, the group decided to rent a car. The Applicant signed the rental agreement and gave his driver's license number to the agent. Under the agreement, the rented vehicle, a late model Ford, was to be returned in approximately one week. The Applicant and his associates drove the rented car to California and then began to return toward Michigan. However, "they, the guys went to Colorado." (T95-8 to 18; T110-1 to 111-2). Realizing they were 7 to 10 days overdue, one of the Applicant's colleagues telephoned his father for money and, according to the Applicant, requested the father to contact the rental agency. Shortly thereafter, the group was arrested by the police in Colorado and charged with larceny by conversion under a Michigan warrant. (T92-5 to 93-5; T98-3 to 100-4).

After being returned to Michigan, the Applicant was convicted of larceny by conversion and sentenced to a prison te

under which be served 18 months in custody before being released on parole. The Applicant testified that he had not been provided with an attorney and that he could not recall being advised of his right to counsel. (T95-19 to 96-7; T137-19 to 138-1; T138-11 to 22).

Detective James Michael Vogt testified for the Division and related his efforts to obtain information concerning the Applicant's Michigan offense. Detective Vogt contacted authorities in Colorado and Michigan and requested any official records or other documents related to the Applicant's 1952 conviction. (2T4-19 to 8-22). As a result, Detective Vogt received several items which were admitted into evidence as D-2a through h, D-3a and b, and D-4a through m.[2] These materials generally corroborate the Applicant's testimony. Specifically, the records reflect that the Applicant was charged with obtaining possession of a 1952 Ford automobile, valued at $2,000, on November 7, 1952, and thereafter, on November 14, 1952, fraudulently converting the vehicle to his own use. (D-4h, 4i, 4j and 4k). A copy of the rental agreement (D-2e) reflects that the Applicant did sign the agreement in his own name and did provide his driver's license number to the rental agency. Further, the agreement indicates that the vehicle was to be returned on November 10, 1952. It appears that, upon his arrest the Applicant was committed to the Oakland County Jail in Michigan

---

2. The Applicant's attorney acknowledged the authenticity of these records and documents but did not stipulate the accuracy of the information contained therein. (T16-9 to 22).

for failure to post a $3,000 bail bond. (D-4j). Subsequently, December 15, 1952, the Applicant pleaded guilty to larceny by conversion and, on December 22, 1952, he was sentenced to a term of two to five years in Michigan State Prison. (D-4g).

Under Section 90(e) of the Casino Control Act, an applicant for a casino employee license will be disqualified if he has been convicted of one of the listed offenses in subsection 86(c) of the Act. The Division contends that the Applicant's Michigan conviction for larceny by conversion would be equivalent to conviction for one of the listed offenses under present New Jersey law. More particularly, the Division argues that the Michigan conviction would be the same in law as a violation of the New Jersey larceny statute, N.J.S.A. 2A:119-2, which is listed in section 86(c) of the Act. In support of this contention, the Division requests the Commission to take notice of the Michigan statute under which the Applicant was convicted. (T93-5 to 95-5). At the time of the Applicant's conviction, the Michigan statute provided as follows:

> Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny and shall be punished as provided in the first section of this chapter. Michigan Codified Laws, Section 23.594.

Under the present New Jersey law, N.J.S.A. 2A:119-2 larceny must involve property valued at $200 or more, otherwise

it is considered only a disorderly persons offense (N.J.S.A. 2A:170-30.1) and not one of the statutory disqualifying convictions enumerated in Section 86 of the Casino Control Act. Thus, a threshold question is whether the rented vehicle was worth more than $200. As noted, the Michigan documents recite that the car was worth $2,000. However, the mere recitation of that value in the complaint is not satisfactory evidence of the actual value of the vehicle. Nor would it be appropriate to assume that the particular vehicle involved was valued at more than $200 solely because it was a 1952 model and the offense occurred in 1952. However, even if it would be permissible to conclude from all the evidence that the vehicle was worth more than $200, there are more substantial problems to be resolved.

The Michigan statute applied by its terms to any person to whom property "shall have been delivered" and who then fraudulently converted the property to his own use. In this case, the Applicant obtained possession of the car by virtue of a rental agreement . No allegation appears that the Applicant acted fraudulently when he originally executed that agreement and received the vehicle. Such an allegation was not necessary under the Michigan statute. However, under New Jersey law, larceny is not committed where possession of the property was lawfully obtained by the alleged offender.

In State v. Palumbo, 137 N.J. Super 13 (App. Div. 1975) the Court considered the question whether one who had acquired lawful possession of property could be guilty of larceny with respect to such property. The Court observed that the crime of embezzle-

ment had been created by statute, N.J.S.A. 2A:102-5, to fill a "gap" in the law of larceny. The Court explained:

> This "gap" resulted from judicial determination that the crime of larceny, designated to punish trespassory thefts, did not encompass theft accomplished by a non-trespassory taking, as when the thief's original possession was lawful. In such cases, the subsequent conversion of the property, rightfully possessed, to the thief's own use was not considered larceny. [citation omitted.] A theft is larceny if the means of acquiring the property is trespass, it is embezzlement if the means of acquisition is by breach of a trust relationship. [citation omitted.] Id. at 16-17.

From the foregoing, it is clear that the Applicant's Michigan conviction for larceny by conversion is not the legal equivalent of a larceny conviction in New Jersey under N.J.S.A. 2A:119-2.

It might be argued that the Applicant's conduct would have constituted embezzlement under N.J.S.A. 2A:102-5 even though he was neither charged with nor convicted of that offense. Sir N.J.S.A. 2A:102-5 is one of the statutes listed in Section 86(c) of the Act, conduct which would be punishable under the embezzlement statute would constitute a disqualification under Section 86 (g) of the Casino Control Act. However, in view of the other matters established at the hearing, it is both difficult and unnecessary to determine whether these 27 year old events would be considered embezzlement under current New Jersey law.[3]

---

3. Assuming that rental of a motor vehicle constitutes a "bailment" as required by N.J.S.A. 2A:102-5 (see Cintrone v. Hertz, 45 N.J. 434, 447 (1965)), serious questions are raised regarding whether the Applicant harbored the necessary intent to defraud the rental agency. As noted, the Applicant testified that he intended to return the car. If accepted, this testimony would rule out embezzlement. However, the Michigan statute and conviction required fraudulent intent. Ordinarily, a conviction would be conclusive as to the elements of the offense involved, unless there appears some indication that the conviction was "procured by fraud, perjury or legal error sufficient to require that it be vacated." Hyland v. Kehayas, 157 N.J. Super. 258, (App. Div. 1978). In the present case, the Applicant testified that he was without counsel. Further, the records do not reflect any offer of counsel and it appears that the Applicant was unable to obtain funds for a bail bond. Under these circumstances, there is considerable reason to avoid reliance on the Michigan conviction. See State v. Laszlo, 74 N.J. 62, 75 (1977).

Rather, the disposition of this application should and will be based on more recent occurrences.

Following his incarceration in Michigan, the Applicant returned to his hometown of Schenectady, New York, and he resided there without further incident until 1969. In that year, the Applicant and his wife moved to Las Vegas. There the Applicant obtained employment as a shill for the Four Queens casino and soon became a blackjack dealer. In 1971, the Applicant left the Four Queens and went to work as a blackjack dealer for the Silver Slipper where he remained until May, 1972. His next gaming related employment was at the Fremont Hotel and Casino where he dealt blackjack and roulette from 1973 to early 1975 at which time he was dismissed due to a reduction in staff. (See J-1, question Nos. 37 and 39; T30-23 to 34-7).

During the ensuing period of unemployment, the Applicant was directed by an employment agency to a Mr. Philip Nuggle at the Casino Training Center, a new gaming school located on Industrial Road in Las Vegas. Mr. Nuggle advised that the school was seeking an instructor and produced an application for a Nevada teaching certificate. The Applicant testified that he started to complete the application, but answered in the negative item 9 which asked whether he had a high school diploma or a graduate equivalency diploma. Seeing this, Nuggle informed the Applicant that a high school diploma or equivalency was needed to obtain a Nevada teaching certificate. When the Applicant told Nuggle that he had attended the Mt. Pleasant Vocation School in Schenectady but had neither graduated nor obtained an equivalency diploma, Nuggle instructed the Applicant to discard the form he had started.

Instead, Nuggle requested the Applicant to partially complete teaching certificate application form, to leave items 7 through 10 blank and to sign the affidavit attached to the form. The Applicant complied. (T34-8 to 35-23; T36-11 to 37-7; T89-6 to 90-8; T111-12 to 112-16).

At the same time, Nuggle gave the Applicant a test consisting of mathematics questions. The Applicant testified that he did not believe Nuggle could issue an equivalency diploma and acknowledged that the test which Nuggle gave him seemed "too easy." He recalled thinking at the time that the test "doesn't seem right" for a high school achievement level. After the Applicant completed the test, Nuggle examined it and told him not to worry. (T111-12 to 116-9). Subsequently, the Applicant was issued a gaming schc teaching certificate by the Nevada authorities. (T40-10,11).

At the hearing, the Applicant identified J-3 as the teaching certificate application which he had partially completed and which he had signed under penalty of perjury for false statements. The application was dated March 19, 1975. Although answers now appear for all items on J-3, the Applicant insisted that items 7 through 10 must have been completed by someone else, presumably Nuggle with whom the Applicant left the partially completed form. In support of this, the Applicant pointed out that the writing on those items differed from both the writing on the remainder of the application and from the Applicant's signature on the affidavit. Specifically, under item 9 on J-3 there is now an indication that the Applicant attended Mt. Pleasant High S in Schenectady, New York, until the 11th grade and earned a

...te equivalency diploma ("GED") at Mt. Pleasant Vocational ... in Schenectady. (See J-3; T88-19 to 90-8; T117-19 to 118-...).

Based on the foregoing and on my inspection of J-3, I find that the Applicant did not write the responses to items 7, 8, and 10 on the application for a Nevada teaching certificate. However, the Applicant's behavior in this matter raises questions regarding his judgment if not his character. Not only did the Applicant sign an incomplete official form under possible penalty of perjury, but he did so after being advised by Nuggle that he lacked one of the requirements for the teaching certificate and after being ordered by Nuggle to discard a form in which he had already answered the pertinent question correctly. Moreover, the ...plicant concedes that he did not believe Nuggle was empowered to issue an equivalency diploma and that the test administered by Nuggle seemed inadequate. Thus, the Applicant's explanation, that he relied on Nuggle's knowledge of correct procedures and requirements (T113-21 to T116-23), is unsatisfactory. Whether he acted with fraudulent intent or not, the Applicant's cooperation with Nuggle under all the circumstances is disturbing. However, the determination of this matter need not rest on that alone.

Although the teaching certificate application, J-3, was dated March 19, 1975 the Applicant testified that it took until June or July of 1975 for the certificate to be issued. The Casino Training Center actually opened at the same time. The school began with only one student and the Applicant taught on a part-time basis for the six or eight weeks of the school's existence. The Applicant stated that, during that period, he would teach two or three days a week on some weeks

...omplete a ... 7 through ... The ...39-6 to 90-... a test ...ified that ...loma and ... "too easy. ...seem right ... completed ... T111-1... ...g school ...). ... the ...mpleted ... state-... ...sisted ... else, ... com- ...that ... the ...re ... now ...hool

and not at all on others. He was also working as a part-time dealer at the Marina Casino at this time. With regard to his salary at the school, the Applicant asserted that Nuggle told him to collect tuition from the students and apply it to his wages. The Applicant claimed to have taught several students, although they could not afford to pay, in an effort to promote the school. As a result, the Applicant asserted that he made at most $100 or $200 in some of the weeks he taught. At the end of the six or eight week period, during which Nuggle had been negotiating with potential investors from Florida, the school closed.(T39-22 to 41-20; T135-25 to 136-12).[4]

During his association with the Casino Training Center, the Applicant met one Thomas Oden who was then taking a course in slot repair at the school. Oden was a friend of Nuggle who requested the Applicant to instruct Oden in the games of black-jack, craps and roulette. Beyond teaching Oden these games, the Applicant asserted that his relationship to Oden during that period was limited to two dinner invitations to the Applicant's home. (T42-1 to 44-11).

After the Casino Training Center closed, the Applicant continued to work part-time at the Marina Casino until he was laid off. Sometime thereafter, while still unemployed, the Applicant encountered Oden at the International School in Las Vegas where Oden was then working. Oden indicated to the Applicant that one

---

4. The circumstances of the Applicant's association with the Casino Training Center are set forth in some detail here because they will be significant in evaluating an alleged failure to disclose employment on the personal history disclosure form No. 1. See Part III, infra.

Frank Francesco had offered Oden a position as resident director of a gaming school being organized in New Jersey.[5] Oden asked the Applicant if he would be interested in being an instructor when the school opened. The Applicant accepted, but a considerable amount of time elapsed without further developments. Eventually, Oden again contacted Francesco. Thereafter, Oden asked the Applicant to accompany him to New York City where they would teach blackjack for an organization known as Bailey Brothers. Oden explained that they would be so employed for only a few weeks until the proposed New Jersey gaming school was ready to utilize their services. Oden also indicated that they would contact one Johnny Mack in New York City. Without knowing anything else, the Applicant agreed to Oden's proposal. (T41-20 to 25; T44-12 to 47-20; T141-3 to 143-2).

In late January or early February, 1977, Oden and the Applicant flew to New York City. (T127-11 to 21; T54-23 to 55-1). Upon arrival, they were taken to the Bronx where, in a former bar which had been converted to a gambling casino and school, Oden introduced the Applicant to Johnny Mack. The Applicant was told

---

5. Mr. Francesco is currently the president of the Atlantic Casino Training Academy, a gaming school licensed by the Commission. At the time of the initial offer to Mr. Oden, however, Mr. Francesco was involved with another group which was trying to organize the Garden State Gaming and Electronics School. Later, Mr. Francesco disassociated himself from that group. (See T57-2 to 58-1; 2T217-21 to 218-25).

that Bailey Brothers conducted Las Vegas nights for charitable causes and that the Applicant would instruct the dealers who w at those affairs. According to the Applicant, these activities were legal under New York law. As compensation, the Applicant and Oden were provided a free apartment maintained by the Bailey Brothers organization and were promised $300 or $400 a week for their instructional services. However, the Applicant was later advised by Oden that it would be lawful to teaching dealing only if no tuition were charged to the students. For that reason, the promised salary was not forthcoming and, at best, the Applicant received $60 a week. The Applicant estimated that he was paid only about $350 for teaching during his entire stay. In return for this money and the apartment, the Applicant devoted his time to instructing the Bailey Brothers' dealers.[6] (T47-21 to 49-9; T53-22 to 55-1; T107-13 to 19; T122-1 to 126-15; 2T257-2 to 15).

Although not receiving the expected salary, the Applicant remained in New York City until June, 1977, approximately four months. During that time, he spent eight hours a day teaching for the Bailey Brothers. (T126-2 to 15; T130-23 to 131-13; 2T 131-17 to 24). He testified that he did so because he was hoping to hear shortly from Mr. Francesco that the New Jersey school was ready. Additionally, the Applicant indicated that he had been unemployed in Las Vegas, that he had incurred debts during that time that his plane fare to New York was $200 and that he needed money to pay for his fare home. Further, the Bailey Brothers continued

---

6. The circumstances surrounding the Applicant's association with the Bailey Brothers as an instructor will become significant in regard to the allegation that he failed to indicate this association as prior employment in his disclosure form. See Part III, infra.

to promise that the Applicant's remuneration would be increased. The Applicant testified that, for these reasons, he stayed in New York even after Oden departed. Oden's departure was apparently prompted by his arrest for working at an illegal gaming club called Cavanaugh's. The Applicant acknowledged that he had known of Oden's illicit involvement with that club before Oden's arrest. (T49-4 to 9; T53-14 to 21; T126-16 to 127-10; T131-18 to 132-18).

Two or three weeks after Oden left New York, the Applicant decided that he would return to Las Vegas and he disclosed this decision to some of the students whom he was teaching for Bailey Brothers. Upon learning of this, Johnny Mack approached the Applicant and offered him the opportunity to earn $50 a night plus tips by dealing at the Grasshopper Club in Manhattan. Although the Applicant then knew that the gambling in that club was illegal and although he expressed concern that he might be arrested, the Applicant agreed to deal there for a few nights. According to the Applicant, he had already made a plane reservation on Tuesday of that week to fly back to Las Vegas on the next Monday. This reservation was accomplished through use of the Applicant's airline credit card. (T127-22 to 130-10; T130-23 to 131-13; T131-18 to 25; T49-10 to 25; T55-2 to 5).

The Applicant related that an individual named Maurice managed the Grasshopper Club. Johnny Mack instructed the Applicant to go to the club and to tell Maurice that "you work for me [Mack] and he [Maurice] will put you to work." (T55-6 to 22). The Applicant did so and he worked as a blackjack dealer at the

club that night, Tuesday. The Applicant worked there again on Wednesday and Thursday. In the early morning hours of that Friday, the Grasshopper Club was raided by the New York Police Department. The Applicant testified that he was dealing at one of the blackjack tables when the raid occurred. He was arrested and taken to the police station where he was charged with gambling offenses. Later that day, the Applicant met an attorney who had been retained for the arrested employees of the club. The attorney told the Applicant not to worry. That night, the Applicant appeared in court where he was convicted of "disorderly conduct" and fined $150. The fine was paid by Maurice. (T49-18 to 51-8; T130-23 to 131-13; 2T257-20 to 258-13; 2T259-18 to 260-15; 2T299-11 to 300-5). After his release on Friday night, the Applicant advanced his plane reservation. Instead of leaving on Monday as planned, he departed on Saturday for Las Vegas. (T49-18 to 25; T55-23 to 56-8).

Detective James Michael Vogt testified that he was assigned by the Division to conduct the background investigation of the Applicant. (2T17-22 to 18-6). In the course of that assignment, Det. Vogt contacted the New York Police Department which advised that the Applicant had been arrested as part of a gambling raid at 345 E. 80th Street in Manhattan. At Det. Vogt's request, the New York Police Department forwarded a copy of the Applicant's criminal history (D6(b)) and his New York arrest record (D-6(c)). These documents, which were admitted into evidence without objection, reveal that the Applicant was arrested on June 3, 1[7]

---

7. Notice is taken of the fact that June 3, 1977 was a Friday.

and that he was initially charged with two class A misdemeanors: promotion of gambling in violation of N.Y. Penal Law, Section 225.05 and possession of a gambling device in violation of N.Y. Penal Law, Section 225.30. The New York arrest record (D-6(c)) further reveals that the Applicant was convicted on June 3, 1977, of "disorderly conduct" and was fined $150. (2T52-6 to 54-25; 2T59-4 to 60-4; 2T31-13 to 32-8; 2T129-25 to 131-24).

Based on the foregoing, I find that the Applicant accompanied Thomas Oden to New York City in January or February, 1977, with the intention of teaching blackjack dealing techniques for the Bailey Brothers until a proposed New Jersey gaming school was organized. I further find that the Applicant believed his activities in so teaching were lawful. I also find, however, that the Applicant agreed to, and did, deal the game of blackjack on three successive nights at the Grasshopper Club in Manhattan and that he knew in advance that such conduct constituted illegal gambling. I further find that the Applicant was arrested on June 3, 1977, that he was initially charged with two class A misdemeanors under New York law and that he was convicted on the same date of the lesser offense of "disorderly conduct." A fine of $15 was imposed and the fine was paid for the Applicant by the person who managed the illegal gaming establishment.

The question presented is whether by virtue of these events the Applicant has failed to clearly and convincingly demonstrate his good character, honesty and integrity. See N.J.S. 5:12-89(b), 90(b) and 92(b). The Applicant was actually convicted of only a disorderly conduct offense, which is considered merely a violation and not a crime. See N.Y. Penal Law, Section 10.00(3)

(6) and Section 240.20. However, the nature and circumstances of his conduct reveal serious defects in both judgment and character. At a time when he held dealing permits from Nevada and when he was intending to pursue a gaming school career in New Jersey, the Applicant succumbed to an offer to participate in an illegal gaming operation on a repeated basis. In addition, the memory of his youthful experiences with the criminal law was not enough to deter him.

The Applicant's attempted explanations for his behavior are significant. Although he implied that he was trapped in New York City and needed money to return to his home in Las Vegas, he admitted that he had already decided to leave before being asked to deal at the Grasshopper Club and had actually reserved a plane ticket on his credit card before he dealt at the club. (T49-10 25; T55-2 to 5; T127-22 to 131-13). Indeed, the Applicant acknowledged that his real motivation for the illegal dealing was simply to obtain additional money before leaving New York. (T131-10 to 17 The Applicant was undoubtedly experiencing financial difficulties at the time, but this could hardly justify his response to the situation.[8] The Applicant's past life reveals that he lacks the personal qualifications required for licensure as a gaming school

---

8. Although he did not receive the compensation promised by the Bailey Brothers for instructing their dealers and although he had been unemployed prior to his arrival in New York, the Applicant and his wife did own a home in Las Vegas in which the payments were current. They later sold that house and obtained over $10,000 in cash plus a second mortgage. (T106-16 to 107-12; T50-6 to 14).

resident director. The events surrounding his application for a Nevada Teaching Certificate and his involvement in illegal gaming in New York show clearly that the Applicant is overly susceptible to influence by unscrupulous or unsuitable individuals. Even assuming that the Applicant would not have engaged in improper behavior but for such influence, the strict regulation and control of the New Jersey gaming industry would be jeopardized by licensure of anyone unable to withstand stronger and more persistent temptations. Specifically, a resident director of a gaming school is responsible for the daily operations of the school or for the supervision of all its employees. N.J.A.C. 19:44-1.8. On the present record, the Applicant has failed to demonstrate the character and integrity necessary to be licensed to such an important position. Moreover, as will be seen in the next part of this report, there are other reasons why licensure should be denied in this case.

III.

FAILURE TO DISCLOSE MATERIAL INFORMATION

The Division's letter-report of October 23, 1978 (J-2), alleged that the Applicant had failed to include certain informati in his personal history disclosure form and had denied certain facts when initially contacted by a Division investigator. Specifically, as set forth in the attached Pre-Hearing Conference Order, the Division asserted: that the Applicant omitted any reference to the Casino Training Center in response to question

37;[9] that the Applicant omitted any reference to the Baily Brothers in response to the same question; that the Applicant improperly answered question 68[10] by failing to make any reference to his 1977 arrest in New York City for two gambling misdemeanors or to his subsequent conviction for disorderly conduct on those charges; and that the Applicant initially denied all these facts to a Division investigator.

Under N.J.S.A. 5:12-86(b), failure to provide material information when requested may constitute cause for disqualificatic and denial.[11] In this regard, "material" information is that which would be important to evaluation of the qualifications of the Applicant. Here, the Applicant's prior gaming instructor experience and his arrest for gambling violations would clearly meet the requirement of materiality for licensure as a gaming school resident director. However, not every failure to provide

---

9. Question 37 requires an applicant to provide full employment information including "all part-time and full-time employment," and to mark with an asterisk "any employment where gaming was conducted on the premises." It also requests dates of idleness between employments.

10. Question 68 asks: "have you or has any member of your immediate family ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" If the answer is affirmative, the Applicant is required to provide information regarding the name of the person involved, the nature of the charge or conviction, the court, the date and the disposition.

11. Of course, depending on the circumstances, such failure may also reflect adversely on the overall character and integrity of the Applicant.

material information should be deemed a disqualifying event. The circumstances surrounding the alleged failure should be considered to determine whether the failure was willful or in bad faith. Merely inadvertent or ignorant failure to disclose a material fact would not warrant the severe response of disqualification. The record must now be reviewed in light of these standards.

The personal history disclosure form submitted by the Applicant was admitted into evidence as a joint exhibit, J-1. Examination of that document reveals that it was signed by the Applicant and notarized on March 20, 1978. As to employment history, the response to question 37 reflects that in 1975-76 the Applicant was employed as a dealer at the Marina Hotel and Casino and that from July 18, 1977 to November 2, 1977, he was employed as a dealer at the 20th Century Hotel and Casino. There is no reference to either the Casino Training Center or the Bailey Brothers in the form. As to prior arrests and convictions, the Applicant answered question 68 by checking "No." There is no reference in the form to the Applicant's 1977 New York arrest and convictio

---

12. It should be noted that, although he answered "No" to question 68, the Applicant responded affirmatively to question 70 which requests information concerning pardons. Under that question, the Applicant listed two offenses: "Interstate Commerce" in 1952 and "Larceny by Conversion" in 1954. The Applicant testified that these offenses were, in fact, the two convictions he sustained as a young man and that he mistakenly placed this information in question 70, although he was never paroled, because he thought the question referred to paroles. (T60-14 to 62-6).

Detective Vogt testified that he was assigned to th Applicant's investigation on June 2, 1978, while the detective was in Las Vegas on a two week working trip. On that date, or shortly thereafter, Detective Vogt telephoned the Applicant who was then living in Atlantic City. The purpose of this first call was to review the disclosure form with the Applicant and to assure that the information therein was complete and accurate. The detective proceeded through the form, read the questions to the Applicant and asked whether there were any additions or correction to be made in the answers. The call lasted between 45 minutes and an hour. (2T17-22 to 19-4; 2T33-14 to 34-22). Detective Vogt stated that the Applicant made no mention of either the Casino Training Center or the Bailey Brothers during the review of question 37, regarding prior employments. Moreover, after Detective Vogt reread question 68 to the Applicant and asked if there were any arrests or convictions other than those indicated in question 70, the Applicant responded that there were none and did not request any clarification of the question. (2T144 23 to 145-3; 2T75-16 to 76-15; 2T83-6 to 88-9; 2T149-17 to 150-2; 2T185-10 to 25). At the time of this initial call, Detective Vogt had no knowledge of the Casino Training Center, the Bailey Brothers or the Applicant's 1977 New York arrest. (2T77-1 to 6; 2T88-13 to 17).

Following the first call, Detective Vogt conducted an investigation in the Las Vegas area. Because the Applicant indicated on the disclosure form that he held a Nevada vocati

teaching certificate, Detective Vogt visited the Nevada Vocational Board of Education and obtained a copy of the teaching certificate application (J-3) filed by the Applicant. The application, dated March 19, 1975, contained a statement that the Applicant expected to teach at the Casino Training Center. Detective Vogt further learned that this school had been located on Industrial Road in Las Vegas, that it no longer existed and that the school had been under investigation before it closed. However, Detective Vogt could not determine at that point whether the Applicant had actually worked at the school. (2T44-16 to 47-8; 2T194-1 to 20).

Additionally, Detective Vogt's investigation in Las Vegas led him to a bank where the Applicant had obtained a car loan. Detective Vogt obtained a copy of the loan application (D-7) which was dated March 14, 1977, and signed by the Applicant's wife. The loan application stated that the Applicant was then employed as a blackjack instructor for the Bailey Brothers and had been so employed for five months at a monthly salary of $900. Because the loan application listed the address of Bailey Brothers only as 8th Street, Detective Vogt assumed that the Bailey Brothers operation was located in Las Vegas. He then made unsuccessful efforts to find it there before he again contacted the Applicant. (2T38-2 to 40-20; 2T43-19 to 44-15; 2T47-9 to 15; D-7).

At approximately 2 p.m. on June 8, 1978, Det. Vogt placed a second telephone call from Las Vegas to the Applicant in Atlantic City. Det. Vogt advised the Applicant that he had discovered a reference to the Bailey Brothers in the loan application (D-7) but that he could not find that enterprise in Las Vegas. The applicant responded that Bailey Brothers was located in

New York City. Detective Vogt testified that he then asked the Applicant if he had worked for Bailey Brothers and that the Applicant replied he had not done so but was "only scheduled to work there." (2T48-12 to 51-11; 2T73-14 to 75-5). Det.Vogt related that, in the same telephone call, he asked the Applicant if he had ever worked for the Casino Training Center. The Applicant replied that he had not worked at that school but was "only scheduled to work there." (2T51-12 to 52-5; 2T75-16 to 77-9).

After returning from Las Vegas to New Jersey, Det. Vogt continued his investigation of the Applicant. On July 17,1978 the detective telephoned the New York City Police Intelligence Unit and inquired whether it had any information concerning the Bailey Brothers or the Applicant. He was advised that the Bailey Brothers had maintained operations in Manhattan and in the Bronx that the Manhattan location had been raided and that the Applicant was one of the persons arrested in that raid. The New York officer read the Applicant's New York arrest record to Det. Vogt who requested a copy be sent to the Division.[13] On the same date, Detective Vogt called the Applicant and arranged an interview for the following day, July 18, 1978, at the Applicant's home in Atlantic City. (2T52-6 to 54-25; 2T59-19 to 60-4; 2T60-16 to 61-1; 2T183-9 to 184-2).

---

13. Subsequently, the arrest records were received in the mail by the Division. At the hearing, the records (D-6) were admitted into evidence without objection. (2T31-13 to 32-3; 2T59-19 to 60-4).

The interview took place as scheduled and was tape recorded by Det. Vogt with the Applicant's permission. The tape itself (J-4) and two transcripts thereof (A-3; D-1) were admitted into evidence. (2T61-2 to 63-13; 2T24-21 to 27-3). During the interview, the Applicant disclosed the details of his relationship with the Casino Training Center and with the Bailey Brothers. The Applicant also related the circumstances preceding and surrounding his 1977 arrest and conviction in New York City for illegal gaming (See A-3). Det. Vogt acknowledged that he had arranged and conducted the interview in the expectation that the Applicant would withhold some or all of the previously undisclosed information. (2T165-14 to 21; 2T167-13 to 168-17; 2T171-9 to 24; 2T177-11 to 21

Although his expectations were not realized, Det. Vogt expressed the opinion that the Applicant had not been candid during the investigation and that he decided to disclose the information at the interview because he believed the Division would obtain it anyway. Det. Vogt based this conclusion on the following: the omissions in the disclosure form; the Applicant's failure to advise of the New York arrest during the June 2, 1978, telephone call; his express denial of employment by either the Casino Training Center or the Bailey Brothers during the June 8, 1978, telephone call; and the warning implicit in the July 17, 1978, telephone call wherein Det. Vogt indicated he wanted to interview the Applicant about his stay in New York City. (2T79-2 to 90-25; 2T149-1 to 150-2; 2T195-1 to 12).

With regard to the allegation that, in the June 8,1978, telephone call, the Applicant expressly denied employment at either the Casino Training Center or the Bailey Brothers, Det.

Vogt stated that he was "absolutely sure" the Applicant had dor so. The officer explained that there were several reasons why ...e denials stood out in his memory although he did not then memorialize them in writing. First, he had unsuccessfully attempted to locate both the Casino Training Center and Bailey Brothers prior to the telephone call. Second, he initially thought the Applicant would be motivated to acknowledge prior teaching experience to bolster his qualifications as a resident director and was surprise to later discover that the Applicant had served as an instructor for both entities. Third, he would have noted the fact that the Applicant had been actively associated with either enterprise and would have attempted to contact them if the Applicant admitte his association. Fourth, since he was in Las Vegas at the time of the telephone call, he would have conducted a further investig of the Casino Training Center and its owner, Philip Nuggle, before returning to New Jersey. In fact, he subsequently had to complete that investigation by telephone after the July 18, 1978 interview. Fifth, Det. Vogt found it curious that the Applicant used the same phrase, i.e., "only scheduled to work," with regard to both the Casino Training Center and the Bailey Brothers.

The Applicant asserted that he had not intended to mislead or deceive when he completed the disclosure form or responded to telephonic inquiries from Det. Vogt. (2T276-4 to 15). As to the 1977 New York gaming conviction, the Applicant testified that he did not list it on the form because he read question 68 to apply only to "felonies." He admitted that question 68 refers to any "criminal or disorderly persons offense," that he read the question before answering it, and that he then knew his New York

conviction was classified as "disorderly conduct" under New York law. He testified that he did not equate "disorderly conduct" with "disorderly persons offense." He also testified, however, that he had been unsure whether to list the New York offense and had sought the advice of several workmen who were remodeling the then proposed site of the Atlantic Casino Training Academy. He did not seek such advice from the owners and founders of the school although he had already informed them about the arrest. (T71-10 to 15; T109-9 to 23; T118-14 to 120-6; 2T281-1 to 282-14; 2T254-17 to 256-1).

Eventually, the Applicant submitted the form with a negative response to question 68. He asserted that he expected to be contacted by an investigator at which time "I would find out for sure if I have to have it down there or not." (T109-11 to 16). He acknowledged that he did not mention the New York offense to Det. Vogt during the telephone calls although he had ample opportunity to do so and although in one of the calls Det. Vogt told him "if [he] was arrested, [he] had to put it down there." (2T261-19 to 262-5; 2T277-21 to 278-14). At one point in his testimony, the Applicant declared, "I had no excuse." At another, he simply stated that he could not explain why he answered the question incorrectly. (2T282-14; 2T300-15 to 23).

With regard to his employment history, the Applicant acknowledged that he made no reference to either the Casino Training Center or the Bailey Brothers in response to question 37 on the disclosure form. (J-1; T77-13 to 78-1).[14]

---

14. The duration and nature of the Applicant's association with both the Casino Training Center and the Bailey Brothers are set forth in Part I of this report at pp. 10 to 14.

The Applicant asserted that he did not consider his six to eigh week involvement with the Casino Training Center to be "employment" because he was not being paid on a regular basis. Although the owner, Philip Nuggle, did pay the Applicant between $100 and $200 per week for some weeks, the Applicant was generally required to obtain his compensation from the students' tuition. However, he frequently did not bother to collect the tuition. Instead, he taught several students without charge while he worked part-time at the Marina Hotel and Casino as a dealer. (T134-25 to 136-12; T39-22 to 41-9).

As to his three or four month relationship with the Bailey Brothers in New York City, the Applicant stated on direct-examination that he had been "employed" by that organization and that his function was to instruct dealers. (T51-21 to 53-18). During that period, the Applicant devoted eight hours a day to teaching for which he received the use of a rent-free apartment and $50 or $60 per week in "some weeks" for a total of approximately $350. (T53-22 to 55-1; T126-2 to 15). When asked why this employment was not reflected on the form, the Applicant replied that he was not "employed there long enough," that his travel and living expenses exceeded the amount he earned, and that "when you are not getting paid every week, that is not working." (T121-2 to 8; 2T270-24 to 271-13; 2T295-1 to 7).

The Applicant was confronted with the allegation that h expressly denied employment by either the Casino Training Center or the Bailey Brothers during the June 8, 1978 telephone conversation with Det. Vort. The Applicant stated that he did mention the Casino Training Center during one call and that he told Det.

Vogt he had "worked there part-time." (T78-15 to 80-23; 2T262-21 to 263-14). The Applicant also asserted that, when Det. Vogt first mentioned the Bailey Brothers in a telephone conversation, the Applicant "did mention I was working in New York." (2T278-15 to 279-5). However, when specifically asked if he ever denied these employments to Det. Vogt, the Applicant responded: "I don't want to call him a liar and I don't want to call myself a liar, so the best thing I can say is I don't recall." (2T289-15 to 25). The Applicant admitted that if he had denied such employment "that would have been a lie on my part because I did work there." (2T290-1 to 10).

Based on the foregoing, I have made the following findings. The Applicant's New York arrest and conviction in 19[illegible] should have been disclosed in response to question 68 on the disclosure form. The Applicant was initially charged with two class A misdemeanors under N.Y. Penal Code, Section 225.05 and Section 225.30. A class A misdemeanor is punishable by imprisonment not to exceed 1 year (N.Y. Penal Code, Section 70.15) and is considered a "crime" under New York law. N.Y. Penal Code, Section 10.00(6). The Applicant was actually convicted of "disorderly conduct," a lesser offense which is punishable by not more than 15 days incarceration and which is not considered a crime under New York law. See N.Y. Penal Code, Sections 70.15, 10.00(3) and 10.00(6). Question 68 requires information as to any "criminal or disorderly persons offense." Under present New Jersey law, a "disorderly persons offense" is defined as a "petty offense" which is generally punishable by a fine of not more than $500, or imprisonment for not more than 6 months or both. N.J.S.A.2A:169-4

Thus, question 68 plainly called for the Applicant to supply information regarding his New York offense.

The Applicant's explanation for his failure to disclose the New York offense is not credible. The Applicant knew that he had been convicted of "disorderly conduct" in New York. Having had experience with the criminal justice system, he was fully conversant with the gradation of charges into felonies, misdemeanors and petty offenses. He admitted that he read question 68 before answering it and that he noted the phrase "disorderly persons offense." He acknowledged that he gave consideration to the question and sought the advice of workmen who were renovating the New Jersey school premises. When he related his background to the school's organizers, he obviously believed the New York offense to be relevant, but he did not again consult those persons in regard to completing the form. He testified that he thought the question only pertained to "felonies." However, he also testified that he was unsure whether his answer was appropriate and that he intended to find out for certain when he was contacted by the Division. Nevertheless, he neither made reference to the New York offense nor sought clarification of the question when Det. Vogt telephoned him and specifically discussed question 68.

In sum, the Applicant's testimony was internally inconsistent and unbelievable. I therefore find that the Applicant acted in bad faith when he omitted any reference to the New York incident on the disclosure form and when he failed to seize the initial opportunity offered by Det. Vogt to rectify that omission. Since the materiality of the New York gambling offense is clear, the Applicant has committed a disqualifying act under Section 86(b

N.J.S.A. 5:12-86(b). The fact that the Applicant eventually decided to disclose the information during the personal interview on July 18, 1978, does not excuse this behavior. Indeed, it was only due to the persistence of Det. Vogt that the New York events were brought to light. The Applicant cannot obtain absolution for a purposeful non-disclosure simply because the investigation may ultimately reveal the information. To hold otherwise under these circumstances would encourage applicants to withhold material information in the hope that it might never be discovered.

As to the Applicant's employment history, I find that he was actually employed at both the Casino Training Center and the Bailey Brothers. His attempt to distinguish these relationships from "employment" based on the amount and regularity of his compensation is unconvincing. During the hearing, the Applicant himself frequently characterized the relationships as either "employment" or "work." Indeed, he admitted that he would have lied if he denied working for either enterprise. Thus, the Applicant's response to question 37 was plainly incomplete. Since these two employments constituted the total of the Applicant experience as a gaming instructor, it is difficult to believe that he inadvertently omitted them.

Far more disturbing is Det. Vogt's unwavering and positive testimony that the Applicant expressly denied these employments in response to direct questions during the June 8,1978 telephone call. As noted, the Applicant was inconsistent in his response to that accusation and ultimately was unwilling to rule out the possibility that he had made the denials. In contrast, Det. Vogt was "absolutely sure" in this regard and articulated

several plausible reasons for his certainty. Based on this testimony and my observations of the witnesses, I find that the Applicant did deny his employment with both the Casino Training Center and the Bailey Brothers. Such an outright denial of material facts constitutes a clear disqualification under Section 86(b), N.J.S.A. 5:12-86(b). Moreover, this conduct provides powerful evidence that the Applicant does not possess the character or integrity necessary to hold any position of trust in the casino industry.

IV.

CONCLUSION

For the reasons set forth above, I find that the Applicant has failed to demonstrate the requisite good character, honesty and integrity, to be licensed as a gaming school direc See N.J.S.A. 5:12-89(b)(2), 90(b) and 92(b). This conclusion is primarily based upon the following: (1) the Applicant's signing of the incomplete application for the Nevada teaching certificate when he knew that he did not possess the educational requirements; (2) the Applicant's agreement to deal blackjack at an illegal gaming club and actually dealing there on three successive nights; (3) the Applicant's purposeful omission of material information on the disclosure form; and (4) the Applicant's denial to a Division investigator of material facts. I further find that the Applicant is disqualified from licensure under Section 86(b) of the Act by reason of his deliberate omission from the disclosure form of material information regarding is criminal and employment history and by reason of his denial of prior employments to a Division investigator. Therefore, I hereby recommend

Robert J. Alois be denied licensure as a gaming school resident director.

Respectfully submitted,

Robert J. Genatt, Hearing Examiner

Dated: Jan 27, 1979

NEW JERSEY CASINO CONTROL COMMISSION
Docket No. 78-EA8

IN THE MATTER OF THE	:	
APPLICATION OF ROBERT J. ALOIS	:	
FOR A GAMING SCHOOL RESIDENT	:	PRE-HEARING CONFERENCE ORDER
DIRECTOR LICENSE.	:	

A pre-hearing conference having been held on this matt before the undersigned Hearing Examiner on November 29, 1978 at 10:00 a.m. in the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, F. Frederick Perone, Esq., appearing for the applicant, Joan Robinson Gross, Deputy Attorney General, appearing for the Division of Gaming Enforcement, Thomas N. Auriemma, Assistant Counsel to the Casino Control Commissi appearing for the Commission, and in the presence of the applicant Robert J. Alois, the following occurred:

A. POTENTIAL CONFLICT OF INTEREST

At the commencement of the conference, the Hearin Examiner inquired of F. Frederick Perone, Esq., whether a possibl conflict of interest might arise. Mr. Perone represents both the present applicant for a gaming school resident director license and the Atlantic Casino Training Academy, Inc., which has applied to the Commission for a gaming school license and which intends t employ Mr. Alois as its resident if he is licensed by the Commission. Mr. Perone represented that he had discussed this matter with Mr. Alois who understood the situation and wished to continue with Mr. Perone as his counsel. Mr. Perone stated th he could vigorously and fairly represent the interests of both

clients and that he would advise the Hearing Examiner immediately if any problem arose. Mr. Perone made these statements in the presence of Mr. Alois and in the presence of the four owners of the proposed gaming school who were permitted to be present for this discussion.

B. ISSUES

At the conference, counsel agreed that the factual issues to be decided by the Commission in determining whether the applicant has met his affirmative responsibility of establishing by clear and convincing evidence his individual qualifications for licensure as a gaming school resident director concern the following matters:

(a) The factual allegations set forth in the Division letter-report of October 23, 1978, which allegations include:

1. the applicant's employment by an illegal gaming club (Baily Brothers) in New York from November, 1976 to June, 1977;
2. the applicant's New York arrest in 1977 for the misdemeanors of promoting gambling and possessing gambling devices, and his subsequ conviction of disorderly conduct on each charge;
3. failure of the applicant to reflect his employment at Baily Brothers on his personal history disclosure form;
4. failure of the applicant to indicate on his personal history disclosure form that he was

employed in the Summer, 1975, as an instru
at Casino Training Center in Las Vegas;

5. failure of the applicant to indicate in response to question no. 68 on his personal history disclosure form that he was arrested and convicted of the New York gaming offenses noted above;

6. denial by the applicant of his employment at Baily Brothers and at the Casino Training Center and of his New York gambling offenses during an initial interview by a Division investigator;

7. inclusion of false information concerning the applicant's educational background in an application for a Nevada teaching certificate filed by the applicant;

8. failure of the applicant to reflect his earnings at Baily Brothers in his income tax return;

9. nature and extent of the applicant's association with one Thomas Oden, an individual who previously applied to the Commission for licensure as a gaming school resident director and who has been indicted for making false statements in his applicatic form;

10. association of the applicant with habitual

criminal offenders in regard to the applicant employment at an illegal gaming club.

(b) The applicant's 1952 conviction in Michigan for a larceny offense, including: the facts and circumstances of the offense, the statutory provision violated, the seriousness of the charge in terms of maximum penalty authorized by law and sentence actually received, and the status and classification of such an offense under present New Jersey law.

C. DISCOVERY

1. The Division and the applicant shall exchange all documentary evidence in their possession relevant to the applicant's Michigan conviction exclusive of work product. Additionally, the Division shall endeavor to obtain further documentation concerning this matter from the appropriate authorities and shall provide any such documentation, exclusive of work product to the applicant.

2. The Division shall provide or make available the applicant any recording or summary, exclusive of work product, of any interview of the applicant conducted by Division personnel

3. The Commission shall provide to the applicant a copy of the applicant's personal history disclosure form.

D. SCHEDULE

1. Discovery shall be completed by December 1978. If the Division is unable to obtain official documentation concerning the applicant's Michigan conviction by that date, it shall promptly advise the applicant's counsel and indicate, if possible, when the information will be forthcoming. If it appear that the information cannot be obtained in time to allow a fair consideration of this matter on the scheduled hearing date, the hearing on this issue may be adjourned or continued on application of counsel or on the Hearing Examiner's own motion.

2. The hearing in this matter will commence at 9:30 a.m. on December 8, 1978, in the Department of Community Affairs Conference Room, 2nd floor, 329 West State Street ("Delaware Building"), Trenton, New Jersey.

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

DATED: November 30, 1978

Robert J. Gonatt
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket No. CCC 2085-79
CCC Docket No. 79-EA-60

IN THE MATTER OF THE APPLICATION :
OF SEYMOUR ALTER FOR LICENSURE :
AS A CASINO KEY EMPLOYEE. :

FINAL ORDER

A hearing having been conducted in this matter before the Honorable Norman D. Smith, A.L.J.; and the Commission having considered the Initial Decision filed on December 11, 1979, the entire record of the proceedings herein and the written exceptions to the Initial Decision filed by the parties; and the Commission at its public meeting of May 1, 1980, having heard the arguments of counsel for the parties, and having resolved at that meeting to adopt the Initial Decision in part, to reject it in part and to deny the application for licensure;

It is on this 2nd day of May, 1980 ORDERED that the Initial Decision herein be and is hereby adopted in part and rejected in part as specified in the Final Commission Decision herein, which the Chairman is authorized to issue simultaneously with this Order on behalf of the Commission; and it is further

ORDERED that the application of Seymour Alter for licensure as a casino key employee be and is hereby denied for the reasons set forth in the Final Commission Decision herein, which is incorporated herein by reference and made a part hereof; and it is further ORDERED that copies of this Order and of the

Final Commission Decision in this matter be served upon the par within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

Dated: May 20, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-EA-60

IN THE MATTER OF THE APPLICATION OF :
SEYMOUR ALTER FOR LICENSURE AS A :
CASINO KEY EMPLOYEE. :

FINAL COMMISSION DECISION

Raymond A. Brown, Esq. and Alan Silber, Esq., appeared for the Applicant

Guy S. Michael, Deputy Attorney General, appeared for the Division of Gaming Enforcement

This matter arises out of the application of Seymour Alter [hereinafter: Applicant] for licensure as a casino key employee. See N.J.S.A. 5:12-9. Mr. Alter's application was filed early in 1978. He was, until his suspension without pay in December 1978, employed by Resorts International Hotel, Inc. as its Director of Real Estate and Retail Stores. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 63 to 65 (1979) [hereinafter: Resorts]. Following this suspension, it was determined that this Commission would consider the Applicant's qualifications for licensure in a proceeding separate from that concerning Resorts' application for a casino license. Id. at 64. Thereafter, on June 18, 1979, the Division of Gaming Enforcement [hereinafter: Division] issued its report to the Commission regarding the Division's investigation of the Applicant's qualifications for

licensure. See N.J.S.A. 5:12-76. In that report, the Division posed an objection to the Applicant's licensure.

On June 25, 1979, pursuant to the Applicant's written request for a hearing, the Commission transmitted this matter to the Office of Administrative Law in accordance with N.J.S.A. 52:14B-10(c). A pre-hearing conference was held on August 7, 1979, and the matter proceeded to formal hearing before the Hon. Norman D. Smith, Administrative Law Judge on August 20, 21 and 22, 1979.

On December 11, 1979, the Administrative Law Judge filed his Initial Decision with the Commission, recommending that the Application for licensure be denied. A copy of the same is appended hereto at A-1 to 24 for convenience of reference. The Initial Decision was forwarded to counsel for the Applicant and the Division on December 11, 1979. The parties were initially afforded 10 working days from receipt of the decision within which to file written exceptions or objections. The Applicant filed a "Statement of Exceptions and Objections on December 21, 1979. On December 19, 1979, the Division was granted an extension of time until January 15, 1980, within which to file written exceptions. On January 10, 1980, the Division filed a brief in partial exception to the Initial Decision and in response to the Applicant's exceptions. The Applicant filed a brief in reply to the Division's exceptions on February 4, 1980.

Upon review and consideration of the Initial Decision in this case, the entire record of the proceedings and the writte

exceptions filed by the parties, the Commission has determined to affirm the Initial Decision insofar as it recommends denial of licensure, but to modify the decision in the areas described below.

I. PRELIMINARY RULINGS

Before entering into discussion of the issues addressed in the Initial Decision relating to the Applicant's qualifications for licensure, it is necessary to review three preliminary rulings made by the Administrative Law Judge.

Two of the Judge's preliminary rulings do not trouble the Commission. The first of these is his ruling that the transcript of the Applicant's testimony before a New York Grand Jury in 1963 (R-1 in evidence) was not rendered inadmissible at the hearing below by virtue of the fact that he was granted immunity from prosecution pursuant to then existing New York law in exchange for such testimony. The second ruling rejected the Applicant's claim that the Grand Jury transcript (R-1) was improperly obtained from New York authorities by the Division, thus rendering it inadmissible, and also rendering inadmissible the transcript of a Division interview of the Applicant (R-9 in evidence) during which R-1 was used in interrogating him. These issues are discussed extensively at the outset of the Initial Decision. The Commission is satisfied that the Administrative Law Judge's conclusions on these points are manifestly correct and therefore adopts them.

The Administrative Law Judge's third preliminary ruling, however, requires correction by the Commission. Because the issue

was raised by the parties before the hearing, the Judge ruled th he would analyze the evidence in this case according to the "residuum rule" of administrative law, rather than in accordance with the specific terms of the then §108(a)(6) of the Casino Control Act [hereinafter: Act]. N.J.S.A. 5:12-108(a)(6). It should be noted that §§107 and 108 of the Act were transposed by the amendments to the Act effected on January 9, 1980. L. 1979, c.282, eff. Jan. 9, 1980. Former §108(a)(6) is now §107(a)(6). That subsection specifies both the type of evidence which may be admitted and the type of evidence which shall be sufficient to support a finding at hearings conducted pursuant to the Casino Control Act.

N.J.S.A 5:12-107(a)(6) provides as follows:

***

> (6) The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action; (Emphasis added).

***

Section 107(a)(6) specifically authorizes the Commission, in proceedings before it, to base ultimate factual findings upon any relevant evidence, regardless of the fact that that evidence may be inadmissible in a civil action, so long as that evidence is the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs. An obvious example of such evidence is hearsay. See Evid. R. 63. In other words, the underscored portion of §107(a)(6) permits findings to be made upon the sole

basis of hearsay which would be inadmissible in a court of law. This is the precise antithesis of the "residuum rule."

It is, of course, well settled that statutory, common law or court-adopted rules of evidence are not binding in administrative hearing proceedings in New Jersey. N.J.S.A. 52:14B-10(a). Accordingly, relevant hearsay is admissible in such proceedings. See, e.g., Newark v. Essex Cty. Bd. of Taxation, 138 N.J.Super. 217 (App. Div. 1975). However, New Jersey is one of those jurisdictions in which the courts have imposed general limitations upon the use of hearsay as the basis for findings of fact in administrative proceedings. Those limitations are embodied in the "residuum rule," set forth by the New Jersey Supreme Court in Weston v. State, 60 N.J. 36 (1972) as follows:

> [I]n our State as well as in many other jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. Id. at 51 (Citations omitted).

The Administrative Law Judge, as noted above, determined to apply the residuum rule in evaluating the evidence in these proceedings. In so doing, he interpreted N.J.S.A. 5:12-107(a)(6) to be consistent with that rule. First, the Judge concluded that the New Jersey Supreme Court in Weston v. State, supra, had raised the residuum rule to the level of a constitutional due process

requirement. He therefore determined that §107(a)(6) of the Act should be interpreted, insofar as possible, as being consistent with the supposedly constitutional residuum rule. Cf. State v. Rosenfeld, 62 N.J. 594 (1973).

Section 107(a)(6) permits findings of fact to be based upon "any relevant evidence," including hearsay, "if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs...." The Administrative Law Judge interpreted the foregoing phrase from §107(a)(6) to constitute a requirement that only reliable hearsay may be used in and of itself to support a finding of fact. We do not quarrel with this interpretation. Nor do we disagree with the Judge's further reasoning that hearsay which is ordinarily admissible, and therefore competent evidence, pursuant to formally adopted exceptions to the hearsay rule (see Evid. R. 63(1) through (32)) would meet the reliability requirement of §107(a)(6). However, we must disagree with the Judge's conclusion that the residuum rule is a requirement of due process under the Constitution, and with the Judge's ultimate conclusion that the residuum rule is consistent with §107(a)(6).

The reliability requirement of §107(a)(6) is wholly consistent with the residuum rule only if it limits the use of hearsay alone to support ultimate findings to ordinarily admissible and competent hearsay evidence pursuant to recognized exceptions to the hearsay rule. In our view, the reliability requirement of §107(a)(6) does not so limit the use of hearsay evidence. The

Administrative Law Judge himself admits at A-4 that there may be tests of the reliability of hearsay within the meaning of §107 (a)(6) other than coverage by an exception to the hearsay rule. Moreover, the very terms of §107(a)(6) clearly state that ordinarily inadmissible, and therefore incompetent, evidence may be used alone to support factual findings subject to the reliability requirement.

For these reasons alone, the Administrative Law Judge's conclusion that the residuum rule and §107(a)(6) are consistent with each other is clearly erroneous. Nor do we think there exists good reason to twist the clear meaning of §107(a)(6) in an effort to render it consistent with the residuum rule. In our view, there is nothing in the opinion in Weston v. State, supra, to support the position of the Judge that the residuum rule is a constitutional due process requirement. Nor has the Judge cited any other authority or offered any persuasive reasoning to support that position. What the Legislature has done in enacting §107(a)(6) is to abrogate a court-made rule of common law. See Magierowski v. Buckley, 38 N.J. Super. 534 (App. Div. 1956). Moreover, this Commission has previously addressed this issue and has held that it may base findings upon reliable hearsay alone pursuant to N.J.S.A. 5:12-107(a)(6). Resorts, supra at 4.

For the foregoing reasons, the Commission expressly rejects the conclusion of the Administrative Law Judge that the residuum rule and §107(a)(6) are consistent. Rather, the appropriate principle is plainly stated in §107(a)(6) as requiring Commission findings to be based on the type of evidence upon which responsible

persons are accustomed to rely in serious affairs, whether such evidence would be admissible under the rules of evidence or not.

II. THE QUALIFICATIONS OF THE APPLICANT FOR LICENSURE

Prior to the hearing herein, the Administrative Law Judge issued a letter, appended hereto at A-25 and 26, in part directing the Division to specify the acts of the Applicant allegedly requiring his disqualification. In its "Pre-Hearing" brief, the Division set forth the following specifications:

1. Seymour Alter engaged in activity in 1962 in connection with a citation received by a liquor store which he was managing, for the violation of state liquor laws, which conduct constitutes bribery under New Jersey law at N.J.S.A. 2A:93-6. This conduct, therefore, constitutes a mandatory disqualification from licensure pursuant to the provisions of the Casino Control Act at N.J.S.A. 5:12-86g.

2. Assuming, arguendo, that the conduct described in paragraph 1 above does not constitute a technical bribery pursuant to the pertinent provisions of New Jersey law, it, nevertheless, constitutes evidence of a lack of honesty and integrity as required for licensure pursuant to the Casino Control Act at N.J.S.A. 5:12-89(b)(2).

3. Seymour Alter assisted in the procurement of paid female companions for persons accompanying him on trips provided to said persons which persons included employees of the Bahamian Customs Department. This conduct reflects adversely on the applicant's good character, honesty and integrity as required to be established by the Casino Control Act at N.J.S.A. 5:12-89(b)(2).

4. Seymour Alter delivered and assisted in the delivery of political contributions, both by cash and by check, to certain political figures in the Bahamas. This conduct reflects adversely on the applicant's good character, honesty and integrity as required by the Casino Control Act at N.J.S.A. 5:12-89(b)(2).

5. Seymour Alter may have engaged in activity in connection with bids submitted on the concession for the gift shop at Resorts International Hotel using his position as an insider to his advantage and to the disadvantage of other bidders. This conduct, if engaged in, reflects adversely on the applicant's good character, honesty and integrity as required by the Casino Control Act at N.J.S.A. 5:12-89(b)(2). (Footnote omitted).

The Administrative Law Judge found that the Applicant's activities in connection with political contributions by Resorts International to Bahamian officials (specification #4) did not reflect negatively upon his good character, honesty and integrity (A-18). This conclusion was based upon the Commission's own conclusion in Resorts, supra, such that these activities were not illegal in the Bahamas, were recorded for the most part and did not reflect adversely on the qualifications of the applicant corporation or its qualifiers. Resorts, supra, at 52-54. Accordingly, this conclusion is adopted by the Commission.

The Administrative Law Judge also concluded that no evidence in the record indicated improper activity on the part of the Applicant in connection with bidding for the gift shop concession at Resorts. Our review of the record shows that the Judge's findings with regard to this matter are manifestly correct. We therefore adopt them as well.

The remaining findings and conclusions of the Judge, however, require substantial modification by this Commission. They may be most conveniently addressed in numerical order according to the Division's specifications. However, one other matter should be discussed initially: the credibility of the

testimony of the Applicant, Seymour Alter.

Prior to addressing the issues regarding the Applicant's qualifications, the Administrative Law Judge extensively discussed the Applicant's credibility (A-7 to 9). Based upon the Applicant's demeanor on the stand, the long period of time which had elapsed since the events under examination and upon the Applicant's admission of one damaging fact, the Judge found him to be a credible witness. The Judge found generally that contradictions in the Applicant's testimony were the product of fading memory and that, therefore, even if that testimony did not reflect the truth of the matters involved, such was not the product of intentional misrepresentation.

The matter of the credibility of the Applicant's testimo , as opposed to his appearance of credibility as a witness, is extremely important. His testimony was the only live testimony presented at the hearing regarding the events embodied in the Division's specifications. Moreover, the Administrative Law Judge appears to us to have based crucial conclusions in the Applicant's favor almost wholly upon his finding that the Applicant was a credible witness, ignoring many possible negative inferences and resolving almost all doubt in the Applicant's favor. In light of the record, we do not believe that we are obliged to accept the Judge's conclusions with regard to the ultimate credibility of the Applicant's testimony without question.

This Commission did not, of course, have the opportunity to observe and hear the Applicant while testifying. According

in reviewing the record and recommended decision herein, we believe that we, like an appellate court, should give "due regard to the opportunity of the one who heard the witnesses to judge of their credibility." Mayflower Securities v. Bureau of Securities, 64 N.J. 85, 93 (1973); Elizabeth Bd. of Ed. v. Elizabeth City Council, 55 N.J. 501, 507(1970); Close v. Kordulak Bros., 44 N.J. 589, 599 (1965). The Commission should treat with some deference findings of a hearing examiner which are based upon his opportunity "to hear and see the witnesses and to have the 'feel' of the case." State v. Johnson, 42 N.J. 146,161(1964). However, a hearing examiner's recommended decision "is not entitled to any special deference where it rests upon a determination as to worth, plausibility, consistency or other tangible considerations apparent from the face of the record with respect to which he is no more peculiarly situated to decide than the appellate court." Dolson v. Anastasia, 55 N.J. 2,7 (1969).

The foregoing quotations highlight an important distinction which we have pointed out above. There is a difference between a witness' appearance of credibility and the actual credibility of his testimony when it is measured in terms of objective factors such as plausibility and consistency. As our Supreme Court has stated:

> Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience

> and observation of mankind can approve as probable in the circumstances.

In re Perrone, 5 N.J. 514, 522 (1950) (citations ommitted and emphasis added); See also State v. Taylor, 38 N.J.Super. 6 (App. Div. 1955).

During the course of the discussion which follows, it will become apparent that the Administrative Law Judge chose to ignore many tangible factors in the record which belie the credibility of the Applicant's testimony on crucial points and render the Judge's reliance upon it misplaced.

A. ACTIVITIES OF THE APPLICANT IN 1962 ALLEGEDLY CONSTITUTING BRIBERY (DIVISION SPECIFICATIONS 1 AND 2).

In 1962, the Applicant Seymour Alter was a resident of New York City and an employee of Huntington Hartford, a person of considerable wealth (T65-9 to T66-7).[1] The Applicant had becoı employed as what may be fairly termed an investment and business advisor to Mr. Hartford in 1956 (T65-22 to T66-24). In 1958, Mr. Hartford acquired, in part through the efforts of the Applicant (T74-1 to 5), a liquor store business in New York City known as "Bermuda Sales Corporation" (T67-8 to 17). The Applicant owned one share of the corporation, of which Mr. Hartford was the major owner (T67-17 to 25). While the Applicant was not often available to supervise the day-to-day operations of the store, because of his other duties in Hartford's employ, he was in fact the manager (T71-3 to T72-9; T274-18 to 23). He was responsible for its

---

1. "T" refers to the transcript of the hearing in this matter, held on August 20, 21 and 22, 1979.

daily operations, hired its employees and had authority to fire them (T274-24 to T275-19).

The Applicant was intimately involved with the formulation and implementation of "store policies" (T277-18 to 20). Examples of such policies significant to this case were credit and discount sales, both of which were illegal in New York at the time (T278-1 to T279-18; R-9 at 23-4 to 24-1).[2] These violations of New York law gave rise to the events forming the basis for the Division's allegation that the Applicant committed acts constituting the disqualifying crime of bribery in 1962, or that, at the least, he committed acts demonstrating his lack of good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2).

At the time of the hearing herein, various sorts of bribery were defined and proscribed by N.J.S.A. 2A:93-1 et seq. In addition, the common law offense of bribery was preserved as an indictable misdemeanor by N.J.S.A. 2A:85-1. See State v. Begyn, 34 N.J. 35, 46-47 (1961). In September of 1979, the New Jersey Code of Criminal Justice became effective, and abolished common law crimes. N.J.S.A. 2C:1-5.

Bribery is now proscribed by N.J.S.A. 2C:27-1 et seq. However, the elements of the offense remain essentially the same

---

2. R-9 in evidence is a portion of the transcript of an interview of the Applicant by the Division held on August 18, 1978.

under the Code. See generally, New Jersey Criminal Law Revisic Commission, The New Jersey Penal Code, §2C:27-2 and commentary (1971). In our judgment, therefore, it makes little difference whether the facts of this case are considered with reference to the old or new law of bribery. Accordingly, the definition of the crime contained in N.J.S.A. 2C:27-1 et seq. will be utilized by the Commission for the sake of convenience.

Bribery was, at the time of the hearing herein, an offense listed as a specific disqualification in §86(c) of the Casino Control Act. N.J.S.A. 5:12-86(c). Under the recent amendment to §86, both the Title 2A and Title 2C versions of the crime remain listed offenses. L.1979, c.282, eff. January 9, 1980. Section 86(c) of the Act provides for the disqualificatic of applicants who have been convicted of listed offenses. The Applicant was not so convicted. Accordingly, the issue to be considered here, pursuant to §86(g) of the Act, is whether the evidence in the record demonstrates that the Applicant has committed "any act or acts which would constitute any offense under subsection c. of this section [§86], even if such conduct has not or may not be prosecuted under the criminal laws of this State." N.J.S.A. 5:12-86(g).

It is now settled that the Commission will deny licensure based upon a §86 disqualification "only if the credible proofs in the record indicate the existence of the disqualification by a preponderance of the evidence." Resorts, supra at 12. Moreover, even where such a preponderance of the evidence is not deemed

present in the record, the proofs with regard to the alleged §86 disqualification may nevertheless be considered as to whether the Applicant here has demonstrated his good character, honesty and integrity by clear and convincing evidence, as he must pursuant to N.J.S.A. 5:12-89(b)(2). Id.

In addition, and most importantly in the context of this case, this Commission has held that evasive testimony by an applicant in Commission proceedings reflects negatively upon his or her good character, honesty and integrity. In the Matter of the Application of John T. Daniels, Jr., for a Casino Employee License (Dealer), Docket No. 78-EA-15, at 19 (1979). A fortiori, deliberately false or misleading testimony with regard to material matters would reflect even more negatively upon such attributes of an applicant. See Middleton v. Real Estate Commission, 39 N.J. Super. 214 (App. Div. 1956) (Suspension of broker's license upheld on the basis of finding of false testimony in revocation proceedings). With the foregoing in mind, we return to a discussion of the evidence in the record regarding Division specifications 1 and 2.

As noted above, the Applicant, in the period from 1958 to 1962, was involved in the formulation and implementation of practices at the Bermuda Sales Corporation liquor store, of which he was the manager, which were then illegal under New York law. These practices were the selling of liquor on credit and at discount prices. The Administrative Law Judge made two findings with regard to the Applicant's admission at the hearing of his

involvement in the carrying on of these illegal practices (see T278-1 to T279-18). First, the Administrative Law Judge cited this admission of a fact damaging to the Applicant's affirmative qualifications as indicating the overall credibility of the Applicant's testimony (A-8 to 9).

We do not believe an inference of credibility is justifiable on the basis of this admission. We know of no legal principle which supports the notion that a relatively minor admission in the context of a given case justifies an inference of credibility with regard to denials by a witness of much more serious allegations, such as the allegations of conduct constituting bribery here. Moreover, as the Division points out in its exceptions, the Applicant's testimony at the hearing regarding these matters was not his first. On August 18, 1978, the Applicant was interviewed by the Division under oath and portions of the transcript of that interview were admitted in evidence as Exhibit R-9 (see T653-9 to T656-14). During that interview, the Applicant uttered essentially the same admission as he made at the hearing with regard to illegal credit and discount sales (R-9 at 23-10 to 24-16 Thus, the Administrative Law Judge appears to have overlooked R-9 in considering the Applicant's admission of these matters at the hearing to have been spontaneously honest. Rather, the Applicant, in so testifying, must have known full well that he had already admitted these matters.

The Administrative Law Judge also found that the Applicant's knowing participation in the implementation of ill

credit and discount sales at the liquor store "clearly and convincingly" evidenced the Applicant's lack of good character, honesty and integrity (A17 to 18). See N.J.S.A. 5:12-89(b)(2). This finding is manifestly correct and is therefore adopted by the Commission. However, we would go further than did the Administrative Law Judge in this area. A comparison of the Applicant's testimony on this point at the hearing with that in the Division interview yields other inferences reflecting negatively upon his character, honesty and integrity.

The Applicant's admission of these practices at the hearing is quoted in the Initial Decision at A-8 to 9 and need not be iterated here. Suffice it to say that the thrust of the Applicant's hearing testimony strongly implies that he continued credit and discount sale policies which had existed under the store's previous owner because Huntington Hartford's attorneys told him to. The Applicant's testimony before the Division of Gaming Enforcement on August 18, 1978, was far different. There, in describing the violations charged against the Bermuda Sales Liquor Store in 1962, the Applicant testified as follows:

> Q. Would you describe that whole issue for us?
>
> A. All right. I was with Hartford in Palm Beach and I received a call from the liquor store manager that the S.L.A. investigator had come in and gave two violations to the store, one for selling on credit.
>
> Q. That was the state liquor authority?
>
> A. Yes. One for selling on credit and one for selling underpriced. Those laws are no longer in existence, but in those days--I was quite aware that we were doing that, but so was every other store, particularly in that area. For example, my store was on 72nd Street, Madison Avenue. I would say that 35 per cent of the big customers, maybe more, you got an order from a butler, one case this, a

case of that, charge it. If you didn't charge it they could darn well go down the street and charge it from the other store. I didn't like it. I did have the ten per cent discount, but it became apparent after a year of business that people would come in and say, well, I'll deal with you, you're closer, but you got to do what he does for me down the block. What is it? Ten per cent. I checked and it was true. So, it was one of those things that it was fairly well prevalent through that whole neighborhood. I can't think of one store.

Q. That kind of violation you are talking about?

A. Yes, that was doing the same thing. Anyway, he got the violation.

Q. Why did you get the violation if the other stores were doing the same thing and didn't get the violation?

A. I think most of those stores, if you go through the records, were caught one way or the other.

Q. They did get the violations?

A. Yes, I know my competitor got the same violation about five months later.

Q. Okay.

A. I never could understand why Sherry's never got it. They were so big that maybe there was a reason why they didn't get it, but I knew they were doing it...

(R-9 at 23-4 to 24-16).

While the Applicant may well have been advised by Hartford's attorneys to continue illegal credit and discount sales at the liquor store, his testimony at the Division interview indicates a conscious choice on his part to continue those practices for other reasons, i.e., business necessity and enhanced economic gain. He did not merely acquiesce in those illegal practices upon the advice of counsel. The licensure of an individual harboring an attitude of conscious disregard for regulatory processes, as evidenced by the foregoing, would hardly serve to inspire public confidence

and trust in the credibility and integrity of the regulation of casino gaming in New Jersey. See N.J.S.A. 5:12-1(b)(6).

Furthermore, the foregoing comparison of the Applicant's testimony with regard to this matter on two occasions reveals an example of what came to be a disturbing pattern in the Applicant's hearing testimony. As will become apparent, on nearly every occasion in which the Applicant's prior testimony, or other evidence, indicated a culpable state of mind on his part, his hearing testimony sought to place responsibility for his apparently illegal acts upon third parties, i.e., to exculpate himself. Here, of course, the Applicant's hearing testimony sought to place responsibility for illegal practices he engaged in primarily upon Huntington Hartford's attorneys. We think his testimony in the Division interview was closer to the truth.

Nor is the patent inconsistency between the Applicant's hearing and Division interview testimony ascribable to fading memory. His Division interview testimony is too detailed to justify that inference. If the Applicant's memory regarding the illegal liquor store practices was deficient at the Division interview, he would have said so as he did with regard to other matters therein (See R-9 generally). Accordingly, we believe the inference is justifiable, on the basis of the foregoing and in light of the Applicant's obvious interest in a favorable outcome in these proceedings, that the Applicant deliberately dissembled in his testimony at the hearing with regard to the matter at hand. This sort of testimony cannot but reflect adversely upon the

Applicant's good character, honesty and integrity, as well as upon the credibility of his other testimony at the hearing. See State v. D'Ippolito, 22 N.J. 318, 324 (1956) (Explaining application of the maxim: "falsus in uno, falsus in omnibus."). We hasten to add, however, that the Applicant's remaining testimony should not be rejected as false on this basis alone. We therefore pass on to a discussion of the evidence in the record with regard to other allegedly illegal activities on the part of the Applicant.

In considering this evidence, we bear in mind our foregoing finding that the Applicant willingly and consciously engaged in illegal liquor retailing practices in New York City between 1958 and 1962. The Applicant's manifest willingness to engage in activities he knew to be illegal at the time certainly tends to corroborate the evidence in the record such that he contemporaneously committed other illegal acts constituting bribery. In the Initial Decision, the Administrative Law Judge appears to have compartmentalized the issues in this case to such a degree that he nowhere addressed the relationship between them. For this, among other reasons, notably his blanket assumption of the credibility of the Applicant's testimony, he found that there did not exist in the record as a whole a preponderance of the credible evidence demonstrating that Seymour Alter committed acts constituting bribery in 1962. For the following reasons, we reject that finding. On the contrary, we find that the Applicant did in fact commit bribery.

In the summer of 1962, while at the Fountainbleu Hotel in Miami, Florida with Mr. Hartford, Alter was contacted over the telephone by an employee of the liquor store who told Alter that charges had been brought against the store by the New York State Liquor Authority on the basis of the illegal credit and discount sales discussed above (T78-7 to 11; T82-3 to 9; T279-19 to T284-15; R-1[3] at 3247; R-9 at 23-1 to 10). It is most important to bear in mind that at this time the Applicant was well aware that he and the other operators of the store were in fact guilty of the charged violations.

Soon after he received this telephone call, the Applicant called Eric Javits, an attorney in New York City who was a personal friend of the Applicant and is the nephew of Jacob Javits, a United States Senator from New York (T83-1 to 18; R-1 at 3247; R-9 at 25-7 to 15). Although the Applicant knew that Javits' uncle was a senator, he denied calling Javits for the purpose of having him exercise political influence (T83-15 to 21).

Eric Javits was a "fairly good" friend of the Applicant, who the Applicant had "gone out" with "numerous times socially" and who had spent considerable time with the Applicant and his wife on Mr. Hartford's yacht (T83-3 to 11). At the time, the Applicant

---

3. R-1 in evidence is the transcript of the Applicant's testimony before a New York grand jury dated April 3, 1963 (see T625-25 to T626-5; T629-17,18). Its admission into evidence was confirmed, and rightly so, in the Initial Decision (A-5).

had known Eric Javits "for at least five years," and Javits had executed the Applicant's will (T83-8 to 14).

The issue of why and with what state of mind the Applicant called Eric Javits, rather than Stroock & Stroock & Lavan, a large New York City law firm usually used by Hartford (T84-24 to T85-4), was hotly contested in these proceedings. This issue is an extremely important one. The Division avers that the evidence demonstrates that Alter called Javits in order to attempt to "fix" the charged violations by means of illegal payments to government officials. The Applicant insisted at the hearing just as strongly that he called Javits only to seek legal representation before the State Liquor Authority [hereinafter: S.L.A.].

The Administrative Law Judge found, with regard to this crucial issue, "that there is nothing in the record to indicate that he [Javits] was called for any other reason than to act as Alter's attorney in the matter or to find someone who could" (A-9 to 10). On the contrary, we find that there is ample credible evidence in the record demonstrating that Alter called Eric Javits for purposes other than to seek legal representation, i.e., for illegal purposes. We also believe the Applicant's testimony explaining how and why he came to call Javits is patently incredible. Accordingly, we expressly reject the foregoing finding of the Administrative Law Judge.

As noted above, the Applicant insisted at the hearing that he called Eric Javits after hearing of the charges brought against the liquor store only in order to seek legitimate legal

representation and for no other purpose (See T83-19 to 21; T84-19 to 23; T85-18 to 24; T294-4 to 13; T295-5 to 20). While Alter did not know whether Javits handled S.L.A. matters, he hoped that if Javits was not experienced in such matters he would nevertheless be able to recommend an attorney who was. Id. The question naturally occurs: why did not the Applicant call the firm of Stroock & Stroock & Lavan, the law firm the Applicant himself termed "Huntington Hartford's lawyers" (T84-24 to T85-2)? In answer to this difficult question, the Applicant conveniently, and consistently with the pattern of his testimony noted above, placed the responsibility for the decision not to call Stroock & Stroock & Lavan upon a third party: Huntington Hartford.

On direct examination, the Applicant first testified that he thought Hartford said, "Stroock & Stroock wouldn't know what to do and get an SLA lawyer" (T85-14, 15). The Applicant did not think Javits was an "SLA lawyer," but "took a shot in the dark that he would suggest one for me." (T85-16 to 19). He later stated on cross-examination that the suggestion to call Javits also came from Mr. Hartford (T288-3 to 9; T293-11 to T295-10). In any event, it was "Mr. Hartford's decision" not to use Stroock & Stroock & Lavan (T295-3).

In light of the Applicant's own testimony as to the services rendered by Stroock & Stroock & Lavan to Mr. Hartford, the suggestion that Hartford thought this enormous law firm would not even be able to recommend an attorney experienced in S.L.A. matters is not only incredible, it is absurd. At the time, Stroock

Stroock & Lavan employed some 200 lawyers (T294-22 to 24). The Applicant himself defined that firm as "Huntington Hartford's lawyers" (T85-2). This was the firm Alter consulted regarding continuation of the credit and discount sales policies. This law firm constituted the "Hartford lawyers" the Applicant testified he was aware "didn't like the idea of bad publicity coming out about Hartford" in connection with the violations (T284-23 to 25). This was the law firm to whom Alter testified he would look to handle the sale of the liquor store (T289-3 to 9). This was the law firm which advised Alter that Hartford could not under New York law hold both a license to dispense alcoholic beverages in his museum as well as a liquor store license (T291-6 to 11; T292-10 to T293-3).

The foregoing alone demonstrates that the Applicant and Mr. Hartford were both well aware that Stroock & Stroock & Lavan possessed the necessary expertise to handle "S.L.A. matters" or to at least recommend an attorney who could represent Hartford upon the charged violations. Under these circumstances, the Applicant's explanation to the contrary, placing responsibility for the decisions not to call Stroock & Stroock & Lavan upon Hartford must be found to be incredible based upon its inherent implausibility alone.

Accordingly, there must have been some other reason for the Applicant's call to Eric Javits. Other evidence in the record demonstrates what that reason was. First, during the Applicant's testimony before a New York grand jury in connection with these

events, he testified under oath as follows:

Q. What was the conversation you had with Mr. Javitz? [sic]

A. I told him what the violations were, that I was very worried because I didn't know exactly what the penalties would be, and I was wondering whether or not he could help me in any way with it.

Q. Well, what did you mean by "help you in any way"?

A. I thought maybe he, himself personally, or would know people that can help me get away from the violation.

Q. What did you convey to him? What type of help were you looking for?

A. I wanted the violation taken away, if possible.

Q. In plain language did you want it fixed?

A. In plain language, yes.

Q. And what did Mr. Eric Javitz [sic] respond to your suggestion?

A. At that time he told me that he would call me back in a few days.

Q. And did he in fact call you back in a few days?

A. Yes, he did.

Q. And what did he tell you?

A. He told me that he had contacted someone, and that everything would be taken care of for $25,000.

Q. Now, did he tell you that he was not handling this himself?

A. Yes.

Q. Did he tell you that somebody else was handling it?

A. Correct.

Q. Did he give you the name at that time, on the phone?

A. No.

Q. And where were you in Florida?

A. I was at the Fontainbleu Hotel.

Q. Did he tell you what this $25,000 was for?

A. Well, the twenty five thousand was a fee, so that I would have not only no violation, but I understood that he would even clear it off the records completely.

Q. There would be no record of violation?

A. Right.

BY MR. SCOTTI:

Q. Did you agree to go along with that at the time?

A. I did, yes.
(R-1 at 3248-3249) (Emphasis added).

The foregoing is not by any stretch of the imagination testimony describing the efforts of a person seeking legitimate legal representation. Rather, it describes a criminal act. Moreover, it was given under oath contemporaneously with the events testified to. The Applicant's explanation of this testimony, again involving placement of responsibility for it upon a third party, will be addressed and disposed of below.

Further evidence of the Applicant's nefarious state of mind in calling Eric Javits appears in his testimony under oath in his interview on August 18, 1978 with the Division as follows:

Q. Okay. Did you admit during Grand Jury testimony that you were attempting to fix that violation with illegal payments?

A. I don't know. I don't remember.

Q. You don't remember?

A. No.

Q. Were you, in fact, attempting to fix that violation with an illegal payment?

A. I guess so.

(R-9 at 7 to 15).(Emphasis Added).

Sometime after he and his attorneys received the transcript of the Division interview, the Applicant submitted a written list of corrections thereto in which it was stated that the last line of the foregoing colloquy should read: "You can consider so." This proposed correction is set forth in the Division's exception brief at page 24. The list of corrections was not, for some unexplained reason, introduced into evidence by the Applicant. This Commission has nothing before it to suggest that the transcript R-9, certified as accurate by a Certified Shorthand Reporter is not accurate. Moreover, even accepting, for the sake of argument, the Applicant's correction here, the import of his testimony is the same. He therein invites the Division and the Commission to "consider" that he attempted to "fix" the violations charged against the Bermuda Sales liquor store by means of an illegal payment. This is as much an admission of culpability as "guessing" that he made such an attempt.

Furthermore, similar statements of the Applicant are recorded in notes taken by New York Assistant District Attorneys of interviews of the Applicant. These are R-5 in evidence, a set of notes dated March 2, 1963, and R-6, a set of notes dated March 9, 1964 (See T632-1 to 19). Counsel for the Applicant stipulated that these exhibits are in fact notes taken of interviews with the Applicant contemporaneously with such interviews and that if the attorneys who transcribed the notes

were available, they would have testified that such notes were an accurate transcription of the interviews (T629-19 to T630-16).

The Administrative Law Judge gave "little weight" to these notes, and properly so since the makers thereof were not available for cross-examination. Resorts, supra, at 4. Nevertheless, having been authenticated by stipulation (cf. Evid. R. 67 and commentary), the Applicant's recorded statements in these notes such that he wanted the charged violations "fixed" and "squashed" (R-6) and that he "had to get this thing fixed" (R-5) certainly tend to corroborate the Applicant's testimony before the grand jury and the Division. As noted above (page 5, supra) even the rankest hearsay may be used to corroborate other competent evidence in administrative proceedings. Weston v. State, supra at 51.

At the hearing, the Applicant advanced an exculpatory explanation with regard to the appearance of the word "fix" in the various documents and testimony described above. The Administrative Law Judge accepted that explanation without question (see A-13). For the reasons which follow, the Commission rejects the finding of the Administrative Law Judge in this regard.

The Applicant testified that before testifying before the grand jury, which he did under a grant of immunity (R-1 at 3245-3246), he had "many talks" with Chief Assistant District Attorney Alfred J. Scotti (T107-16 to 19; see T632-14). During these talks, Scotti constantly used the word "fixed," which the Applicant took to mean "repair" by legal means (T107-19 to T108-24; T298 to T299-4; T342-25 to T344-8). The Applicant's testimony was,

essentially, that the word "fix" was put in his mouth by the Assistant District Attorney and also that he (Alter) answered questions involving that word under oath before the grand jury (and, by implication, the Division) thinking the word was being used in a manner consistent with non-criminal behavior.

The Applicant went even further than this in testifying specifically that the Assistant District Attorney had actually written down the answers the Applicant was to give before the grand jury on a pad of paper which the Applicant took into the grand jury room, pointing to Mr. Scotti's direction to him at page 3246 of R-1 to "...put that pad away." (T112-12 to 19; T35 15 to T359-12; T371-14 to T373-19). This explanation of the Applicant's testimony before the grand jury is not only belied by other evidence in the record, it is absurdly incredible on its face according to simple common sense. See In re Perrone, supra at 522.

First of all, and without more, it is absolutely incredible to suggest that the Applicant, a person of sophistication, a person who moved at will in the higher circles of New York society, a person who was the trusted business and investment adviser of one of the wealthiest individuals in this country, did not know that an Assistant District Attorney in the context of a criminal investigation was using the word "fix" to denote criminal activity. Moreover, the Applicant was well aware at the time, having been so informed by Mr. Scotti, that his activities with Eric Javits, as described above, could be construed as criminal behavior (T441-7 to 17; R-9 at 28-14 to 20). This is precisely

why the Applicant was granted immunity in exchange for his grand jury testimony.

The Applicant therefore knew full well that the word "fix" as it appears in both R-1 and R-9 meant to dispose of the New York liquor law violations by illegal means. In addition, even a cursory perusal of R-1, the grand jury testimony, demonstrates clearly and convincingly that all that was written on the pad in Mr. Alter's possession at the time of his testimony was a statement affirmatively asserting his fifth amendment privilege with regard to the questions being asked of him in order to insure that he would be granted immunity from prosecution (See R-1 at 3243 to 3246). For these reasons, not only must the Applicant's attempt to explain away the foregoing admissions of criminal activity be rejected by the Commission, his testimony in this regard at the hearing herein may properly be deemed to have been deliberately false. See Middleton v. Real Estate Commission, supra.

Furthermore, other aspects of the Applicant's testimony at the hearing herein, and of other evidence in the record, strongly support the conclusion that the Applicant intended to commit bribery in connection with the events under inquiry. We therefore return to our discussion of the Applicant's testimony, both at the hearing herein and prior thereto.

It will be recalled that the Applicant had contacted Eric Javits by telephone regarding the violations charged against the Burmuda Sales liquor store. He had at the time determined that

the store could incur a penalty of as much as a 30 to 45 day suspension of its license upon a determination of guilt with regard to the charged violations (R-9 at 24-21 to 25). Alter's major concern, however, was the possibility that a suspension of the store's license might make it impossible for Mr. Hartford to sell the store, which he was trying to do at the time (See T102-12 to T103-11; T284-22 to T286-10). Hartford wanted to place a bar in his art museum then under construction at Columbus Circle in Manhattan and apparently was not permitted under New York law to simultaneously hold two liquor licenses. Id. As noted previously, the Applicant testified that Javits told him during their first telephone conversation that he did not himself handle S.L.A. matters but could find someone who would (T296-11 to 13).

Javits called the Applicant in Florida several days later and told the Applicant that he had found either "someone" to take care of the matter (R-1 at 3248-3249; R-9 at 25-17, 18) or else a lawyer experienced in S.L.A. matters (T86-12,13). Javits also told Alter that the "fee" would be "a little high," i.e., $25,000 (T86-12 to 21; R-1 at 3249). As noted above, Alter's testimony before the New York grand jury and in the Division interview totally contradicts the notion of legal representation. In addition, the very amount of Javits' proposed "fee" renders that proposition even more difficult to accept. Twenty-five thousand dollars in 1962 is the equivalent of a much larger sum today. The idea that such an amount could have been viewed by a business-man of Alter's sophistication as a legal fee strains credulity. This is especially so in light of the fact that this supposed

legal fee was for representation upon a relatively minor matter which could only have resulted in a 30 to 45 day suspension of the liquor license. This was hardly a major consequence in light of Hartford's wealth. Moreover, the store itself was eventually sold for only $150,000. Thus, the supposed legal fee proposed by Javits was, in fact, not only high but astoundingly huge under the circumstances.

Nevertheless, the Applicant maintained at the hearing that it did not occur to him that this huge fee was for other than legal representation, even at the later time when he was introduced to the person Javits had found to assist him (T92-23 to T93-1). While the fee seemed "high" when Javits quoted it, the Applicant insisted that he "wasn't too aware what lawyers charge" (T389-10 to 12). He knew enough, however, to opine that the fee was "very cheap" in comparison to those charged by "Hartford's attorneys" (T389-15,16). He also stated that he had had sufficient past dealings with Hartford's attorneys to occasionally question their ability (T96-19 to T97-5). Under these circumstances, we simply cannot believe that the Applicant could have thought Javits' proposal to have been for a legal fee, even apart from our conclusion above that the Applicant called Javits for a criminal purpose in the first place.

According to the Applicant's hearing testimony, he told Javits he would have to check with "Hartford and his lawyers" about the fee although it "seemed all right" (T87-22 to 25). Javits had proposed that Alter come to New York to meet with t..

person Javits had procured (T86-15, 16). The Applicant stated that he then told Mr. Hartford about the fee and that Hartford disapproved paying it (T88-11 to 19; see also T382-12 to T383-15). Interestingly, the Applicant's 1962 grand jury testimony makes no mention of any discussion of the fee with Hartford and instead indicates that the Applicant agreed to the fee quoted by Javits (R-1 at 3249). In any event, without calling Javits again, the Applicant went to New York to meet with him a week or 10 days after the telephone conversation on or about July 30, 1962 (T98-20 to 23; T89-12; T92-1 to 7). The Applicant had been informed of the charges on or about July 18, 1962 (T279-19 to T280-7).

Why the Applicant went from Florida to New York without first calling Javits, a good friend, to tell him of Hartford's disapproval of the proposed fee is somewhat puzzling. It is clear, however, that the Applicant went to New York with the idea in mind of negotiating a lower fee (T393-15 to 17; T393-25 to T394-8; R-1 at 3253). He thereafter met with Javits at his office in New York and was introduced by Javits to one Melvyn Thaler (T91-14 to 18; T385-11,12). The three went to a restaurant where Thaler told Alter that a "contract" had been made for $25,000 and that he was "out of trouble completely" (T386-3 to 12; R-1 at 3251; see T92-14 to 18; R-9 at 26). Alter then told Thaler that the fee was unacceptable (T92-20 to 22; T393-8,9).

Alter insisted at the hearing that Thaler's mention of the word "contract" was the first indication he received that something illegal was going on (T386-22 to T387-24; see T93-8 to 14). He

stated he thought he was in a "blackmail" situation (T93-14; T394-13, 14). Thaler's reaction to rejection of his demand "frightened" Alter (T93-13). Thaler said that contracts had been made that he couldn't be "embarrassed this way" (T93-8 to 10; T395-9 to 11; see R-1 at 3252). The Applicant testified that at this point he offered eight or ten thousand dollars knowing it would not be acceptable in an effort to "get out of there" (T9-16 to 25; T393-19 to T394-17; T400-1 to 16).

In light of the foregoing, the thrust of the Applicant's testimony at the hearing with regard to this matter is obvious. He again sought to portray himself as the victim of third parties: this time, Javits and Thaler. However, the Applicant's admissions of criminal intent in prior testimony (R-1 and R-9) and to New York Assistant District Attorneys (R-5 and 6), the fact that the very size of the fee demanded should have indicated something other than legal representation to a reasonable person, and the Applicant's activities after the aforedescribed meeting, all justify the inference that he knew very well that he was engaged in illegal activity. We find from all of the foregoing that Alter meant to offer a bribe in the first place but did not succeed in negotiating the price he wished. We further find that his offer of eight or ten thousand dollars was in fact a serious offer of a bribe and that Thaler was supposed to get back to him about it but never did (T405-13, 14; R-1 at 3253).

As noted, the Applicant's activities after the meeting with Thaler corroborate the inference that he acted with crimina

intent in that prior transaction. Certain of these subsequent actions might even be considered criminal in and of themselves.

After the meeting with Thaler and Javits, the Applicant called his cousin Seelig Adler, who held a high position with a major New York newspaper (T407-1 to 12). At the hearing, Alter maintained that he called his cousin hoping he would know someone who could give him [Alter] information as to what would happen at the S.L.A. as a result of the rejection of Thaler's demand for $25,000. (See T408-1 to T411-21). Before the grand jury, however, the Applicant testified that he called his cousin to find out if he "would know of anybody in the S.L.A. who could help me on the matter" (R-1 at 3255). At the hearing, Alter insisted that by "help" in his grand jury testimony he only meant the gathering of information by means of his cousin's "contacts" (T411-13) in the S.L.A. (T411-16 to 21; T426-15 to 24). He admitted, however, buying airline tickets for his cousin's "contact," one Sidney Appel, an S.L.A. investigator, but maintained that this was a gesture of good will made at his cousin's suggestion which he did not think illegal at the time (T426-1 to T429-19).

The Applicant's grand jury testimony again portrays a somewhat different, and more derogatory picture on this point. A portion of that testimony ran as follows:

> Q. Now, did you have any discussions with him about obtaining airline tickets, to refresh your recollection?
>
> A. Not at that time.
>
> Q. When did that come up?

A. That came up afterwards. He called me up and said that everything was going along smoothly, but that he thought as a gesture of good faith --

Q. What was going along smoothly?

A. My taking care of the violation.

Q. Taking care of the violation?

A. Yes -- that he thought as a gesture of good faith, that I had invited my cousin to come down to Mr. Hartford's hotel at Paradise Island as my guest, and he said as a gesture of good faith, "why don't you send the investigator two tickets, and he could come down also as a guest," and I said, "Fine."

BY MR. SCOTTI:

Q. Which investigator?

A. Mr. Pell [sic]

Q. Well, why did he suggest that you send, or give to the investigator two tickets?

A. Well, I didn't ask my cousin too many questions, but it stood to reason if he asked me to give him two tickets it was because he must have been one of the people who was helping the violation.

(R-1 at 3260-61) (Emphasis added).

We think the above testimony demonstrates with considerable force that the Applicant intended to extract more from Sidney Appel than information as asserted by the Applicant at the hearing. He wanted "help" with the violation, not merely information. We so find.

This conclusion is further supported by the Applicant's grand jury testimony regarding a meeting he attended in an effort to sell the store, arranged by his cousin. The meeting was attended by the prospective buyer, one Lou Miller and Sidney Appel, who Miller introduced to Alter as "the commissioner" (R-1 at 32

3264). At the meeting, Alter and Appel both advised Miller as to how to handle illegal "charge accounts" in the safest way (R-1 at 3264-3265). The meeting took place perhaps 10 days after Alter purchased the tickets for Appel (R-1 at 3266). These are hardly the acts of a person with an innocent state of mind.

It should be noted here that Alter did in fact purchase airline tickets for Appel and his wife and had them delivered through his cousin (T340-18 to 25; R-1 at 3261-3263). At a subsequent meeting, after the District Attorney's investigation of the S.L.A. became public, Appel explained to Alter that "nothing could be done [with regard to the violations] with a big investigation going on "and told Alter he wanted him to take the tickets back (R-1 at 3271-3272). He also told Alter there "would have been no trouble, problem whatsoever" had there not been an investigation going on (R-1 at 3272). The foregoing hardly comports with the Applicant's hearing testimony such that he contacted Appel for an innocent purpose and did not begin to suspect Appel was doing improper things or that it was wrong for Appel to accept the tickets until Appel gave them back (See T431-6 to T432-24).

At approximately the same time the Applicant contacted his cousin, he engaged an attorney named Max Krongold, ostensibly to represent Bermuda Sales before the S.L.A. (T416-1 to 8; R-1 at 3256). He met with Krongold, told him about the $25,000 demand from Thaler, and agreed to pay Krongold $3000 if the disposition of the violations was a five-day suspension or less and $1000 if

the penalty was more severe (R-1 at 3256-3257). Krongold told Alter he was "well connected with the S.L.A." (R-1 at 3258). Most significant, however, was the Applicant's testimony that he "took it for granted" that Krongold was going to "split" the extra $2000 (R-1 at 3267), presumably with some person connected with the S.L.A., although Krongold never said so (R-1 at 3267). This testimony indicates that the Applicant was willing to pay a supposed legal fee which he apparently took "for granted" would be shared with some official in a position to help obtain lenient treatment with regard to the liquor store violations. While we cannot find, based upon the sparse testimony on this subject, that the Applicant intended to pay a bribe through Krongold, the foregoing certainly belies, in our view, the inference drawn by the Administrative Law Judge that the Applicant's activities with Krongold were consistent with an innocent state of mind (see A-12).

What the Applicant actually intended to accomplish through Javits and Thaler, his cousin, Sidney Appel and Max Krongold is demonstrated conclusively by his grand jury testimony with regard to a conversation he had with a "Mr. Abney" on November 1, 1962. Abney was Melvyn Thaler's partner (R-1 at 3281). The Applicant testified as follows:

> Q. Has Mr. Thaler since contacted you, since that meeting where you had lunch with him in the restaurant?
>
> A. No, his partner did.
>
> Q. Mr. Abney?
>
> A. Yes.

Q. What did he say?

MR. SCOTTI: When was this?

Q. That's right.

A. That's easy to remember. November 1st my wife gave a surprise birthday party, and a mutual friend of ours is a girl singer by the name of Nancy Steele, Mr. Abney is her boy friend, and I was not aware at that time Mr. Abney even knew Mr. Thaler, but during the course of the party, he asked if he could speak to me for a moment alone, and when I went upstairs with him, to my bedroom, he said to me, "Whatever happened with the S.L.A. case? Why didn't you ever go through with the deal?" And I looked at him sort of shocked, and he said, "Well, my goodness, didn't you know I was Thayer's[sic] partner?"

I said, "No, I didn't." Then I said to him, "There was no deal. I have to go through other people because I couldn't afford your price," and he dropped it right there, and that was it.

(R-1 at 3281-3282) (Emphasis added).

It is thus made clear that the only reason a "deal" was not made with Thaler to "fix" the violation was that his price was too high, and that the Applicant then sought to accomplish the same "fix" through his cousin, Appel and, perhaps, Krongold, for less money.

It should be noted that all of the events described above, except one, took place before the Applicant was contacted by the District Attorney's office on or about November 28, 1962 (See R-1 at 3276). The only exception is the meeting with Sidney Appel during which Appel told Alter he wished to return the tickets. We note this fact because of the Applicant's assertion in both his testimony and other documents filed in this case such that he was instructed by the District Attorney's Office to attempt to elicit incriminating information in taped conversations with many of

those referenced above. However, it is obvious from the foreg that there is ample evidence in the record apart from testimony relating to the taped conversations upon which to find that the Applicant in fact engaged in criminal activity.

N.J.S.A. 2C:27-2 provides, in pertinent part, as follows:

> 2C:27-2. Bribery in Official and Political Matters.
>
> A person is guilty of bribery if he directly or indirectly offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
>
> a. Any pecuniary benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election; or
>
> b. Any benefit as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding; or
>
> c. Any benefit as consideration for a violation of an official duty of a public servant or party official; or
>
> d. Any benefit as consideration for the performance of official duties.
>
> For the purposes of this section "benefit as consideration" shall be deemed to mean any benefit not authorized by law.
>
> It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.
>
> In any prosecution under this section of an actor who offered, conferred or agreed to confer, or who solicited, accepted or agreed to accept a benefit, it is no defense that he did so as a result of conduct by another constituting theft by extortion or coercion or an attempt to commit either of these crimes.

***

The Commission finds that the facts related above which are drawn from the evidence in the record herein, demonstrate by a fair

preponderance of the credible evidence that Seymour Alter engaged in acts falling within the proscription of N.J.S.A. 2C:27-2.

Specifically, the Commission makes the following factual findings based upon the record herein as extensively discussed above. We find that the Applicant first contacted Eric Javits with the intent to arrange for an unlawful disposition of the violation matters pending before the New York S.L.A. by means of an illegal payment of money to S.L.A. officials. Secondly, we find that the Applicant was aware that the $25,000 figure quoted to him by Javits in a subsequent telephone call was in fact a bribe to be paid either directly or indirectly to S.L.A. officials and not a legal fee. Thirdly, we find that the Applicant later met with Eric Javits and one Melvyn Thaler in New York City for the purpose of negotiating a lower figure, and during that meeting offered to pay a bribe of eight to ten thousand dollars to unspecified S.L.A. officials indirectly through Thaler in exchange for a favorable disposition of the pending violation matters. Based upon the foregoing, the Commission concludes that a fair preponderance of the evidence in the entire record here demonstrates that the Applicant did in fact commit acts constituting the crime of bribery as defined in N.J.S.A. 2C:27-2 in New York in 1962.[4] Accordingly, the contrary findings and conclusions of the Administrative Law Judge in this regard are expressly rejected.

---

4. Because of our finding in this regard, it is not necessary that we address the Division's exception to the Administrative Law Judge's statement that the Division has the burden of proving a §86 disqualification by a preponderance of the evidence. However, we do not adopt the statement in the Initial Decision complained of by the Division. We adhere to our holding in Resorts, supra at 12 with regard to the proof necessary to establish a §86 disqualification.

The Administrative Law Judge's finding that the Applicant was the victim of extortion by the officials involved (see A-12) is of no moment. Regardless of whether these officials attempted to extort $25,000 from Huntington Hartford through the Applicant (See R-7 and R-10),[5] the Applicant was nonetheless guilty of bribery. By the literal terms of N.J.S.A. 2C:27-2, extortion by the bribee is no defense to bribery by the actor agreeing to confer the benefit. And, in any event, there is no evidence in the record such that Thaler threatened the Applicant in order to obtain money from him, an essential element of extortion. N.J.S.A. 2C:20-5.

Nor does it matter that the official action sought never came about. State v. Begyn, supra. at 47-48. The offense is complete upon the offer being made to confer a benefit with the intent that official action be affected thereby.

With regard to the Applicant's activities described above with his cousin Seelig Adler, Sidney Appel and Max Krongold, we decline to consider, as a separate ground for disqualification,

---

5. R-7 in evidence is an indictment against Judge Melvin H. Osterman, to whom Melvyn Thaler was a law secretary, the fifth count of which charges Osterman and Thaler with conspiracy to pay a bribe of part of the $25,000 they asked of the Applicant to an S.L.A. official. R-10 is the transcript of a taped conversation between Osterman and one Epstein, an S.L.A. official (See T398-12 to T399-6), in which the Bermuda Sales violation was discussed.

whether the crime of bribery was committed. It appears to the Commission that all parties assumed during these proceedings that the only acts of bribery alleged were those relating to Javits and Thaler. Nevertheless, there is sufficient evidence in the record showing the Applicant's nefarious intent in dealing with Appel and Krongold for the Commission to consider this evidence as clearly demonstrating lack of good character, honesty and integrity on the part of the Applicant. N.J.S.A. 5:12-89(b)(2). Accordingly, the Administrative Law Judge's finding that the Applicant's activities in connection with Sidney Appel demonstrate "clearly and convincingly his lack of good character, honesty and integrity "(A17) are adopted by the Commission.

On the basis of the foregoing alone, the Applicant is disqualified for having committed acts constituting bribery, an offense listed in §86(c) of the Act. In addition, we find that the Applicant's activities with regard to the maintenance of illegal credit and discount policies at the Bermuda Sales liquor store and his entire course of interaction with Eric Javits, Melvin Thaler, Seelig Adler and Sidney Appel consitute powerful evidence of the Applicant's lack of good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2). Finally, as we have pointed out above, we are most disturbed by the Applicant's less than candid testimony with regard to the transactions at issue here. In short, and for the reasons specified above, we believe the Applicant's story with regard to these events which he uttered under oath at the hearing herein to have been deliberately

fabricated. False testimony of course reflects most negatively upon the Applicant's good character, honesty and integrity. See Middleton v. Real Estate Commission, supra.

In light of our conclusion that the Applicant is disqualified for having committed an offense listed in §86(c) of the Act (N.J.S.A. 5:12-86(g)), it is necessary to address one further issue which is not considered in the Initial Decision. The amendments to the Act effected on January 9, 1980, added a remedial proviso to §86(c). As we have explained, the commission by an applicant, in the absence of conviction, of an offense listed in §86(c) must result in automatic disqualification. The January 9 amendments to the Act added provisions to §§90 and 91 of the Act permitting casino employee and casino hotel employee applicants respectively to avoid the automatically disqualifying effect of §86(c) offenses by affirmatively demonstrating their rehabilitation, according to specified criteria. N.J.S.A. 5:12-90-(h) and 91(d). No such amendment was made to §89 with regard to casino key employee applicants. While this opportunity was not specifically extended by the Legislature to key employee applicants, such as the Applicant here, the proviso added to §86(c) appears to have much the same effect where the offense involved occurred more than 10 years prior to application.

Section 86(c)(4) now provides that:

> [T]he automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately

> preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification....
>
> N.J.S.A. 5:12-86(c)(4) (emphasis added).

While the above proviso speaks in terms of convictions, we deem that it must apply equally where, as here, it has been found pursuant to §86(g) of the Act that an applicant has committed a disqualifying offense although not convicted therefor. Accordingly, the issue to be addressed here is whether the Applicant has demonstrated by clear and convincing evidence that his acts in 1962 constituting a bribery offense do not justify automatic disqualification.

This issue is a close one. The offense we have found in the Applicant's background and the surrounding events we have found to reflect negatively upon his good character all occurred approximately 18 years ago. In fairness to the Applicant, we must consider the negative effect of his offense and other less than forthright activities in 1962 to have been attenuated, at least in some degree, by the passage of this substantial time period. In addition, we must and do consider the testimony of the many character witnesses presented on behalf of the Applicant, tending to establish his reputation as a man well admired in the community, as a man of charity and generosity to the underprivileged and as a trustworthy and efficient businessman. (See A-19, 20).

Nevertheless, and giving the greatest possible weight to the passage of time and to the positive character evidence in the record, we cannot say that the Applicant has clearly and convincingly demonstrated that his 1962 bribery offense does not justify

his automatic disqualification. This is so for several reasons.

First of all, the burden the Applicant must shoulder in this regard is a very heavy one. He is obliged to clearly and convincingly produce in the minds of the Commissioners a "firm belief or conviction" that his offense does not justify disqualification under all pertinent circumstances. See Resorts, supra, at 5-6. Whether this concept is coextensive with that of rehabilitation we need not determine. Suffice it to say that evidence regarding rehabilitation is certainly relevant to the issue at hand and that at the very least, in our view, the Applicant must clearly and convincingly demonstrate his present good character, honesty and integrity in order to satisfy the 10 year proviso of N.J.S.A. 5:12-86(c)(4).

Secondly, we believe the nature of the position applied for by the Applicant and the standards for licensure relating thereto, to be an extremely important factor in this regard. In this connection, it is most significant that the Applicant here is applying for licensure as a casino key employee. See N.J.S.A. 5:12-9 and 85(c). This is the highest level of licensure under the Act. It must be obtained not only by those who seek positions directly involving the supervision of gaming (N.J.S.A. 5:12-9), but also by those who, like the Applicant here, seek postions high in the management of a licensed facility carrying the authority to affect the operation thereof. N.J.S.A. 5:12-38 and 85(c). These are the persons who will direct and control, insofar as permissible in the private sector, the future course of the

casino gaming industry in New Jersey. As such they must meet the very highest standards of qualification in terms of character, honesty, integrity and business probity; not just barely, but clearly and convincingly. While candidates for all categories of licensure under the Act are required to demonstrate their affirmative qualifications clearly and convincingly (N.J.S.A. 5:12-89, 90 and 91), we believe we are obliged to subject applicants for licensure in management positions to the most stringent scrutiny.

Thirdly, the nature of the offense at hand, bribery, and the circumstances under which it was committed in our view weigh heavily against the Applicant here. While all offenses listed in N.J.S.A. 5:12-86(c) must, by legislative command, result in automatic disqualification, some are obviously more probative of traits of character impinging directly upon exclusionary policies of the Casino Control Act than others. See N.J.S.A. 5:12-1(b)(7) and 1(b)(9)(policy of exclusion of those with criminal backgrounds and of career offenders). These policies are designed to engender public confidence and trust in the system of regulation and control of the gaming industry established by the Casino Control Act.

Thus, there is an obvious difference, in terms of the policies of the Act, between the disqualifying offense of bribery and, for example, aggravated assault (N.J.S.A. 2C-12-1(b)). Quite simply, bribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other

offenses. The very object of bribery is, inescapably and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes, but a willingness to actively corrupt them for private ends.

Moreover, the circumstances surrounding the Applicant's commission of this offense demonstrate to us that he was not a mere victim of circumstances and that the incident of bribery we have identified was not an isolated incident. As we have noted above, the Applicant was a very sophisticated individual at the time of this offense. Not only was he far from the ignorant youth he would portray himself as, he was the prime mover of the events in question. He actively sought out Eric Javits in order to seek means of illegally escaping the regulatory processes of the New York S.L.A. When he failed to arrive at an argreement to do so with Melvyn Thaler, he did not stop, but continued his efforts through his cousin, Seelig Adler, which efforts led to his gift of airline tickets to Sidney Appel, an S.L.A. investigator. He also used Appel to assist him in selling the liquor store, participating with Appel in instructing a prospective buyer how to best carry on illegal credit and discount sales without detection by the S.L.A. Furthermore, even the Applicant's alleged attorney-client relationship with Max Krongold at the time carried unsavory overtones. As we have noted above, the Applicant apparently assumed that part of his fee to Krongold would be "split" between Krongold and some third party or parties in the event of a

favorable disposition of the pending violations. Under these circumstances, the incident between the Applicant, Eric Javits and Thaler which we have found to constitute bribery can hardly be said to have been an isolated incident or an aberrational event in the Applicant's background.

Finally, the Commission has found the Applicant to have in many instances given deliberately false testimony in the hearing leading to this Decision. These instances have been specified above.[6] As we have also noted above, this behavior must be held to reflect negatively upon the Applicant's present good character, honesty and integrity. While the other instances of conduct we have identified above as demonstrating the Applicant's lack of the attributes required for licensure took place many years ago, the Applicant's dishonest testimony was given quite recently. We are therefore persuaded that the Applicant has not purged himself of the cavalier and manipulative attitude toward government processes evidenced by his earlier conduct discussed at length above.

---

6. We note that, pursuant to N.J.S.A. 5:12-86(b), the supplying of untrue or misleading information regarding facts material to qualification is a sufficient ground for disqualification in and of itself. However, we decline to determine whether the Applicant is separately disqualified in this regard.

Based upon the foregoing, the Commission is of the unanimous view that the Applicant has not demonstrated by clear and convincing evidence that his bribery offense does not justify automatic disqualification, notwithstanding that it occurred nearly 18 years ago and taking into account the positive evidence in the record regarding the Applicant's good reputation in the community.

B. ACTIVITIES OF THE APPLICANT IN ALLEGEDLY PROCURING PROSTITUTES FOR BAHAMIAN OFFICIALS IN LAS VEGAS (DIVISION SPECIFICATION 3).

The evidence in the record with regard to this matter is adequately set forth in the Initial Decision at A-13 to 14 and need not be iterated here. The Commission agrees with the Administrative Law Judge's conclusion that even if the Applicant himself requested prostitutes from the bell captain on behalf of his companions, his conduct would not fall within the proscription of N.J.S.A. 2A:170-5, now repealed. This conclusion is therefore adopted by the Commission.

Nor do we find it necessary to make a finding with regard to whether the Applicant actively assisted in procuring the prostitutes or merely tacitly cooperated in such procurement and later paid the prostitutes as he freely admitted. For even in the latter case, this conduct on the part of the Applicant certainly reflects negatively upon his good character, honesty and integrity. The Applicant's apparent claim that he had no choice in the matter and that at worst, his conduct amounted to a gift of money by himself to personal friends is of no avail in

our view. We think that citizens always have the choice of whether to assist others in criminal conduct unless a legally cognizable defense of duress, lack of mental capacity or the like is proven. Nor does the Applicant here seriously claim that he did not know the prostitution activity he paid for constituted criminal conduct. Of this he was quite well aware.

Moreover, the persons to whom he gave money to pay for prostitutes were not just friends; some of them were Bahamian government customs officials who had jurisdiction over transactions engaged in by the Applicant's employer. In light of the foregoing factors, we find this incident to again demonstrate a remarkable insensitivity on the Applicant's part to the boundaries of appropriate interaction between private citizens and government officials. Accordingly, this incident necessarily reflects negatively upon the Applicant's good character, honesty and integrity.

The Administrative Law Judge so found (A-17) and the Commission adopts this finding with one modification.

In his finding on this point, the Administrative Law Judge includes as part thereof the Applicant's mere participation in the junket itself as a ground for drawing a negative inference regarding his character. However, this junket was financed through a special corporate fund, expenditures from which the Commission has found not to reflect negatively upon the character or integrity of Resorts International or its qualifiers in Resorts, supra at 61-63. Accordingly, the portion of the Administrative Law Judge's finding relating to the junket per se is rejected as inconsistent

with the Commission's previous decision in this regard.

CONCLUSION

For the foregoing reasons, the Initial Decision of the Office of Administrative Law in this matter is adopted in part and rejected in part as specified above. The Application of Seymour Alter for licensure as a casino key employee is denied for the reasons stated herein and in those portions of the Initial Decision specifically adopted herein.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

DATED: May 20, 1980

SEYMOUR ALTER,	:	INITIAL DECISION
	:	
PETITIONER,	:	OAL DKT. NO. CCC 2085-79
	:	AGENCY DKT. NO. 79 EA 60
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	
	:	
RESPONDENT.	:	

APPEARANCES:

For the Petitioner, Raymond Brown, Esq.
26 Journal Square
Jersey City, New Jersey 07306

Alan Silber, Esq.
33 Evergreen Place
East Orange, New Jersey 07018

For the Respondent, Guy S. Michael, Esq., Deputy Attorney General
Division of Gaming Enforcement
Department of Law and Public Safety
Independence Mall
South Broad Street
Trenton, New Jersey 08625

For the Casino Control Commission, David Arrajj, Esq.
379 West State
Trenton, New Jersey 08625

See Table I - List of Witnesses

See Table II - List of Documents in Evidence

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

This matter concerns the application of Seymour Alter for licensure as a Casino Key Employee pursuant to the provisions of N.J.S.A. 5:12-89. Formal hearings were held on August 20, 21 and 23, 1979. Final responsive briefs were filed on October 18, 1979.

The title of the proposed position of Mr. Alter is Director of Real Estate and Retail Sales. However, the history of his previous performance in that capacity demonstrates that he will also be used in the capacity of a general consultant and trouble-shooter, handling matters that do not fall easily into any specified category (e.g. solving problems of individual employees or unions, community relations, and the like).

N.J.S.A. 5:12-89 B sets forth four (4) criteria for qualification which must be met by the petitioner. The criteria set forth in subparagraph b(1), i.e., financial stability, integrity and responsibility and those set forth in subparagraph b(4), i.e. residency, have been stipulated by both parties as having been met by the petitioner. Therefore, the remaining criteria which must be met are those set forth in subparagraph b(2) i.e. the applicant's reputation for good character, honesty and integrity and those set forth in subparagraph b(3) i.e. sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved. Those criteria must be established by the applicant by clear and convincing evidence.

The parties also dispute the existence of certain acts requiring disqualification as set forth in N.J.S.A. 5:12-86 c and g.

Before discussing the case in main, four preliminary rulings must be made. First, paragraph 7 of the pretrial order notified the parties that I would analyze the evidence in accordance with the so-called "residuum rule". That ruling was over the objection of the Division of Gaming Enforcement and the Casino Control Commission. The pretrial order promised that a formal opinion to support that ruling would be incorporated into the initial decision.

The enabling legislation for the Casino Control Commission, N.J.S.A. 5:12-108a(6) provides as follows:

> "The hearing need not be conducted according to rules relating to the admissibility of evidence in Courts of Law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action;"

The rule promulgated by the Casino Control Commission, pursuant to the authority granted by N.J.S.A. 5:12-70, utilizes the same language. N.J.A.C. 19:42-6.7.

The Office of Administrative Law Act, N.J.S.A. 52:14F-1 et seq. provides for the Office of Administrative Law to create rules of procedure to be followed. See N.J.S.A. 52:14F-5. The Act also contains a clause which purports to repeal any acts or parts of acts inconsistent with its own provisions. See N.J.S.A. 52:14F-10. Counsel for petitioner argues that the proposed rules of procedure of the Office of Administrative Law (which adopt the residuum rule) supercede any prior rules promulgated by the Casino Control Commission and any contradictory portion of the Casino Control Act because the Office of Administrative Law Act was adopted subsequent in time to the Casino Control Act and contains the aforementioned repealer clause. The difficulty with this tempting resolution of the apparent conflict between the proposed administrative law rule and the existing casino control rule is the fact that the rules of the Office of Administrative Law are not yet officially promulgated. A proposed rule, which is not yet promulgated, cannot rise to the level of an existing rule, lawfully promulgated and a fortiori the provision of an existing statute.

More persuasive is the source of the residuum rule itself. The rule has been held to be the general rule in New Jersey for administrative hearings. Weston v. State, 60 N.J. 36 (1972).

> "...in our State as well as in many jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a Court to sustain an administrative decision which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. /citing authority/ "Id. at p. 51.

The Weston case raises the residuum rule to the level of a due process requirement. If the provision of the Casino Control Act (which has been coloquially referred to as the "anti-residuum rule") can be interpreted in a manner which is consistent with the residuum rule, then that is the desired interpretation to be applied. It is my opinion that the Casino Control provision can, in fact, be interpreted consistently with the residuum rule.

N.J.S.A. 5:12-108a(6) permits any relevant evidence (presumably whether or not it is legally competent) to support a finding in and of itself. However, that permission is only granted by the statute if the evidence is of the sort "upon which responsible persons are accustomed to rely in the conduct of serious affairs".

This concern for the reliability of hearsay evidence is the precise concern which motivated the adoption of the various exceptions to the hearsay rule. The hearsay rule has not been jealously guarded in the rules of evidence applicable in Courts of Law, as the many and varied exceptions to it can attest. Wherever it has appeared that hearsay evidence is of such a nature that responsible persons are accustomed to rely upon it in the conduct of serious affairs, an exception has resulted and been formally adopted. It is my view that reliance upon the formally adopted exceptions to the hearsay rule is one permissible test to determine whether or not evidence meets the reliability required by the Casino Control Act. There may be others. However, this test is consistent with the due process requirement of the residuum rule.

It must be remembered that the residuum rule is not used to exclude any relevant evidence, but is merely a method of analyzing all of the evidence at the end of the case. I CONCLUDE that the residuum rule is consistent with the provisions of the Casino Control Act as well as the due process requirements of the Weston case. That is the basis of my ruling in the pretrial order.

The second preliminary matter is the question of the admissibility of the transcript of Seymour Alter's testimony, given under a grant of immunity to a New York State Grand Jury in April, 1963. R-1 was admitted into evidence subject to legal briefs to be filed at the conclusion of the hearing.

The language of the court rule of New York State pursuant to which immunity was granted to Mr. Alter has been stipulated by the parties to have contained the following language:

> "'Immunity' as used in this rule means such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction matter or thing concerning which, in accordance with the order, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding."

The petitioner urges that the consideration in this hearing of his testimony before that Grand Jury, with regard to its affect on his qualifications for licensure, would be

tantamount to subjecting him to a penalty or forfeiture on account of that testimony. However, this proceeding seems to me to bear little or no relationship to any form of penalty or action which would be affirmatively brought against the petitioner for punitive purposes. The consideration in this proceeding is not punitive in any respect but merely analytical; i.e. does the petitioner meet those criteria, which he must meet by force of statute in order to qualify for licensure.

Furthermore, it is difficult to perceive how one could forfeit a right that does not exist. The Casino Control Act provides:

> "Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy in this state concerning gaming for private gain, participation in casino operations as a licensee under this act shall be deemed a revocable privilege ... consistent with this policy it is the intent of this Act to preclude the creation of any property right in any license ... N.J.S.A. 5:121(b)(8).

Therefore, even were the license already granted to the petitioner, he would have no property right in it by reason of the specific terms of the statute. It is even clearer, then, that no right of any nature exists in a license that has not as yet been granted. One can only forfeit what one has.

In the case of Manning Engineering, Inc. v. Hudson City Park Commission, 74 N.J. 113 (1977), the defendant sought to introduce testimony given by the president of plaintiff's company in a prior federal court case under a grant of immunity. The testimony was offered to establish the defense that the plaintiff's services, for which it now brought suit for compensation, were illegal. The statute under which immunity had been granted, 18 U.S.C.A. 2514, contained language identical in all relevant aspects to the language contained in the New York statute under which Mr. Alter has been granted immunity. The court held that the testimony was admissible. The immunity did not extend to actions which were instituted for some reason other than to punish the person who was compelled to give the testimony.

A New York State case reached the same result where testimony given under a grant of immunity was allowed into evidence in an attorney's disciplinary hearing. Anonymous Attorneys v. the Bar Association of Erie County, 41 N.Y. Id. 506, 362, N.E. 2d 592 (Ct. of Appeals, 1977).

The admission of R-1 into evidence is confirmed.

The third preliminary matter is the argument of the petitioner that the Grand Jury testimony of Mr. Alter is tainted by reason of the method by which the Division obtained possession of the transcript. The contention is that the Division obtained possession without legal authority and used the information to unfairly question Mr. Alter in the interview marked R-9 in evidence. Therefore, the petitioner argues, any use of the Grand Jury testimony is prejudicial to the petitioners' rights and should be prohibited.

However, by order dated June 15, 1971, the New York Supreme Court of the County of New York specifically permitted the information to be released to the Division of Gaming Enforcement (C-1 in evidence). Therefore, when the transcript was offered into evidence at this hearing, it was lawfully in the possession of the Division of Gaming Enforcement. I cannot find any prejudice to the petitioner concerning the procedure followed by the Division of Gaming Enforcement.

Finally, a letter was forwarded to my office subsequent to the last day of hearing. The letter can be described as a good character reference for Mr. Alter. Because the record was closed on the last day of hearing, I would only reopen it if it appeared that justice so required. However, the letter is cumulative of many other letters already in evidence and will not act to alter the decision in either direction. Therefore, that letter is not being marked into evidence.

I. THE DISQUALIFICATION CRITERIA UNDER N.J.S.A. 5:12-86 C AND G

I will first explore the allegations concerning those acts of the petitioner which require disqualification according to the assertions of the Division of Gaming Enforcement. If paragraph c or paragraph g of N.J.S.A. 5:12-86 can be shown to apply, then disqualification is mandatory and it becomes unnecessary to make findings concerning other issues in the case.

The Division asserts that certain conduct of Seymour Alter in 1962 in connection with the alleged bribery of a judge in the State of New York constitutes a violation of N.J.S.A. 2A:93-1 et seq, specifically N.J.S.A. 2A:93-6. That statute is one of the listed statutes in N.J.S.A. 5:12-86c. Paragraph G of the same statute provides:

> "The Commission by the applicant or any person who is required to be qualified under this Act as a condition of a casino license of any act or acts which would constitute any offense under subsection c of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State;"

requires the Casino Control Commission to deny the license to the applicant. The issue is whether or not Mr. Alter committed acts in New York in 1962 which would constitute an offense under N.J.S.A. 2A:93-6. The evidence adduced in that regard stems mainly from the direct testimony of Mr. Alter given at the hearing, his prior testimony given before the New York State Grand Jury which is marked R-1 in evidence, and his statement to an investigator for the Division of Gaming Enforcement marked R-9 in evidence. The Division and the petitioner each have different interpretations of the petitioner's testimony.

In analyzing that testimony, an initial comment concerning Mr. Alter's credibility is appropriate. I observed Mr. Alter testify before me for close to two entire days. I paid close attention to his appearance and demeanor as well as to the content of his answers. Mr. Alter listened carefully to each question posed and tried to respond directly to the question. His voice and his emotions rose and fell during

the course of the extensive questioning, both direct and cross-examination, which variations seemed to me to be completely natural and genuine reactions. His responses appeared to me to be sincere and not at all evasive. The Division carefully points out in its brief those areas where Mr. Alter's testimony appears to contradict itself. Nevertheless, those contradictions appear to me to be the natural result of fading memory in attempting to recall detailed activities which took place as long as seventeen years ago. Not only do memories fade over that course of time, but they also change and become indistinguishable from the way one wishes to remember or perhaps the way one remembers remembering itself.

Mr. Alter related matters which he must have known would hurt rather than help his application. For example, in describing his conduct when he first became a stockholder and manager of a liquor store named Bermuda Wines and Liquors in New York City, he became aware that, under prior ownership and management, the store had violated a regulation of the State Liquor Authority prohibiting credit sales and discount sales. His testimony in regard to this matter on cross-examination beginning on page 278, line 13 of the transcript is as follows:

"A. I didn't say Hartford's. I said I brought the problem to his attorneys and they said continue it as the other store had been doing. In other words, don't change anything before we owned the store. I just continued the same as the store was operating before.

Q. Was that policy illegal?

A. I told them it was my impression that it's illegal.

Q. That it is illegal?

A. That I understood it was illegal, and they said this is what's goind on, everybody else is doing it, and do it.

Q. And they advised you to do an illegal act?

A. I don't know how you put it, whether it was an illegal act or not, that's your problem.

Q. It might not be only my problem.

A. It's not my problem.

Please don't make me feel like some sort of a sneak that went around. It was illegal. I told the attorneys this is what's happening, shall I continue, and they said yes, continue."

Mr. Alter could have said that he did not know that those practices were illegal. However, he did not testify that way.

In short, I found Mr. Alter's testimony to be credible. I believe that Alter believed the testimony he gave.

This does not mean that I must necessarily accept all of his testimony as the truth of the matter. For the reasons I have just indicated, his testimony might not represent the truth of the matter, but I find that if that is the case it was not the result of an intentional misrepresentation on Mr. Alter's part.

Based upon Mr. Alter's several testimonies, i.e. the hearing before me, the Grand Jury testimony and the interview with the Division investigator, I find the following facts with regard to the bribery case in New York City. In the summer of 1962 Mr. Alter owned a one-share interest in a liquor store in New York City named Bermuda Wines and Liquors. The majority owner of the store was Huntington Hartford. (T-67-17 to 25). Although not playing an active daily role in the conduct of the business, Alter was nevertheless the manager and was responsible for its management. (T-275-2). While in Florida with Mr. Hartford, Mr. Alter received a telephone call from a store employee and was then advised of charges that were brought against the store by the New York State Liquor Authority concerning credit sales and discount sales; both apparently violations of the New York State Liquor Law. (T-78-7 to 11) (R-1 at 3247) (R-9 at 23). Alter was aware of the practices and knew that they were illegal. (T-278-13 to 25).

Alter called Eric Javitts, a practicing attorney in New York City and nephew of Senator Jacob Javitts. (T-84-16 to 23) (R-1 at 3247) (R-9 at 25). Javitts had prepared Alter's will approximately two years earlier. There is some dispute here as to why Alter called Javitts in particular. The Division argues that he was called for the precise purpose of "fixing" the case. However, I find that there is nothing

in the record to indicate that he was called for any other reason than to act as Alter's attorney in the matter or to find someone who could. It may well be that the choice of Javitts as opposed to another attorney was made because of his ostensible political influence. However, that would be speculation and not particularly probative of the issues in this case. Javitts told him that his firm did not handle SLA matters (State Liquor Authority) but that he would look into finding an attorney (T-85-21 to 24). Javitts called back apparently a few days later and told Alter that he had found someone experienced in SLA matters. The fee was $25,000. Javitts invited Alter to return to New York to meet with him. Javitts told him that the violation would be cleared off the records completely. (R-1 p. 3249). Alter returned to New York City about a week to ten days later. He met with Javitts and another man whom he later learned to be a Mr. Thaler at Javitts' Fifth Avenue office. After the introductions, they left the office and went to a resturant for lunch.

Thaler told Alter that he had good news for him. A contract had been made for $25,000 and he was out of trouble completely. Javitts did not take part in this conversation, but sat silently at the table and listened. Alter told Thaler that he had thought about it since returning from Florida and had decided that he could not afford to pay $25,000; that "the cure was worse than the disease". (R-1 p 3262). Thaler became aggravated and said "You are putting me in a very embarrassing position, because a contract has already been made." (R-1 p. 3262). Alter became frightened at the mention of the word contract and was unsure of the implications of that term. He responded to Thaler that he could go to 8 or maybe even $10,000. (R-1 p. 3253). Thaler replied "It is impossible, the agreement has already been reached, and I can't go back on my word." (R-1 p. 3254). Somewhere during the course of the conversation, Alter was told that he would be expected to pay $5,000 there and $20,000 upon the completion "of the thing". (R-1 p. 3254). Alter asked "well, supposing I do get a violation?" Thaler smiled and told Alter that if he got a violation he would not have to pay anything else. (R-1 p. 3254).

In testifying before the New York Grand Jury, Alter was asked whether Javitts mentioned that he would partake in any of the money. Alter's answer was : "No, he did not make any mention at all. As a matter of fact, I think he said that he never handles SLA matters himself." (R-1 p. 3252). Alter left having offered $10,000 and expecting that Thaler would

get back to him. He never did. That was the extent of Alter's involvement with Mr. Thaler.

Alter subsequently was contacted by investigators of the County Prosecutor's Office. He cooperated with them extensively, including being wired with a tape recorder on his body. He testified before the State Grand Jury under a grant of immunity (R-1 p. 3243 et seq). This resulted in the ultimate indictment and conviction of Thaler, secretary to Judge Osterman, and Judge Osterman as well as the Director of the SLA, one Epstein. (R-7).

Alter now contends that his original anticipation when meeting Javitts was that Javitts would introduce him to an attorney who would handle his case. He understood the $25,000 to be a fee and considered it too high. When he realized that the conversation had taken a sinister turn, especially after the word "contract" was used by Thaler, he was afraid and mentioned the $10,000 figure simply to develop an excuse to leave the meeting. On the other hand, the Division urges that he knew all along that Thaler was looking for a bribe and that Alter was offering one. This is the crux of the issue regarding this entire incident. If in fact Alter intended to offer a bribe, then he would be in violation of N.J.S.A. 2A:96-3 and disqualification would be mandatory.

The burden of establishing the existence of a specific disqualification under N.J.S.A. 5:12-86 c and g rests with the Division of Gaming Enforcement and must be by a proponderance of the evidence (See the opinion of the Casino Control Commission in the Matter of the Application of Resorts International Hotel Inc. For A Casino License, page 12). There are many difficulities in learning the true intent formulated in Seymour Alter's mind in 1962, not the least of which is the passage of seventeen years. While the Division points to the notes of an Assistant County Prosecutor who interviewed Mr. Alter in preparation of the investigation (R-4, 5 and 6), I give little weight to the probative value of those notes to this fine issue. The maker of those notes was not present to be cross-examined. There is no explanation whether these are actual quotes of Mr. Alter or whether or not they are paraphrases of Mr. Alter's comments or actually not Mr. Alter's comments at all. While they were admitted into evidence, I find that they do not help resolve the problem.

P-1 in evidence is a letter from Jeremiah B. McKenna, Assistant District Attorney to the Honorable Donald S.

Hostetter, Chairman, New York State Liquor Authority, dated December 11, 1963. That letter confirms a prior letter and advises that Bermuda Sales Corporation and Seymour Alter cooperated completely with the District Attorney's office throughout his investigation. It concludes: "We sincerely hope you will consider the cooperation given by Seymour Alter to this office in determining what action to take regarding his license." (P-1). Petitioner points to that letter as evidence that the Assistant District Attorney was not so upset by Alter's conduct in the bribery matter as to lead him to believe that Alter should not receive a liquor license. The letter is evidential to that point, although the mental set of the Assistant District Attorney is again, not particularly helpful as to the inner workings of Mr. Alter's mind.

When Alter testified to the New York State Grand Jury that Javitts was not going to take part in that $25,000 because he did not handle SLA matters, that answer is consistent with a possible thought in Alter's mind that Thaler was in fact an attorney who did handle SLA matters and that the payment requested was a fee for legal services. There is no question that Alter was the victim of a heinous scheme hatched by others, specifically Judge Osterman and Mr. Epstein (R-10, R-7). When Alter later hired Max Krongold to handle the SLA charges for him, he agreed to pay Krongold $3,000. In fact, he told Krongold about the incident with Thaler and the $25,000. Krongold said that his fee would only be $1,000 if he, in fact, got anything more than a 5 day suspension. If he got less than a 5 day suspension, his fee would be $3,000. The fact that Alter related the conversation with Thaler and Javitts to Krongold is supportive of Alter's own innocent state of mind at the time. The fact that he agreed to pay Krongold the $1000 even if he got a 5 day suspension indicated that he was willing to go along with the normal adjudicative process and was not necessarily looking to short circuit it. Javitts called Alter sometime later and asked how he was getting along with Mr. Thaler. Alter responded by telling Javitts that he thought he had made a terrible mistake and that Thaler seemed to him to be a crook. (T405-25 to T-406-7).

All of these are consistent with an innocent state of mind of Alter at the time that he spoke with Thaler. Alter was candid in admitting that he would not have objected if the charges were dismissed without ever being brought to hearing. It may well be that Alter would not have objected to the use of a $10,000 legal fee as a bribe as long as he did not know about it. All of these possibilities are speculation and conjecture. There is sufficient evidence to

support Alter's own innocent state of mind at the time that he met with Thaler. While suspicion and innuendo abound, I cannot find by the proponderance of the evidence that Alter violated the bribery statute.

Much moment is made of the use of the word "fix" in the testimony before the New York State Grand Jury (R-1 p. 3248). However, it should be noted that the word was not used initially by Mr. Alter but was a characterization made by the inquirer. Mr. Alter professes now that he meant the word fix only in the sense that something is repaired. In listening to his manner of speech and the fact that he never used the word himself in the first instance, I find that a plausible interpretation and one that is consistent with Mr. Alter's background and speech characteristics.

I THEREFORE FIND there is no mandatory disqualification by reason of the events surrounding the bribery case of 1962.

The other incident offered by the Division as a mandatory disqualifier is an incident which took place in 1969 involving prostitution. Once again, the only source of information is the testimony of Seymour Alter. Based on that testimony, I find the facts to be as follows regarding that incident:

Alter was a member of the Coyaba Club which was basically a social and card playing organization, peopled by members of the Bahamian Custom Department. (T-139-9)(R-9 at 103). The club members asked Alter to arrange a trip for them to Las Vegas in 1969 (T-141-6 to 17 and T-142-17)(R-9 at 103). Alter obtained the approval for this idea from I.G. Davis, President of Resorts International. (T-142-20 to 21; T-144-15). While at a hotel in Las Vegas, one of the members of the junket asked Alter if he could provide them with prostitutes. (T-145-22). Alter's testimony at the hearing on this point was that he didn't know how that could be done and advised the inquirer to ask the bell captain. (T-145-22 to 24 and T-146-8). His prior testimony to the Division investigator differed slightly. He advised at that time that he personally went to the bell captain and said "Find me some girls" as opposed to sending his companion on that errand. (R-9 p. 107 line 3). Because of my analysis of the law regarding this point it is unnecessary for me to make a finding between the two contradictory statements of Mr. Alter. Subsequently, prostitutes came to the suite and went into respective bedrooms with Mr. Alter's companions. Mr. Alter remained in the central living room and did not participate in the activities. Some time later one of the companions came out

and asked Mr. Alter if he would pay for the girls. He initially declined and reminded his companion that each of the men had been given some spending money by Resorts International. The companion responded that he had lost the money at the dice tables. Alter then paid for the girls to avoid a scene.

In State v. Alveario, 154 N.J. Super 135 (App. Div. 1977), the Appellate Division ordered the acquittal of a hotel clerk who rented rooms in the hotel to unmarried couples knowing that they would be used for the purpose of prostitution. The Court noted:

> "There can be little doubt that this provision /N.J.S.A. 2A:17-5/ is addressed narrowly to behavior calculated to attract illicit custom by or on behalf of the prostitute. ... The statutory language being penal in nature, is subject to the rule of strict construction and all doubts must be resolved in defendants favor." Id. at p. 137.

The Court referred to the statement which accompanied the original bill: "The object of this bill is to curb nightwalkers and prostitutes in interferring with and soliciting pedestrians from doorways, houses, etc., the law being insufficient to curb such violations as it now exists."

Just as the Appellate Division concluded that the renting of rooms did not fall within the meaning of inviting or soliciting on behalf of prostitutes, so I CONCLUDE that the mere asking of the question to the bellhop is also not included within that prohibition. More obviously, the alternative set of facts, i.e., that Alter instructed his companion to seek out the bellhop is even more remote.

Therefore, I CONCLUDE that the prostitute incident does not constitute a specific disqualifier.

II. THE AFFIRMATIVE CRITERIA

N.J.S.A. 5:12-89 B3 requires the applicant 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 in the particular position involved.

Based upon Seymour Alter's testimony which was largely uncontradicted, I make the following findings regarding this issue:

Alter was born in 1921. After two years of High School, he left school to work for his father, who owned garages in Washington Heights and Greenwich Village, New York City. After three years of working for his father, he became an investigator for the City Tax Department, charged with investigating possible fraud with regard to the payment of city tax or business tax. He held that job for one and one-half years. He then spent one and one-half years as a supervisor at the Hebrew National Orphanage in Tuckahoe, New York.

His first personal experience with the business world was his position as private detective for Wilmark Service Systems. There, he was engaged in store and business security, including reporting the honesty and efficiency of store personnel. After approximately three years in that position he left to open up his own business. That was called Centennial Service System and he operated it for approximately three or four years. During that time he was chief supervisor of all of the work being done by the agency, which was engaged in security similar to that done by Wilmark. He had a private detective's license from the State of New York and a license to carry a weapon. He had many large client's including major department stores in New York City, such as Macy's, Fanny Farmer Candy Company, the Whelan-Liggit Chain including 100 individual drug stores and others. He then went to work for Huntington Hartford. Basically his function for Hartford was to evaluate the various business opportunities that would be brought to Hartford, as many as ten a day. Hartford's wealth was approximately one hundred million dollars. The investment opportunities ran the gamut of possible commericial enterprises; in Alter's words "building museums to building ping pong tables." (T-66-10, 11). Some of the proposals that culminated from Alter's advice were a theater in Hollywood, a museum in New York and a magazine in New York.

In 1958, after two years as Hartford's personal advisor, Hartford set him up in the Bermuda Sales Corporation, a liquor store in New York City to which reference has already been made. There he was in charge of managing the store. However, during this time he continued to be a personal financial advisor and troubleshooter for Huntington Hartford. This included taking many trips with Hartford, virtually all over the world.

Alter was particularly engaged in appraising real estate values and commercial concepts (T-74-6 to 8). These ranged from a large building on 57th Street to a property in the Bahamas that ultimately became Paradise Island. He has been a consultant to Resorts' International in assessing the

casino property in Atlantic City right from the outset. He has played an active role in negotiating leases with merchants in the casino and with purchasing property in the neighborhood on behalf of Resorts' International.

No evidence was placed on the record by the Division of Gaming Enforcement which would indicate that Mr. Alter was not possessed of sufficient business ability and casino experience to establish a reasonable likelihood of his success and efficiency in the position for which he applies. The lone negative comment concerning Mr. Alter's business skill was adduced during cross-examination of Mr. Alter. It was there brought out that Mr. Hartford's fortune shrank from one hundred million dollars to eight million dollars during an eighteen (18) year period when Alter was giving him financial advice. Alter responded that all you could do was advise Hartford, but that he did not necessarily listen to Alter's advice. (T-270-13 to 25; T-271-1 to 17). Alter also played a key role in putting together the purchase of Paradise Island and the conversion of it into a casino resort, the sale of it to Mary Carter Paint Company which later became Resorts International, the purchase of land in Atlantic City and the development of Resorts' Internationals' Atlantic City facility.

The evidence is clear and convincing that Mr. Alter is possessed of sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in his proposed employment as a director of real estate and leases.

That leaves the last issue to be determined i.e. the applicant's reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89 B2. As pointed out in the opinion of the Casino Control Commission In the Matter of the Application of Resorts International Hotel Inc., For A Casino License, at p. 8, "A sullied reputation may well be indictive of poor character. In that respect, reputation is quite relevant. However, reputation and actual character are not the same. It may well occur that an applicant suffers from an undeservedly bad reputation. ... In other words, if the credible evidence demonstrates that despite the unfavorable reputation, the person actually possesses the essential attributes of good character, honesty and integrity, then that person should not be rejected. Public confidence will be preserved by the exposition of the reliable evidence which proves the inaccuracy of the reputation."

Conversely, a good reputation may be shown to be erroneous by actual proof of a bad character.

I find the following facts with regard to this issue:

Following the aforementioned meeting with Mr. Thaler concerning the 1962 liquor violations, Mr. Alter contacted his cousin, an editor of a New York newspaper. (T-408-7 and T-409-7 to 11). He asked his cousin whether he knew anybody in the State Liquor Authority who could help him on the matter, (R-1 at 3255). His cousin subsequently returned the call and advised Alter that he had contacted an investigator for the SLA and he was taking care of the violation. (R-1 at 3260-3261). His cousin suggested that as a jesture of good faith, Alter send the investigator two airline tickets to Paradise Island where he would be Alter's guest. Alter agreed to this and actually did procure the tickets and have them forwarded to his cousin for transmittal to the investigator.

When asked at the Grand Jury proceedings why Alter's cousin had suggested sending him the airline tickets, Alter responded that he didn't ask his cousin too many questions "But it stood to reason, if he asked me to give him two tickets, it was because he must have been one of the people who was helping the violation." (R-1-3261). I find that his attitude and actions with regard to sending gifts to an investigator on his case is, at the very least, unsavory, and clearly and convincingly evidences a lack of good character, honesty and integrity.

I find that Mr. Alter's participation in the junket to Las Vegas with Bahamian officials, including his tacit cooperation in the obtaining of prostitutes clearly and convincingly evidences a lack of good character, honesty and integrity.

I find that Mr. Alter as manager of a liquor store in New York City in 1962, was aware that the store was violating two provisions of the New York State Liquor Law by permitting credit sales and discount sales. He was responsible for the management of the store. He knew of the policy. He knew it was illegal. He in fact discussed it with his attorneys, and he made a knowing decision to continue the policy because it was the way everyone did business in New York City. (T-278-13 to 25). I find his knowing violation of the laws pertaining to a regulated business to clearly and convincingly evidence lacking

of good character, honesty and integrity. His willingness to violate those laws are especially relevant because gambling is allowed as a privilege in this state subject only to a high degree of regulation. It is vital that everyone employed in the casino industry understand the necessity for following all regulations of state law. The State of New Jersey in allowing casino gambling, has expressly endeavored to assure that it is an industry where observance of the law is the rule rather than the exception, so that the attitude that motivates someone to follow an accepted practice in violation of the law never has a chance to develop in the first place.

The division also offers testimony concerning Alter's delivery of cash to certain political parties and public figures in the Bahamas. Rather than make specific factual findings in detail in this initial decision, I will observe merely that all of this conduct was previously considered in the opinion of the Casino Control Commission In The Matter of the Application of Resorts International Hotel, Inc. For A Casino License, beginning at page 52 and continuing to page 54. The Commission concluded that these political contributions were legal under existing law at the time when they were made. Additionally, especially in light of the legality and tradition of such contributions in the Bahamas and the fact that records thereof were maintained, on the whole these contributions do not reflect adversly upon the good character, honesty and integrity of James Crosby (who directed Alter to make the payments) and the applicant corporation. Mr. Alter was merely the individual who delivered the payments which the Commission has already concluded carry no negative inference regarding the qualifications of Resorts International and James Crosby. Therefore, they should not carry negative inferences against Mr. Alter.

The Division further offers evidence concerning the Resorts International Hotel Gift Shop. Regarding that allegation I make the following findings:

In February, 1977 Alter asked James Crosby, Chairman of the Board of Resorts International whether he could be awarded the Gift Shop at Resorts International. Alter had previous experience in the operation of a similar shop on Paradise Island. (T-190-23 to T-191-5 and T-203-13). Crosby conferred with the Board of Directors and advised Alter that the Board desired that the matter be put up for bids. (T-191-9 to 11; T-205-16 to 19). The following day Alter made his bid at $30 a square foot against 12½% of the gross revenue. (T-206-10 to 13). Alter received all the bids which were forwarded

as a response to an advertisement in a newspaper that appeared on August 5, 6 and 7, 1977 (T-207-18 to 19) (P-13). On August 25th the bids were closed and Alter's bid was still the highest. (T-209-16). On September 16, Alter and Jack Davis placed a higher bid, this time at $40 a square foot against 12½% of the gross (T-210-22 to 25) and with an additional square foot guarantee in advance (T-212-67).

The Division argues that Alter used his inside position to his advantage by reviewing all of the bids and then increasing the terms of his bid so that it was substantially better than all of the others. However, since the bids were not required by law in the first instance, and the uncontroverted evidence is that Alter's bid was in fact the highest, I see no improper action on Alter's part. There is no evidence that he violated the instructions of the Board of Directors. I find no negative inferences from the evidence concerning the aforesaid bidding procedures.

In fairness to Mr. Alter, some eighteen (18) witnesses took the stand to testify to his reputation for good character, honesty and integrity. Many letters were filed similarly attesting (P-17, P-18). All of the witnesses appeared to me to be testifying sincerely and credibly.

Based upon the testimony of those various witnesses I make the following findings. Among his social friends, Mr. Alter has a reputation for being an honest, ethical man and a man of principles and integrity. (T-518-23 to 25). He also earned a reputation among merchants in Atlantic City as a man of his word who was honest, loyal and who dealt fairly and openly with businessman. (T-534-3 to 24)(T-572-21 to T-573-6).

I further find him to be a man of compassion for the needs of others who is quick to use his position in a generous manner to help those in need. During his employment with Resorts' International, he was helpful to senior citizen organizations (T-537-11 to T-539-5) (T-552-20 to T-554-18).

He was personally instrumental in the effectness of the Affirmative Action Employment Program of Resorts' International to employ women and minorities at every level of employment. (T-542-8 to 12).

He used his offices to aid mentally and physically handicapped people (T-544-16 to 20)(T-560-3 to 563-25). He

channeled Resort International funds to aid underprivileged children in Atlantic City. (T-545-2 to 13).

Among employees of Resorts International he has a reputation of being hard but fair. (T-546-20, 21). He had an unusual ability to solve problems of employees by cutting through unnecessary red tape. (T-549-5 to T-550-14).

Mr. Alter is a man eager to help charities of all kinds and to use the resources of Resorts' International for that purpose. (T-566-11 to 570-15). He is also a fine family man. (T-567-9 to 13).

Mr. Alter's genuine concern for the well-being of others was exhibited early in his life. This was attested to by several witnesses who had been orphans in an orphanage where Mr. Alter was a supervisor. He apparently had a profound salutary affect on the development of these witnesses into successful adults. (T-575 to T-608-4).

His reputation among businessman in the Paradise Island business community was one which engendered trust (T-616-10 to 16).

In short, Mr. Alter is a man of complex personal dimensions. There is much about him that is unique and positive. His personal philosophy has resulted in a substantial benefit to many Atlantic City residents' as well as employees of Resorts' International. It is difficult to reconcile these findings with the acts previously referred to that Mr. Alter admits having committed. The only conclusion that can be reached is that there is another side to Mr. Alter's nature which has permitted him in the past to knowingly violate the New York State Liquor Laws while managing a liquor store because everyone else was doing it; to exceed the bounds of propriety by financing a junket of Bahamian officials to Las Vegas including the services of prostitutes, in order to mantain their good will for business purposes; to send gifts to an investigator for the New York State Liquor Authority because he was helping Mr. Alter out of difficulty with pending charges against him. Those acts render the petitioner's proofs with regard to his good character, honesty and integrity something less than clear and convincing, which is required by the statute.

Therefore, it is hereby ORDERED that the petitioner's application for licensure as a casino key employee be denied.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, who by law is empowered to make a final decision in this matter. However, if the Chairperson does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1 et seq.

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

December 6 1979
DATE

NORMAN D. SMITH, ALJ

December 11, 1979
DATE

Receipt Acknowledged

AGENCY HEAD

Mailed to Parties

DATE

OFFICE OF ADMINISTRATIVE LAW

mjl

TABLE II

LIST OF DOCUMENTS IN EVIDENCE

P-1	Letter 12/11/63 from Jeremiah B. McKenna to Donald S. Hostetter
P-2	Agreement dated 5/21/65
P-3	Letter 4/6/71 to S. Alter from I.G. Davis
P-4	Check 000442 June 30, 1972
P-5	Check 000440 June 30, 1972
P-6	Check 000441 June 30, 1972 (Bahama Developers Limited
P-7	Check #5 August 1, 1972 on Bank of Commerce
P-8	Check #4, August 1, 1972 on Bank of Commerce
P-9	Check #3, August 1, 1972 on Bank of Commerce
P-10	Undated receipt for $75,000 from Cecil Whitfield
P-11	Undated receipt for $55,000 from Cecil Whitfield
P-12	Undated receipt from FNM/Stationery signed Cecil Whitfield
P-13	Advertisement from the Atlantic City Press, Friday, August 5, 1977
P-14	Letter December 11, 1978 from Davis to Alter
P-15	Resume, John Glassey
P-16	Resume, W.H. Rhoads
P-17	Letter re: character of S. Alter
P-18	48 letters re: Gratitude of Organizations
P-19	Transcript of testimony of Colin Calendar

TABLE II continued:

R-1	Transcript of Grand Jury testimony
R-2	Letter dated 1977, May 11, to Gore from Alter
R-3	3 page bid compilation document
R-4	3 page document 11/28/62, notes of Goldstein
R-5	7 page document 3/2/63, notes of Goldstein
R-6	7 page document, notes of Scotty and Goldstein
R-7	docket sheet, indictment
R-8	Subpeona
R-9	Interview of Sy Alter by Division of Gaming Enforcement
R-10	Transcript of New York Liquor Authority, Oscarman-Epstein 7/27/72
C-1	Order, Supreme Court of New York June 15, 1979

TABLE I

LIST OF WITNESSES

Rabbi Aaron Krauss	John Glassey
Seymour Alter	John Buffman
John Alden Talbot	Donald Friedman
Evelyn Grossman	Richard Safran
Walter Qualls	Aaron Luttinger
Frank Gerace	Rom Bondy
W.H. Rhoads	Henry Firstenberg
Joel Mittleman	Eric Amber
Rafael Kravec	Gerald Fishbein

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
234 EAST STATE STREET, CN 049
TRENTON, NEW JERSEY 08625
(609) 292-6042

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

August 7, 1979

Raymond A. Brown, Esq.
26 Journal Square
Jersey City, New Jersey 07306

Alan Silber, Esq.
33 Evergreen Place
East Orange, New Jersey 07018

David Arrajj, Esq.
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Guy S. Michael, Esq.
Deputy Attorney General
Division of Gaming Enforcement
State House Annex
Trenton, New Jersey 08625

Thomas Lowe
Office of Administrative Law
185 Washington Street
Corner of Raymond Boulevard
Newark, New Jersey 07102

RECEIVED
AUG 1 0 1979
NEW JERSEY
CASINO CONTROL COMMISSION

Gentlemen:

Re: Seymour Alter CCC #2085-79

As a result of the pre-hearing conference held this morning in the above-referenced matter, please note the following:

1. The trial date is carried from August 13, 1979 to August 20, 1979 at a location as yet uncertain.

2. Briefs by all parties will be filed with my office on or before August 15, 1979, on the following points:

a. The nature and extent of the participation in the hearings of the Casino Control Commission.

b. The application of the procedural rules set forth in the Casino Control Act to a proceeding before the Office of Administrative Law with specific attention to the so-called residuum rule.

c. The effect, if any, of the proposed rules governing proceedings before the Office of Administrative Law, currently in draft stage.

d. The burden of going forward with evidence with specific attention to the distinction between the affirmative and negative criteria set forth in the Casino Control Act.

e. The burden of persuasion with specific attention to the distinction between the affirmative and negative criteria set forth in the Casino Control Act.

f. The potential evidence problem concerning the presentation of selective tapes.

3. Mr. Michael will submit a list of acts which the Division of Gaming Enforcement contends constitute disqualification of the petitioner together with references to supporting statutes and regulations.

4. A pre-trial order will be issued upon receipt of the foregoing material. I will have my secretary call each of you and read it to you if necessary so that you are apprised of its contents prior to the hearing.

Thank you all for your splendid cooperation.

Very truly yours,

Norman Smith
Administrative Law Judge

NS:ams

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3920-79
CCC DOCKET NO. 79-EA-112

IN THE MATTER OF THE APPLICATION :
OF GARY W. BRUMMOND FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (FLOORPERSON) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions to the Initial Decision filed on behalf of the Applicant, no exceptions or objections having been filed by the Division of Gaming Enforcement, and the Commission having resolved at its public meeting of May 1, 1980 to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 8th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Gary W. Brummond for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: 6/8/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF GARY W. BRUMMOND FOR LICENSURE AS A CASINO EMPLOYEE (FLOOR MAN)	:	INITIAL DECISION OAL DKT. NO. CCC 3920-79

APPEARANCES:

Howard G. Guggenheim, Esq. appeared on behalf of the applicant, Gary W. Brummond, (Messrs. Harris & Guggenheim, attorneys)

John J. Degnan, Attorney General for the State of New Jersey, by: Joseph A. Mussomeli, Deputy Attorney General, for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In April of 1979, Gary W. Brummond (applicant), filed an application, including a Personal History Disclosure form, with the Casino Control Commission (Commission) for licensure to work as a casino employee (floor man). By letter dated July 26, 1979, the Division of Gaming Enforcement (Division) objected to the licensure of the applicant based upon his failure to disclose past employments at Jerry's Nugget, the Silver Bird, and the Silver Nugget casinos, and dismissals from the MGM Grand and Frontier hotels in response to questions 31 and 33 on his Personal History Disclosure form. The letter also stated that the applicant failed to disclose a judgment entered against him in the amount of $4142.00 for failure to pay on an auto loan, which was subsequently satisfied.

The applicant was advised by letter dated September 4, 1979, from the Casino Control Commission's general counsel, with a copy of the Division's report enclosed, that there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing.

The applicant requested a hearing on September 10, 1979 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 October 26, 1979. A hearing was held on January 9, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Mussomeli on February 4, 1980 and from Howard Guggenheim, Esq. on March 4, 1980. The hearing was closed on the latter date.

The applicant testified that he came to New Jersey on May 1, 1979 and returned to Las Vegas sometime in the middle of October. He has continued to maintain a residence in Brigantine, New Jersey. He neglected to list "a couple of jobs", held at various times, at Jerry's Nugget, the Silver Nugget, and the Silver Bird casinos in Las Vegas. He denied that he tried to conceal any of his prior employments but, he simply followed the customary practice in Nevada of listing his longest periods of employment. All of his terminations, including Jerry's Nugget, the Silver Nugget, the Silver Bird, the MGM Grand and the Frontier were, to the best of his knowledge, the result of changes in personnel wherein new managers "bring in their own people". He believed that he was never fired from any casino position.

He purchased a house in Nevada sometime before December of 1979. He intended to keep the property for approximately a year prior to resale. That house had a $60,000 first mortgage and a $26,500 second mortgage. He made payments on the first mortgage; however, he neglected to make payments on the second mortgage. The house is presently for sale.

He purchased a car from a friend. The car was repossessed. When he attempted to pay the arrearage, together with three months in advance, the finance company demanded payment in full. The car was sold; however, he denied that he was served with a complaint and/or copy of a judgment.

He is presently employed at the Desert Inn and Country Club in Las Vegas.

James Edward Southwick, an investigator employed by the New Jersey Division of Gaming Enforcement, testified as follows: he spoke to both Fred Baker, a security officer, and Glen Neely, a casino manager, at the MGM Grand. Baker showed him the applicant's personnel file which stated that

he was discharged "due to poor job performance". Neely related that the applicant was discharged because "he was incompetent, because he was not paying attention to business such as credit and customer complaints". Neely added that "the MGM Grand does not fire many employees and to get fired, he had to be -- (he was) quoted as saying -- really bad". The Personnel Action Transmittal Form MGM (R-2) reveals that the applicant was terminated because of "unsatisfactory job performance".

When Inspector Southwick interviewed the applicant on two occasions, he stated that he was "laid off" at that casino.

Investigator Southwick spoke to Gerri Smith, a personnel representative, at the Silver Bird, who related that the applicant was terminated on two occasions for failure to follow casino and hotel rules. He interviewed Phyllis Leathers, a bookkeeper at Jerry's Nugget, who informed him that the applicant was terminated due to a "conflict with the boss, personality conflict".

Investigator Southwick spoke to Ester Evans, a security chief at the Frontier casino, who informed him that the applicant was discharged for "making a bet for himself"; hustling i.e, trying to promote a customer to tip the dealer; for "taking a gift"; and for "making a bet out of field" for himself. Evans was quoted as saying 'we really picked a bad one'.

Investigator Southwick stated that Fred Baker, the security officer at the MGM Grand, showed him the applicant's personnel file wherein it stated that he was discharged "due to unsatisfactory job performance". He did not know who made that entry in the personnel file. He interviewed Glen Neely for approximately ten minutes and verified the applicant's position and dates of his employment. Neely related that the applicant was discharged due to unsatisfactory job performance. Neely was the casino manager at the same time when the applicant was employed as a dealer at the MGM Grand. He spoke to Gerri Smith, the personnel representative, at the Silver Bird on the telephone. He did not know if she knew the applicant personally. He did not see the applicant's personnel file. He interviewed Ester Evans, the security chief, at the Frontier casino on the telephone. Evans stated that he was looking at some document while the interview was being conducted; however, investigator Southwick never saw the applicant's personnel file.

FINDINGS OF FACT

Having reviewed the testimony and exhibits presented into evidence together with having observed the demeanor and

having assessed the credibility of the witnesses, I FIND:

1. Question 31 reads in full as follows: "provide the information listed below as to each place in which you have been employed. Beginning with the most recent and work backwards. Give dates of idleness between employment in prior sequence. Include all parttime and fulltime employment. Include by means of an asterisk (*) any employment where gaming, (as defined in Part IX) was conducted on the premises".

   The applicant failed to list his employments at (1) Jerry's Nugget, (2) Silver Bird and (3) the Silver Nugget casinos.

   The applicant was employed at Jerry's Nugget from January 1978 to March 1978; at the Silver Nugget in April of 1978, and from January 1974 to November 1974; and at the Silver Bird from April of 1976 to May of 1977, and from October 1973 to December 1973.

2. Question 33 reads as follows: "were you ever discharged or asked to resign from employment?". The applicant has placed a check mark after the work "no".

3. The applicant testified that he was never fired, to the best of his knowledge, while employed in a casino in Nevada, but was terminated on various occasions "because of a change in personnel".

4. A Division Investigator, James Edward Southwick, spoke personally to Fred Baker, a security officer at the MGM Grand. Baker related to the investigator that the applicant was discharged for "poor job performance".

5. Baker showed Investigator Southwick the applicant's personnel file with the notation that he was discharged because of "poor job performance". The Personnel Action Transmittal Form from MGM Grand is in evidence as (R-2).

6. Investigator Southwick personally spoke to Glen Neely, casino manager, at the MGM Grand who stated that the applicant was discharged because "he was incompetent, because he was not paying attention to business, such as credit and customer complaints".

7. Investigator Southwick spoke to Gerri Smith, a personnel representative, at the Silver Bird on the telephone, who related that the applicant was terminated on two occasions for "failure to follow casino and hotel rules".

8. Investigator Southwick spoke on the telephone to Phyllis Leathers, the bookkeeper at Jerry's Nugget, who stated that the applicant was terminated due to a personality conflict with a supervisor.

9. Investigator Southwick spoke to Ester Evans, a security chief at the Frontier hotel, on the telephone. He gave four reasons why the applicant was terminated from employment: he was making a bet for himself; he was "hustling"; he was taking a gift; he was making a bet "out of field" for himself.

10. The applicant purchased a home in Nevada. The house has a $60,000 first mortgage and a $26,500 second mortgage. The applicant has been paying on the first mortgage but has not been making payments on the second mortgage. The house is now for sale.

11. The applicant purchased a car which was repossessed by the finance company. The record is devoid of proof that the applicant was served with a complaint or that a civil judgment was docketed against him.

12. The applicant came to New Jersey May 1, 1979. He returned to Las Vegas in the middle of October. He is presently employed at the Desert Inn and Country Club in Las Vegas. He asserts that he has maintained a continuous residence in Brigantine, New Jersey.

CONCLUSIONS OF LAW

N.J.S.A. 5:12-86(b) provides in pertinent part:

> "the Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the criteria:
>
> (A) . . .
>
> (b) . . . failure of the applicant to reveal any fact material to qualification or misleading as to material fact pertaining to qualification criteria . . .".

The legitimate inferences from the testimony are that the applicant was less than candid when he filled out his Personal History Disclosure Form (PHD). Concededly it might be argued that minor omissions are common place; however, the oversights here are too numerous to be attributed to momentary inadvertence, ignorance or mistake. Various employees at Las Vegas casinos related to a division investigator specific, concrete and concise reasons for the applicant's terminations. At the MGM Grand, the applicant was terminated for incompetence and the failure to pay attention to his business. The applicant was terminated by the Silver Bird for "failure to follow casino and hotel rules". He was discharged from the Frontier because he made a bet for himself; he was "hustling"; he was taking a gift; and he was making a bet "out of field" for himself. The applicant was terminated by Jerry's Nugget due to a personality conflict with a supervisor.

The applicant's assertions that he was not given any of the aforementioned specific reasons for his discharges, except "a change of personnel", strains credulity.

I CONCLUDE that the applicant violated the statute by supplying misleading and incomplete information regarding material facts pertaining to his licensure.

I FURTHER CONCLUDE, substantially for the aforementioned reasons, that the applicant's failure to disclose his terminations from the various casinos, and his failure to list his employments on his Personal History Disclosure Form (PHD) at Jerry's Nugget, the Silver Bird, the Silver Nugget also adversely reflect upon his good character, honesty and integrity to compel denial of his license under N.J.S.A. 5:12-90(b) and N.J.S.A. 5:12-89(b)2 of the Act.

I CONCLUDE that the proofs are deficient to establish that the applicant failed to disclose a civil judgment against him involving the repossession of his car; or that a mortgage transaction on his property in Las Vegas, presently for sale, constitutes a lack of financial stability, integrity and responsibility under N.J.S.A. 5:12-89(b)1 and N.J.S.A. 5:12-90(b) of the Act. Any adverse inferences on these two matters only rise to a plateau of conjecture and speculation.

The applicant contends that he has satisfied the residency requirements of New Jersey under the Act pursuant to N.J.S.A. 5:12-89b(4) and N.J.A.C. 19:41-4.3.

The term "resident" is defined under N.J.S.A.5:12-42.1., as:

> "any person who occupies a dwelling within the state, has a present intent to remain within the state for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indicia that his presence within the state is something other than merely transitory in nature".

N.J.A.C. 19:41-4.3 provides that:

> "all casino key employee licensees and casino employee licensees be residents of this state for a period of six (6) months immediately prior to the issuance of a license".

I CONCLUDE that the applicant has not satisfied the six (6) month durational residency requirement for licensure. He came to New Jersey May 1, 1979 and returned to Las Vegas sometime in the middle of October. He is presently employed at the Desert Inn and Country Club in Las Vegas. Therefore, he has been a resident of the state for approximately five and one half (5½) months.

Moreover, the applicant's presence in the state appears to be "transitory in nature". He does not possess a sufficient "ongoing physical presence within the state" to satisfy the Commission's licensing requirements under the definition set forth in the aforementioned statute.

It is my recommended decision that licensure be DENIED.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lordi, who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1.

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

March 21, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged

March 25, 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3714-79
CCC DOCKET NO. 79-EA-113

IN THE MATTER OF THE	:	
APPLICATION OF CHARLES	:	FINAL ORDER
CLENTCHSCALE FOR LICENSURE	:	
AS A CASINO EMPLOYEE	:	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Richard L. Voliva, Jr. of the Office of Administrative Law, and the Commission having considered the entire record of proceedings, the Initial Decision of the Administrative Law Judge and the exceptions to the Initial Decision filed by the Division of Gaming Enforcement, no exceptions or objections having been filed by the Applicant, and the Commission having resolved at its public meeting of April 9, 1980 to affirm in part and reject in part the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 22nd day of April 1980, ORDERED that the Initial Decision of the Administrative Law Judge be affirmed insofar as it concludes that the Applicant failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2); and

It is further ORDERED that the Applicant is disqualified from licensure for having intentionally failed to disclose his employment at Rahway State Prison and with Wells Fargo Guard Service, contrary to N.J.S.A. 5:12-86(b), as supported by the findings of fact and conclusions of law set forth in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI, CHAIRMAN

DATED: April 02, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3714-79
CCC DOCKET NO. 79-EA-113

IN THE MATTER OF THE APPLICATION :
OF CHARLES CLENTCHSCALE FOR :
LICENSURE AS A CASINO EMPLOYEE. :

FINAL
COMMISSION DECISION

A. Charles Clentchscale, appeared pro se.

Patricia Arons, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On January 16, 1979, Charles Clentchscale [hereinafter "Applicant"] filed an application for licensure as a casino employee in the position of dealer with the Casino Control Commission [hereinafter "Commission"]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter "Division"] for the appropriate background investigation.

As a result of this investigation, the Division submitted a letter-report dated August 21, 1979 to Chairman Lordi, interposing an objection to the licensure of the Applicant. Upon inquiry, the Applicant was advised that there was a substantial possibility that the Commission would deny his application for licensure. The Applicant thereupon requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq.

After the issuance of a Prehearing Conference Order the matter proceeded to formal hearing on November 27, 1979. Administrative Law Judge Richard L. Voliva, Jr. filed his Initial Decision in this matter on January 14, 1980, a copy of which is appended hereto as A-1 through A-13. The Initial Decision was served upon the parties on January 17, 1980. Pursuant to N.J.S.A. 52:14B-10(c) the parties were afforded ten (10) days from their receipt of said Initial Decision to file a statement of written exceptions or objections to the findings and conclusions of the Administrative Law Judge. No exceptions or objections have been filed by either party.

In his Initial Decision the Administrative Law Judge recommended that the Applicant be denied licensure. The Commission agrees. Nevertheless, many of the findings and conclusions expressed in the Initial Decision and issues which surface from a review of the entire record of proceedings which were not addressed in the Initial Decision, require discussion.

The first issue framed for administrative review at the hearing was whether the Applicant's alleged failure to return uniforms to Wells Fargo Guard Service [hereinafter "Wells Fargo"], a prior employer, was an act which would constitute an offense under N.J.S.A. 5:12-86(c),[1] even if such conduct

---

[1] Section 86(c) of the Casino Control Act, N.J.S.A.5:12-1 et seq. was amended by L.1979, c.282, effective January 9, 1980. The amendments to this section have no bearing on the question of the Applicant's disqualification for allegedly engaging in conduct constituting larceny, in light of its resolution in the Applicant's favor.

has not or may not be prosecuted under the criminal laws of this State. N.J.S.A. 5:12-86(g). It appears that the Applicant was employed as a part-time security guard by Wells Fargo from December 1978 to February 4, 1979 and failed to return uniforms issued by his employer after this employment relationship was severed. Ultimately, the uniforms were returned.

The Division alleged that the Applicant's failure to return the uniforms was conduct equivalent to the commission of larceny pursuant to N.J.S.A. 2A:119-1, which is an offense listed in N.J.S.A. 5:12-86(c)(2), as amended.[2] The Administrative Law Judge found that there was no evidence that the Applicant's acts were willful or malicious, one of the essential elements of the offense of larceny. Based upon this finding, the Administrative Law Judge concluded that the Applicant should not be disqualified on this ground.

Upon review of the applicable law and the entire record of proceedings the Commission concludes that the findings and conclusions of the Administrative Law Judge in this regard are supported by persuasive legal authority and substantial credible evidence. Although not expressly stated in N.J.S.A.2A:119-1, in order to constitute larceny, case law requires proof of

---

[2] It is unclear whether the Applicant's alleged conduct should be characterized as larceny, N.J.S.A. 2A:119-2 or embezzlement, N.J.S.A. 2A:102-5. See State v. Leicht, 124 N.J.Super. 127(1973) and State v. Barbossa, 157 N.J.Super. 26(1976). Nevertheless, resolution of this issue is unnecessary in light of the fact that a common element to both offenses is the intentional deprivation of the property of another and further the Commission's disposition of this ground for disqualification. Moreover, under N.J.S.A. 2C:20-1 et seq., there no longer appears to be a distinction between larceny and embezzlement, except for the gradation of any theft as constituting a crime of the third degree, if it is in breach of an obligation by a person in his capacity as a fiduciary. N.J.S.A. 2C:20-2(b)(2)(e).

animus furandi, the intent to deprive the owner permanently of the property taken. State v. Leicht, 124 N.J.Super. 127, 133 (1973). Any unfavorable inference to be drawn concerning the Applicant's intent, based upon his failure to return the uniforms in a timely fashion, does not, when viewing the evidence as a whole, rise to the level of a preponderence of the evidence. Disqualification on this ground is clearly not mandated.

The second issue framed for administrative review was whether the Applicant is disqualified from licensure under N.J.S.A. 5:12-86(b) for having failed to provide information, documentation and assurances required by the Casino Control Act [hereinafter "Act"] or requested by the Commission.[3] A review of the Applicant's Personal History Disclosure Form [hereinafter "PHDF"] reveals that the Applicant failed to list his employment as a correction officer at Rahway State Prison from June to October 1976.[4] The Applicant also failed to list

---

[3] See, N.J.S.A. 5:12-80(b) and (d).

[4] Part VII of the PHDF at p. 12 is as follows:

> Provide the information listed below as to each place in which you have been employed. Begin with the most recent and work backwards. Give dates of idleness between employment in proper sequence. Include all part-time and full-time employment. Include by means of an asterisk (*) any employment where gaming, ... was conducted on the premises.

Applicants must then supply the following information concerning employment: dates; name and mailing address of employer; position and description of duties; name of supervisor and reason for leaving.

his part-time employment as a security guard for Wells Fargo from December 1978 to February 4, 1979. Testimony at the hearing also revealed that a Division investigator personally interviewed the Applicant and reviewed each question and answer thereto on the Applicant's PHDF, in order to insure that each question posed therein was understood and that every answer was responsive and complete. The Applicant volunteered no information to supplement that which had been provided in the PHDF (T208-18 to T209-8)[5]. Subsequent to this interview and during the course of its investigation, the Division ascertained that the Applicant had in fact been employed by Rahway State Prison and Wells Fargo (T211-3 to 11 and T215-3 to 6).

In his Initial Decision the Administrative Law Judge found that the aforedescribed nondisclosures were ignorant and therefore concluded, based upon the Commission's construction of N.J.S.A. 5:12-86(b) in In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 13 (1979), that disqualification for licensure on this ground was inappropriate. While the Commission agrees with the Administrative Law Judge's interpretation of N.J.S.A. 5:12-86(b), we nonetheless find, for the reasons which follow, that the record does not support the finding that these non-disclosures were ignorant. Conversely, the Commission finds that these nondisclosures were intentional and therefore concludes that the Applicant is disqualified from licensure

---

[5] "T" refers to the transcript of the hearing herein held on November 27, 1979.

for having failed to provide information, documentation and assurances required by the Act or requested by the Commission, pursuant to N.J.S.A. 5:12-86(b).

A review of the hearing transcript shows that the Applicant offered alternative and inconsistent explanations in an attempt to justify his nondisclosures of prior employment. The Applicant repeatedly testified that his PHDF nondisclosures were caused by carelessness in the completion of the form (T13-1 to 6; T32-4 to 8). This bland assertion is belied by the events which followed the Applicant's filing of his PHDF. As noted earlier, a Division investigator reviewed each question and answer on the PHDF with the Applicant prior to commencing his investigation. No additional information was supplied by the Applicant. Thereafter the Division investigator discovered the aforementioned prior employment and contacted the Applicant. Upon being confronted with his nondisclosure the Applicant advised the Division investigator that he believed that the Commission was more interested in recent employment and further that he did not think part-time employment was important (T211-12 to 17; T217-9 to 18).

Not only are these explanations inconsistent with the Applicant's purported carelessness, they evince a conscious decision by the Applicant not to divulge his prior employment. This finding is further substantiated by the fact that the Applicant's purported carelessness in the completion of his PHDF could have been cured easily during the Division

investigator's review of the questions posed and answers supplied therein. It was not. Moreover, the record indicates that the undisclosed employers furnished derogatory information to the Division investigator, which reflects adversely upon the Applicant's reliability and the overall performance of his work-related duties (T209-13 to T210-17; T216-10 to T217-3). The nexus between such information and the Applicant's motive in not disclosing same is readily apparent.

The Commission reiterates that it is for the Commission and Division, not the Applicant, to decide what information, documentation and assurances it requires in order to properly assess an applicant's suitability for licensure. See, In the Matter of the Application of Angelo J. Ruggiero for Licensure as a Key Employee, Docket No. 79-EA-69 (1979). Applicants who fail to provide that which is requested do so at their own peril. Based upon all of the foregoing, the Commission concludes that the Applicant is disqualified for licensure pursuant to N.J.S.A. 5:12-86(b), for having intentionally failed to disclose, on his PHDF and to a Division Investigator, prior employment at Rahway State Prison and Wells Fargo.

During the course of its investigation the Division discovered evidence which was probative of the fact that the Applicant had been discharged from his employment with Wells Fargo. Applicants are required to divulge all discharges from employment in response to the pertinent question contained in

their PHDF.[6] The Applicant made no mention of the purported discharge in his PHDF. Based in part upon the foregoing, the Division interposed its objection to the licensure of the Applicant pursuant to N.J.S.A. 5:12-86(b).

Review of the hearing transcript reveals that during his perusal of the Applicant's employment records at the Mercer County Correction Center, the Division investigator came upon a letter which had apparently be sent by one George Titko, an employee of Wells Fargo, to the Mercer County Correction Center. This letter, among other things, stated that the Applicant had been terminated from his employment at Wells Fargo. The Division investigator testified that he contacted George Titko by telephone and confirmed the Applicant's purported termination (T212-3 to 25). The Applicant denied having been discharged and testified that he voluntarily terminated his employment with Wells Fargo (T13-10 to T14-9).

In an effort to lend credibility to the testimony of its investigator and to further substantiate the Applicant's purported undisclosed discharge from employment, the Division sought to introduce into evidence a copy of the aforedescribed letter. Although no objection to its introduction was raised by the Applicant, the Administrative Law Judge refused to admit this letter into evidence. It is unclear from a review of the hearing transcript what the precise basis was for the Judge's ruling.

---

[6] Question 33 on the PHDF states:

Were you ever discharged or asked to resign from employment? If yes, how many times? Provide the [following] information ... as to each time you were discharged or asked to resign from employment [:] date; name and address of employer, supervisor's name and reasons for discharge or resignation.

Both the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Casino Control Act, N.J.S.A. 5:12-1 et seq., recognize that administrative hearings are to neither be conducted according to, nor bound by, the rules relating to the admissibility of evidence in courts of law. See, N.J.S.A. 52:14B- 10 (a) and N.J.S.A. 5:12-107(a)(6). Relaxation of these technical and often cumbersome evidentiary rules permits parties to introduce evidence which might otherwise be inadmissible. Notwithstanding this practice, the factfinding process remains safeguarded since the Administrative Law Judge and ultimately the reviewing administrative agency are afforded the opportunity to give however much or little weight to such evidence that it deserves. So long as the evidence in question is relevant and its probative value is not substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of prejudice, it should be admitted. See N.J.S.A. 52:14B-10(a).

The letter in question was clearly relevant. Its introduction into evidence would have consumed little time and further posed no danger of prejudice. Failure to admit the letter in question resulted in the rendering of an incomplete record on this issue.

Based upon the evidence adduced, the Administrative Law Judge found that the Applicant had not been discharged from his employment with Wells Fargo and therefore concluded that the Applicant's disqualification pursuant to N.J.S.A. 5:12-86(b) was not mandated. In light of all of the foregoing, especially the erroneous exclusion of pertinent evidence on this issue, the Commission neither affirms nor rejects the findings and conclusions of the Administrative Law Judge but declines to disqualify the Applicant for his alleged failure to disclose his discharge from employment. It should nevertheless be noted that if other bases for disqualification from licensure were not present, the Commission would be entitled to remand this matter to the Office of Administrative Law for the purpose of completing the record on this issue.

An additional basis for disqualification from licensure raised by the Division is the Applicant's alleged intentional failure to disclose on his PHDF the fact that he was the subject of disciplinary action while an employee at the Mercer County Correction Center. If such nondisclosure appears by a preponderance of the evidence from the record as a whole, the Applicant is subject to disqualification from licensure under N.J.S.A. 5:12-86(b).

The Prehearing Conference Order is unclear as to whether this issue was framed for administrative review at the Prehearing Conference. Nevertheless, a review of the hearing transcript reveals that this issue was noted in the Division's

opening statement (T6-24 to T7-3); testimonial evidence was also introduced on the subject by both parties (T28-17 to 29-20; T34-11 to 37-7; T244-15 to 245-8). Although this testimony is addressed in the Initial Decision in the context of its relationship to the Applicant's reputation for good character, honesty and integrity, findings of fact and conclusions of law are conspicuously absent on the issue of the Applicant's disqualification from licensure under N.J.S.A. 5:12-86(b) for having failed to disclose being the subject of disciplinary proceedings. In light of the absence of such findings and conclusions and in recognition of the fact that alternative bases exist upon which the Commission relies to deny licensure, it is unnecessary to pass on this question.

An issue that received a substantial amount of attention at the hearing in this matter was the Applicant's alleged involvement in the sale of marijuana, a controlled dangerous substance. See, N.J.S.A. 24:21-5(e). The Division sought to establish that the Applicant, while employed as a guard at the Mercer County Correction Center, sold marijuana to an inmate and also to a fellow guard. Sale of marijuana is proscribed by N.J.S.A. 24:21-19 and is classified as a high misdemeanor. Criminal charges have never been filed against the Applicant in connection with the events noted above. Nevertheless, the Division asserted that, if it appeared by a preponderance of the evidence from the record as a whole that the Applicant had in fact sold marijuana, this conduct

would render his licensure inimical to the Act and casino operations. N.J.S.A. 5:12-86(g) and (c).

As discussed earlier, N.J.S.A. 5:12-86(c) as well as other sections of the Act have recently been amended by P.L. 1979, c.282. These amendments occurred subsequent to the hearing and almost simultaneously with the filing of the Initial Decision by the Administrative Law Judge. As a result of this sequence of events, the Applicant's alleged conduct relating to the sale of drugs was not considered in the light of N.J.S.A. 5:12-86(c)(3) as amended. If the requisite showing is made that the Applicant sold marijuana, this conduct results in disqualification from licensure when N.J.S.A. 5:12-86(c)(3), as amended, is considered in tandem with N.J.S.A. 5:12-86(g).

At the hearing the Division introduced evidence probative of the fact that the Applicant, while employed as a guard at the Mercer County Corrections Center, sold marijuana to one of its inmates (T38-12 to T50-9). The Administrative Law Judge found that the proofs were insufficient to establish a violation of N.J.S.A. 24:21-19 by a preponderance of the evidence and therefore concluded that the Applicant faced no disqualification from licensure under N.J.S.A. 5:12-86. Without setting forth in detail and with particularity the findings of the Administrative Law Judge on this issue, suffice it to say that the Commission affirms and adopts

those findings and conclusions set forth in the Initial Decision.

Additional testimony at the hearing focused upon the Applicant's alleged sale of marijuana to a guard, John F. Wilkie, Jr., also then employed by the Mercer County Correction Center. The Administrative Law Judge found that the testimony concerning the actual sale was vague and further that Wilkie was not sufficiently qualified as an expert to identify the substance sold as being marijuana. Based upon these findings, the Administrative Law Judge concluded that the record, when viewed as a whole, did not establish the proscribed conduct by a preponderance of the evidence and therefore recommended that disqualification was not warranted on this ground. The Commission disagrees. Based upon a careful review of the entire record, the Commission is satisfied that the Applicant sold marijuana to Wilkie, contrary to N.J.S.A. 24:21-19 and further that this fact has been established by a preponderance of the credible evidence.

With respect to the sufficiency of the evidence concerning the transaction itself, Wilkie testified that he approached the Applicant, asked whether he had any "pot" for sale, and requested to buy a "nickel bag."[8] (T63-4 to 10; T64-19 to 24.)

---

[8] It is clear from the context in which the terms "pot" and "nickel bag" were used, that they referred to marijuana and five dollars worth of marijuana, respectively.

Wilkie further testified that subsequent to this inquiry, he met the Applicant at Trenton High School where a substance was given to him by the Applicant, in exchange for five dollars (T64-25 to T65-23). The Applicant denied having sold marijuana to Wilkie (T15-22 to T23-10).

The Administrative Law Judge found that the substance purchased was not sufficiently identified as marijuana because Wilkie was not qualified to reliably identify the substance. The Judge cited State v. Pipkin, 101 N.J.Super. 598 (App. Div. 1968), to support this conclusion. In Pipkin, the Court concluded that the identification of a controlled dangerous substance - heroin - could be established circumstantially. There, the testimony of long time addicts, that their physiological and psychological reactions after injecting themselves with the substance purchased from the defendant were the same as they had previously experienced from heroin injections, was sufficient to permit the jury to find that the substance purchased was in fact heroin. Contrary to the assertion of the Administrative Law Judge, Pipkin fully justifies a finding in the present matter that the Applicant sold marijuana to Wilkie. While the Commission believes that the proofs adduced at the hearing were sufficient to support a criminal conviction, which requires proof of each and every element of an offense beyond a reasonable doubt, it is certainly clear that the

record amply supports the finding by a preponderance of the evidence that the substance sold by the Applicant was marijuana.

As noted earlier, Wilkie allegedly purchased a substance from the Applicant after making a specific request for marijuana. Implicit from this fact is the inference that the Applicant sold that which had been asked for. Wilkie further testified that he smoked this substance in cigarette form and felt "high" and further denied having added anything to the substance or being under the influence of alcohol (T67-18 to T68-13). Moreover, Wilkie testified that the substance smelled like marijuana (T68-25 to T69-7).

Identification of the substance allegedly purchased is further substantiated by the fact that Wilkie's exposure to marijuana was not isolated to his use of the marijuana allegedly obtained from the Applicant. The Applicant himself admitted to having smoked marijuana with Wilkie. In addition, the Applicant was of the opinion that Wilkie could identify marijuana (T248-24 to T249-9). Further, Wilkie admitted to having been arrested and charged with possession of marijuana in July 1978 (T67-5 to 9).[9]

Finally, the Commission notes the findings of the Administrative Law Judge concerning the testimony of this witness at A-10:

---

[9] The record does not reflect the disposition of this charge against Wilkie.

> ... Mr. Wilkie's testimony was clear, candid and convincing. He was forthright and had ample recollection of the incidents. That he did not come forward prior to his arrest is of no consequence. These proofs were entirely credible and pose a substantial obstacle to Mr. Clentchscale's licensure.

Based upon all of the foregoing, the Commission is satisfied by a preponderance of the evidence not only that there occurred the sale of a substance from the Applicant to Wilkie, but that the substance sold was marijuana. Hence, the Commission concludes that the Applicant has engaged in conduct, categorized as a high misdemeanor under N.J.S.A. 24:21-19, which is an enumerated statutory disqualifier under N.J.S.A. 5:12-86(c)(3), as amended.[10]

Pursuant to N.J.S.A. 5:12-90(h) of the Act as amended, an applicant for licensure as a casino employee is afforded, after a finding that he has committed an act which is an enumerated statutory disqualifier under N.J.S.A. 5:12-86(c), an opportunity to demonstrate his or her rehabilitation by clear and convincing evidence. The Applicant was not afforded this opportunity since N.J.S.A.5:12-90(h) as amended, was not law when the

---

[10] In light of this conclusion, it is unnecessary to determine whether such conduct would render the Applicant's licensure inimical to the Act and casino operations. N.J.S.A. 5:12-86(c) and (g).

hearing was conducted. For reasons to be discussed infra, the Commission has determined that notwithstanding this fact, remand on this issue is unnecessary.

An issue neither framed for administrative review in the Prehearing Conference Order, nor addressed in the Initial Decision is whether the Applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-86(b) for having failed to disclose his use of marijuana on his PHDF or in response to the specific inquiry of a Division investigator. This issue was not raised by the Division at the Prehearing Conference, since the Applicant's use of marijuana was not disclosed until the Applicant so testified at the hearing. Only then did the inconsistency between the Applicant's response in his PHDF and to the inquiry of the Division investigator, as compared to his testimony at the hearing, become apparent.

Question 49 on the PHDF states:

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

Although no specific reference is made to marijuana in this question, marijuana is a substance listed in Schedule I of N.J.S.A. 24:21-5(e). The Applicant responded negatively to this question.

As noted earlier the Division investigator testified in detail concerning the procedure he employed with the Applicant in reviewing the contents of the PHDF. Each question and response thereto was reviewed in detail to insure that all questions were understood and all answers complete. Specifically, with respect to question 49 set forth above the Division investigator testified that after reading the question and illiciting a negative response from the Applicant, he also asked the Applicant if he had used marijuana, which question was also answered in the negative (T253-3 to 16).

Subsequent to the introduction of the Applicant's PHDF into evidence and to the Division investigator's testimony concerning the Applicant's use of marijuana, the Applicant was advised on the record by counsel for the Commission that his inconsistent statements regarding t use of marijuana, if unexplained, might result in disqualification under N.J.S.A. 5:12-86(b). The Administrative Law Judge nevertheless stated that he would not consider this issue.

The Act permits the transmittal of contested cases pursuant to N.J.S.A. 52:14B-2, such as the instant matter, to the Office of Administrative Law. N.J.S.A. 5:12-108(a)(1) as

amended. The Office of Administrative Law, N.J.S.A.52:14F-1 et seq., was established in 1978. The purpose of this legislation is set forth in the Senate State Government, Federal and Interstate Relations and Veterans Affairs Committee Statement, Senate, No. 766-L.1978, c.67:

> The legislative goal embodied in this bill is to create a central independent agency staffed by professionals with the sole function of conducting administrative hearings. This will tend to eliminate conflict of interests for hearing officers, promote due process, expedite the just conclusion of contested cases and generally improve the quality of administrative justice.

Central to this goal is the development of a complete record, coupled with an Initial Decision containing findings of fact and conclusions of law on all issues.

During the course of a hearing, issues often develop that are not reasonably foreseeable at the Prehearing Conference. While in certain limited instances, requiring the parties to address an issue not framed for administrative review in the Prehearing Conference Order may be prejudicial, that is certainly not the case herein. This is especially true when the issue comes to fore as a result of the testimony of the Applicant, which is at variance with prior statements or information furnished to the Commission or Division. In such cases it is imperative that the Administrative Law Judge not only afford the parties the opportunity to address such an issue, but to make findings of fact and conclusions of law with respect thereto.

As a result of the Administrative Law Judge's refusal to consider the issue of the Applicant's disqualification under N.J.S.A. 5:12-86(b) based upon his failure to disclose his use of marijuana on his PHDF or in response to the inquiry of the Division investigator, the Applicant was deprived of the opportunity to offer any justifiable excuse for these prior inconsistent statements. Thus, the record with respect thereto is incomplete. The Commission therefore declines to consider or decide this issue.[11]

Applicants seeking licensure as casino employees are required, among other things, to demonstrate their reputation for good character, honesty and integrity by clear and convincing evidence. N.J.S.A. 5:12-89(b)(2) and 90(b). As a result of its investigation, the Division interposed an objection to the Applicant's licensure on this ground. Thus, this issue was framed for administrative review.

In the Initial Decision the Administrative Law Judge concluded that the Applicant failed to demonstrate that he possessed the requisite reputation for good character, honesty and integrity. Based upon its review of the entire record, the Commission agrees.

---

[11] The Commission also declines to address whether the Applicant's failure to disclose his possession or distribution of marijuana in response to either question 49 in the PHDF, or the inquiry of the Division investigator mandates disqualification under N.J.S.A. 5:12-86(b). Nevertheless, the existence of these issues is noted.

The evidence supporting this conclusion is overwhelming. In addition to the findings of fact set forth in the Initial Decision, which support this conclusion, the Commission's findings concerning the Applicant's intentional nondisclosure of prior employment and recent sale of marijuana impact negatively upon the Applicant's reputation for good character, honesty and integrity and substantiate the conclusion of the Administrative Law Judge in this regard. In light of all the foregoing, the Commission affirms and adopts the conclusion of the Administrative Law Judge that the Applicant failed to sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b).

The final issue to be addressed is whether the Applicant has demonstrated his rehabilitation and, as a corollary thereto, whether remand on this issue is necessary. The Commission finds that the question of the Applicant's rehabilitation need not be resolved and that remand is unnecessary.

The record is replete with factors which demonstrate the Applicant's lack of character, honesty and integrity and their restatement at this juncture is unnecessary. Nevertheless, reference is made to these factors since the Commission recognizes that while the proofs necessary to establish rehabilitation and reputation for good character, honesty and integrity are not necessarily coextensive, there is, in most instances, significant overlap. The Applicant's sale of marijuana, as well as his intentional non-disclosure of prior employment, in light of their temporal proximity to the Applicant's request for licensure, not only reflect adversely upon the Applicant's character, honesty and integrity, but also stand as severe impediments to the demonstration of rehabilitation.

If the Applicant's sale of marijuana was the only basis for disqualification from licensure, the Commission might be compelled to remand this matter to the Office of Administrative Law for the purpose of affording the Applicant the opportunity to demonstrate his rehabilitation. However, other bases exist upon which we rely to deny licensure, namely the intentional nondisclosure of prior employment, violative of N.J.S.A. 5:12-86(b) and the failure of the Applicant to demonstrate his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b). Demonstration of rehabilitation would have no effect upon the denial of licensure on these grounds.

The Commission therefore concludes that remand to the Office of Administrative Law is unwarranted. In light of this conclusion the Commission, notwithstanding its finding that the Applicant sold marijuana, an enumerated statutory disqualifier under N.J.S.A. 5:12-86(c)(3) as amended, and although it recognizes that severe impediments exist to the Applicant's demonstration of rehabilitation, does not rely upon said finding in denying licensure.

For the reasons set forth herein, we find that the Applicant intentionally failed to disclose his employment at Wells Fargo and Rahway State Prison, in violation of N.J.S.A. 5:12-86(b). The Commission further finds that the Applicant has failed to demonstrate his reputation for good character, honesty and integrity by clear and convincing evidence. N.J.S.A. 5:12-89(b)(2) and 90(b). Accordingly, the application of Charles Clentchscale for licensure as a casino employee is denied.

BY: Joseph P. Lordi
Joseph P. Lordi,
Chairman

DATED: April 22, 1980

IN THE MATTER OF THE APPLICATION OF A. CHARLES CLENTCHSCALE FOR LICENSURE AS A CASINO EMPLOYEE	))))	INITIAL DECISION OAL DKT. #CCC #3714-79 CASINO CONTROL COMMISSION DOCKET # 79-EA-113

APPEARANCES:

A. Charles Clentchscale, Petitioner, pro se

John J. Degnan, Attorney General of New Jersey, by Deputy Attorney General Patricia Arons, on behalf of the Department of Law and Public Safety, Division of Gaming Enforcement, Respondent

R. Benjamin Cohen, Esq., General Counsel, by Anthony J. Sposaro, Esq., on behalf of the Casino Control Commission, Issuing Forum

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., ALJ:

This matter concerns the application of A. Charles Clentchscale, petitioner, for licensure by the Casino Control Commission (hereinafter the "Commission") as a Casino Employee (Dealer), pursuant to the provisions of N.J.S.A. 5:12-90. The Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter the "Division"), respondent, opposes Mr. Clentchscale's licensure. A prehearing conference was conducted on October 18, 1979 and the matter was heard on November 27, 1979.

The qualification criteria which each applicant must satisfy for licensure are set forth in N.J.S.A. 5:12-89b. N.J.S.A. 5:12-90. The applicant has the burden of establishing by clear and convincing evidence that he satisfies the criteria. N.J.S.A. 5:12-90 also incorporates N.J.S.A. 5:12-86 by reference, wherein, per se disqualifiers are set forth. The Division has the burden of establishing the existence of these disqualifiers by a preponderance of the credible evidence. However, if the Division is

unable to meet this burden, the proofs can still be considered when determining whether the applicant has established the affirmative qualification criteria under N.J.S.A. 5:12-89b.

The Division has raised specific objections to Mr. Clentchscale's application. I consider the absence of objections to the remainder of his application as conceding qualification thereunder. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (1978). The Division initially contends, pursuant to N.J.S.A 5:12-86g, that when the applicant's part-time employment as a security guard with the Wells Fargo Guard Service (hereinafter "Wells Fargo") was terminated, he did not return the uniforms which he had been issued. It is argued this constitutes a violation of N.J.S.A. 2A:119-1, "Larceny from the Person," which offense is a specifically enumerated disqualifier. N.J.S.A. 5:12-86c. It is also alleged that while the petitioner was employed as a Correction Officer at the Mercer County Correction Center (hereinafter the "Center") he sold drugs (marijuana) to inmates and to another Correction Officer, which constitutes a violation of N.J.S.A. 24:21-19 and which offense is "inimical" to the Casino Control Act. N.J.S.A. 5:12-86c. Secondly, the Division argues the applicant violated N.J.S.A. 5:12-86b, by his failure to disclose his employment as a Correction Officer at Rahway State Prison (hereinafter "Rahway"), as a part-time security guard at Wells Fargo and the unfavorable termination of his employment at Wells Fargo. The Division alleges the non-disclosures concern facts which are material in nature, i.e., essential for a sufficient evaluation of his qualifications. Lastly, the Division contends the applicant has not sustained his burden of establishing his qualifications for licensure by clear and convincing evidence due to alleged unfavorable employment records at Rahway, Wells Fargo and the Center, his dismissal by Wells Fargo, and the sales of marijuana.

Mr. Clentchscale testified on his own behalf. He stated that his resignation as a Correction Officer at the Center was in good standing. Concerning the termination of his employment with Wells Fargo, he contends that he quit due to a misunderstanding with his employer concerning the times he was to report for work. The petitioner acknowledged that the uniforms issued to him by Wells Fargo were returned late; however, they were returned. He acknowledged the non-disclosures, but contended that he was careless when completing his application; however, he adamantly argued he had no intent to conceal anything from the Commission. Lastly, he testified that he had completed the educational requirements for licensure at the Casino Career Institute.

During cross-examination Mr. Clentchscale again acknowledged that he had failed to list his employment at Rahway and Wells Fargo on his application for licensure. However, he repeated

this was a mere oversight and not an intent on his part to refuse to disclose the information. He was also questioned concerning an incident which occurred on October 23, 1978 at the Center. He recalled the incident but stated that it was merely a disagreement with his supervisor and did not result in any formal disciplinary action. He recalled informal discipline, to the extent of a conference with the Warden, which resulted in a verbal reprimand. Again, as concerns the allegation of failure to disclose past employment, the applicant contends that he put down his most recent full-time job, which he believed was more significant and important than a position he had held at Rahway for only a few months and a short-term part-time job.

The first witness presented on behalf of the Division was Angelo Welles, a former inmate at the Mercer County Jail, who testified under subpoena. He was an inmate at the time it was alleged that the petitioner sold marijuana to inmates. The witness had been incarcerated due to a conviction for breaking and entering. He had never been under Mr. Clentchscale's supervision; however, he knew the petitioner and had been treated well by him. Mr. Welles recalled an incident wherein he observed the applicant give a "nickel bag" of marijuana to an inmate by the name of Charles Sanders in the prison yard. This incident allegedly occurred during the summer of 1978. The witness understood the petitioner was paid $10 for the marijuana. He also recalled an incident wherein an inmate by the name of James Harris ("Shoebox") told him that he had received marijuana from Mr. Clentchscale, who had demanded payment of $45. Harris was of the opinion the price should only have been $20 to $25. Mr. Welles did not observe the alleged delivery of the marijuana. This testimony only consisted of what he had been told by inmate Harris. Additional testimony was elicited concerning the source of marijuana to Mr. Clentchscale.

Cross-examination concerned an incident wherein Mr. Welles was accused of receiving marijuana in a food package during a visitors' period. However, he was cleared of any involvement in the matter following an investigation.

The next witness was John F. Wilke, Jr., who was a Correction Officer at the Center in 1978. He worked with the petitioner during that time period. The witness testified that he approached the petitioner during their shift and arranged for the purchase from the petitioner of a $5 bag of marijuana. The purchase was consummated off the prison grounds. He smoked the alleged marijuana

and felt high, a sensation similar to that which he had experienced on other occasions when he had smoked marijuana. He did not know whether the petitioner sold marijuana within the institution.

It was revealed during cross-examination that Mr. Wilke had been arrested on July 31, 1978 and charged with possession of marijuana and speed. The witness had not provided the police with the information concerning Mr. Clentchscale until subsequent to his arrest. The witness contended his statements implicating the petitioner were truthful and that he was not pressured in any way.

Lieutenant George J. Michalski testified that he is the Lieutenant in charge of the 4 p.m. to 12 shift at the Center. As such, he is in charge of the institution as the warden is not then on duty. The applicant worked under his supervision. He then related an incident that had occurred on October 23, 1978. The incident involved an order to the petitioner to gather up certain inmates for educational programs conducted by Mrs. Baugher. A few inmates did not wish to attend the session and Mr. Clentchscale was angry with Sergeant Koos that he had been assigned this task. Allegedly, the petitioner directed his anger at the Sergeant and also at Mrs. Baugher. Later in the same evening, the Lieutenant observed the applicant in the east wing of the prison, to which he was not assigned, fooling around and dancing when he was supposed to have a sore leg. They got into a shouting match and, the Lieutenant testified the petitioner threatened him with physical harm. The Lieutenant filed formal charges against him. He recalled a hearing in the Warden's office. He understood a written reprimand would be issued against the petitioner.

The Lieutenant testified on cross-examination that Mr. Clentchscale generally followed all orders with the exception of one other incident, and that he was mostly punctual and honest.

Arndt P. Koos testified that he was a Correction Sergeant at the Center at the time of the October 23, 1978 incident. He is now assigned to the Mercer County Detention Center. He recalled the incidents that occurred on October 23, 1978. Upon passing through the east wing he observed the petitioner and the Lieutenant exchanging heated words. The Sergeant believed the petitioner's actions indicated a desire for a fight. The matter was brought to the attention of the Warden, who heard the testimony of each party. The Sergeant considered this a formal hearing. He was not aware of any final disciplinary action. Concerning the incident involving Mrs. Baugher, he was of the opinion the petitioner's actions were detrimental to good order and discipline.

On cross-examination the Sergeant testified that he did not know if a letter of reprimand was ever placed in the petitioner's personnel file. He considered Mr. Clentchscale's work to be generally adequate. The petitioner was punctual, followed orders and was not dishonest.

Sergeant Emil Erdelsky also testified on behalf of the Division. He has been a Sergeant with the Hopewell Township Police Department for three years and was a patrolman for the seven years preceding. He was involved in an investigation concerning the use and delivery of narcotics within the Center. He interviewed Mr. Welles concerning another matter at which time Mr. Clentchscale's name appeared. It was the Sergeant's opinion that Mr. Welles was straightforward, he came forward readily with information, no deals were made and he knew what marijuana was. He did not pressure Mr. Welles. The Sergeant also testified concerning another former inmate, Harry Green. Additionally, he interviewed Mr. Wilke immediately following his arrest. He had no reason not to believe Mr. Wilke's statements implicating the petitioner. In fact, Mr. Wilke had repeated his statements in a subsequent interview, January 8, 1979, at which time Mr. Wilke was represented by counsel. The Sergeant stated that no deals were made with Mr. Wilke for any information, and he appeared very candid.

On cross-examination the Sergeant testified that his first interview with Mr. Wilke was conducted in the presence of a Sergeant Goerce from the Center. Again, that he did not pressure Mr. Wilke.

The next witness was Patrolman John Moran of the Hopewell Township Police Department. He testified concerning the alleged food box incident of August 6, 1978 involving Mr. Welles. He also interviewed Mr. Welles.

The next witness was Harry Green, who was an inmate at the Center during 1978. Mr. Green allegedly made statements to Sgt. Erdelsky implicating Mr. Clentchscale in drug sales at the Center; however, his testimony at the hearing was a repudiation of his prior statements. He claimed to have no knowledge of Mr. Clentchscale bringing drugs into the institution. He also claimed that Sgt. Erdelsky attempted to make a deal with him to shorten his time in exchange for statements implicating correction officers in drug traffic.

Lieutenant Paul D. Galayda testified that he is a Correction Lieutenant at the Center. He was a Correction Sergeant during 1978. This witness is in charge of the administrative offices at the Center. It was his opinion the type of hearing afforded the petitioner as a result of the incident of October 23, 1978 was a formal hearing. Also, as custodian of the attendance records he reviewed the applicant's absentee record for the calendar year 1978. Although the applicant took substantial leave, he was entitled, including twenty-four days for an accident which occurred on the job, to all the time except one-half day. He also testified that drugs are prevalent in the institution are a presemt and on-going problem. The use of drugs in the institution is well known to guards and inmates alike.

On cross-examination the Lieutenant testified that there was no written disciplinary action in the petitioner's personnel file.

The last witness on behalf of the Division was State Police Detective Thomas R. Spivey. The Detective was in charge of the investigation of the petitioner. He first interviewed Mr. Clentchscale on March 7, 1979, prior to commencing his investigation, at which time he reviewed the application (J-1). The petitioner did not at that time disclose his employment at Rahway or Wells Fargo, or his termination from Wells Fargo. The Detective became aware of the prior employment from reviewing the petitioner's alleged application for employment at the Center. Thereafter, he again interviewed Mr. Clentchscale, who stated that he did not disclose the Wells Fargo employment because it was part-time, and Rahway because he was only there for a short period of time. The Detective also determined that the applicant had not yet returned his work uniforms to Wells Fargo. Also,during the second interview the Detective inquired concerning the alleged disciplinary action at the Center. Mr. Clentchscale responded that he did not know anything that small would be in his record. It is important to note the Detective read every question to the applicant during the first interview and asked whether it was understood. There appeared to be no confusion.

Cross-examination established that upon inquiry the applicant readily admitted his employment at Rahway and Wells Fargo, but he contends he was not dismissed from Wells Fargo, rather he quit.

The petitioner called Mary H. Baugher as a rebuttal witness to the testimony of Lt. Michalski and Sgt. Koos concerning the

incident of October 23, 1978. Mrs. Baugher did not hear any comments made by Mr. Clentchscale, and he had never been disrespectful in her presence.

The Division argues the applicant's failure to return the uniforms issued to him by Wells Fargo, at least until after his interview with Detective Spivey, constitutes a larceny, a violation of N.J.S.A. 2A:119-1. This is one of the disqualifiers specifically set forth in N.J.S.A. 5:12-86c. The Division makes its objection under N.J.S.A. 5:12-86g. However, the Division's proofs merely reveal a failure on the part of the petitioner to return the uniforms in a timely manner. There was no evidence that his acts were "willful" or "malicious" as required. The evidence does not establish the nature or the elements of the offense.

The Division also argues under N.J.S.A. 5:12-86g, that the two incidents wherein the petitioner allegedly sold marijuana (to inmates and to Mr. Wilke) constitute violations of N.J.S.A. 24:21-19 (involving the distribution of controlled dangerous substances). As such, the offenses are inimical to the Act and serve to disqualify the applicant from licensure. However, concerning the alleged sale to an inmate, Charles Sanders, the Division has not established the elements of the offense. All that Mr. Welles testified to was a delivery of a substance he believed to be marijuana. Assuming, arguendo, distribution pursuant to N.J.S.A. 24:21-19a(1), there was no evidence, among other things, identifying the substance. Mr. Welles' belief, regardless of its justification, does not begin to sufficiently identify the substance for a finding of fact, even by a preponderance of the credible evidence, that it was marijuana. Likewise, the elements of the alleged sale to Mr. Wilke were not established by a preponderence of the credible evidence. Mr. Wilke's testimony concerning the transaction was extremely vague. Further, the witness was not sufficiently qualified to reliably identify the substance as marijuana. State v. Pipkin, 101 N.J. Super. 598 (App. Div. 1968). Therefore, the Division has not established that the petitioner violated the provisions of N.J.S.A. 24:21-19. Consequently, there is no need to address the issue of whether the distribution of marijuana in contravention of N.J.S.A. 24:21-19 constitutes an offense which is inimical to the policies of the Act.

The Division next contends that Mr. Clentchscale violated N.J.S.A. 5:12-86b, by failing to disclose his employment at Rahway and Wells Fargo, including his alleged termination. The petitioner was a Correction Officer at Rahway from June to October, 1976. Allegedly his resignation was not in good standing due to insufficient notice; also, he was frequently late to work. The petitioner contends that he resigned because he was unable to report to work from his home in Trenton on a timely basis. The petitioner was a part-time security guard for Wells Fargo from December, 1978 to February 4, 1979. Detective Spivey testified that George Titko, the Branch Manager, informed him that the applicant had been terminated. On the other hand, the petitioner testified he quit as a result of a misunderstanding concerning his work times and his beginning dealer school in Atlantic City.

The Commission has ruled that not every failure to disclose information constitutes a violation of N.J.S.A. 5:12-86b and warrants denial of licensure. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra, page 13. The Commission held that the failure to disclose a (or provide a misleading) material fact would be considered sufficient for disqualification only after an analysis of the factors surrounding the failure. Some of the factors to be considered are whether it was willful, was "...a conscious disregard for the regulatory system," inadvertent or an ignorant failure. Disqualification of an applicant is considered severe. Clearly, reasonable discretion is to be applied in each individual case. Mr. Clentchscale's testimony on point was consistent with the explanation he gave to Det. Spivey during the second interview. He believed the Commission was interested in more recent employment. He had worked at the Center, beginning in August, 1977, for approximately one and one-half years. Further, he did not think part-time employment was important, especially when he had only worked at Wells Fargo for such a short period of time and on only a few jobs. Additionally, there is no direct proof that he was fired from his position at Wells Fargo. The only direct proof was Mr. Clentchscale's testimony to the contrary. Of course, Part VII of the application requires disclosure of all places of employment, including part-time (J-1, see attached List of Exhibits). Also, a complete record of a person's past employment is material for a full evaluation of qualifications. Although I in no way condone the petitioner's failure to disclose his previous employment and have serious reservations, considering the fact that Det. Spivey reviewed the application with him, I believe Mr. Clentchscale did not intentionally withhold this information. The applicant's actions constitute an ignorant failure to disclose. There was

no evidence that he had a conscious disregard for the regulatory system. Although the petitioner's responses on the application were not fully responsive, the evidence does not warrant disqualification. The applicant has sufficiently rebutted the Division's demand for disqualification pursuant to N.J.S.A. 5:12-86b.

Lastly, the Division contends Mr. Clentchscale has not carried his burden of establishing his qualifications under N.J.S.A. 52:12-89b(2) by clear and convincing evidence. More specifically, it is argued that the applicant's unfavorable employment record at Rahway, the Center and Wells Fargo, including his alleged termination at Wells Fargo, his failure to disclose prior employment at Rahway and Wells Fargo, and the alleged drug sales have not been shown to be groundless in fact.

In the Resorts case the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant is not the determinative criteria for licensure. Rather, the individual's actual character ("...attributes of good character, honesty and integrity...") is the key. The Commission further stated at page 9:

> "... if the credible evidence demonstrates that, despite the unfavorable reputation, the person actually possesses the essential attributes of good character, honesty and integrity, then that person should not be rejected."

The alleged unfavorable employment record at Rahway is insignificant. Lateness and short notice of resignation, are not sufficient to negatively affect Mr. Clentchscale's character. The proofs submitted by the Division concerning Wells Fargo were hearsay at best and subject to substantial doubt. The petitioner's testimony sufficiently rebutted any negative inference which could be drawn therefrom. Further, I do not believe he was fired. The alleged unfavorable employment record at the Center consists of two elements, first, the incident of October 23, 1978 involving Lt. Michalski. The testimony of all witnesses clearly reveals that nothing more than an inquiry was conducted by the Warden, who issued only a verbal reprimand. There is no reprimand or any other record of resolution of the incident in writing. It went no further. I do not believe that one verbal reprimand casts any shadow on a person's actual character. Further, Mrs.

Baugher's testimony relieved the applicant from any negative inference. The seond element concerned his absentee record. Although he was off the job for a substantial amount of time, with the exception of one-half day, each and every day the petitioner was absent was properly accounted for. He used earned sick and vacation time and was granted leave due to an injury received while on the job. Mr. Clentchscale had no unfavorable employment record at the Center, in fact it was favorable.

As I have previously determined that Mr. Clentchscale did not fail to disclose material information within N.J.S.A. 5:12-86b, no negative inference will be drawn therefrom.

The alleged sales of marijuana are, however, another matter Although I determined the Division had not shown by a preponderance of the credible evidence that a violation of N.J.S.A. 24:21-19 had occurred, the proofs raise a significant question concerning the applicant's actual character. The testimony of Mr. Welles, a former inmate, is subject to doubt. However, he had no apparent reason to sabotage the petitioner and after observing his demeanor and manner, I believe his testimony was forthright and credible. The testimony of Sgt. Erdelsky gave support to Mr. Welles' credibility. Additionally, it must be noted that Mr. Welles when pressed by the petitioner on cross-examination, implicated him in the sale of drugs, not just at the instituion, but on the streets as well and as far back as at least three years preceding the hearing. Likewise, Mr. Wilke's testimony was clear, candid and convincing. He was forthright and had an ample recollection of the incidents. That he did not come forward prior to his arrest is of no consequence. These proofs were entirely credible and pose a substantial obstacle to Mr. Clentchscale's licensure.

Conduct which could constitute a violation of law, dealing in drugs, especially to inmates while employed as a Correction Officer, raises serious and substantial doubts concerning the applicant's actual character. The only proof offered by the petitioner to overcome this attack was his own testimony, denying the incidents. The petitioner's proofs did not overcome these unfavorable inferences. The petitioner has not met his burden of proof and has not established his reputation for good character, honesty and integrity by clear and convincing evidence.

The testimony of Mr. Green was neutralized by his prior statement, therefore, his testimony was disregarded in its entirety.

The testimony of Lt. Michalski and Sgt. Koos concerning the applicant's reputation for honesty was fully accepted. However, this testimony did not address the question of involvement in the sale of drugs.

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

1. When Mr. Clentchscale failed to return his work uniforms to Wells Fargo in a timely manner he did not violate the provisions of N.J.S.A. 2A:119-1.

2. The Division did not establish by a preponderance of the credible evidence that the petitioner sold marijuana in violation of N.J.S.A. 24:21-19.

3. The petitioner's conduct, as testified to, does not constitute offenses warranting disqualification for licensure pursuant to N.J.S.A. 5:12-86c and g.

4. The applicant did not fail to disclose material information sufficient to warrant disqualification from licensure pursuant to N.J.S.A. 5:12-86b.

5. With the sole exception of involvement in drug sales, the applicant has established his qualifications for licensure by clear and convincing evidence.

6. The evidence presented by the Division regarding the petitioner's direct involvement in the sale of marijuana, especially while he was a Correction Officer at the Mercer County Correction Center, raises substantial unfavorable questions concerning his reputation for good character, honesty and integrity.

7. The petitioner has not established that he actually possesses the essential attributes of good character, honesty and integrity required for licensure.

Therefore, I ORDER that the application of A. Charles Clentchscale for licensure as a casino employee, dealer, be DENIED.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

I HEREBY FILE with Joseph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

January 10, 1980
DATE

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

Mailed to Parties:

January 14, 1980
DATE

AGENCY HEAD

BY: R. GERTMAN, CHIEF COUNSEL

Mailed to Parties:

Jan. 17, 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

aem

OAL DKT. # CCC 3714-79

LIST OF EXHIBITS

Exhibits Admitted into Evidence

J-1 Application for Licensure as a Casino Employee, A. Charles Clentchscale (31 pages)

R-1 Hopewell Township Police Department, Statement of Angelo Welles, August 8, 1979 (4 pages)

R-2 Memorandum to Warden Moretti from Lt. G. Michalski, October 23, 1978

R-3 Report of Incident, Arndt P. Koos, Correction Sergeant, October 23, 1978

R-4 Hopewell Township Police Department, Supplementary Investigation Report, Sgt. E. Erdelsky, August 30, 1978

R-5 Hopewell Township Police Department, Supplementary Investigation Report, Sgt. E. Erdelsky, July 31, 1978

R-6 Hopewell Township Police Department, Supplementary Investigation Report, Sgt. E. Erdelsky, January 8, 1979

R- Mercer Count Workhouse Employee Attendance Record, A. Charles Clentchscale, 1978

Exhibits Not Admitted into Evidence

R-8 (I.D.) Letter to Lt. Blackwell from George Titko, January 31, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3133-79
CCC DOCKET NO. 79-EA-91

IN THE MATTER OF THE APPLICATION	:	
OF STEVEN M. COHEN FOR	:	
LICENSURE AS A CASINO EMPLOYEE	:	FINAL ORDER
(DEALER)	:	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law, and the Commission having considered the record of that hearing and the Initial Decision of the Administrative Law Judge and the Commission having resolved at its public meeting of January 23, 1980 to affirm and adopt the Initial Decision of the Administrative Law Judge and to deny licensure,

It is on this 30th day of January, 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the licensure of Steven M. Cohen be and is hereby denied based upon the reasons stated in the said Initial Decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement

within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

Joseph P. Lordi, Chairman

DATED: January 30, 1980

IN THE MATTER OF)
THE APPLICATION OF STEVEN M. COHEN)
FOR LICENSURE AS A CASINO)
EMPLOYEE (DEALER))

INITIAL DECISION

OAL DKT. NO. CCC 3133-79
Agency Dkt. No. 79-EA-91

APPEARANCES:

Lashman and Kupperman
By: H. Parker Smith, Esq.
for the Applicant, Steven M. Cohen

John J. Degnan, Attorney General of New Jersey
By: Robert J. Melillo, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Steven M. Cohen to the Casino Control Commission for licensure to work in a casino as a dealer. Applicant was advised by letter from the Casino Control Commission, dated August 7, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated July 12, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on October 18, 1979, at the Office of Administrative Law, Trenton, New Jersey. The final supplemental paper of the parties was received on October 26, 1979, which is deemed to be the concluding date of the hearing.

At issue is whether applicant should be disqualified from licensure as a casino dealer on the grounds that he has failed to reveal a fact material to his qualification criteria, and has supplied information which is false or misleading as to a material fact pertaining to his qualifcation criteria. If not so disqualified, the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining

issue of whether applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) relied upon by the Division of Gaming Enforcement in its opposition to applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the applicant shall show by "clear and convincing evidence the applicant's reputation for good character, honesty and integrity." Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that applicant successfully completed a Black Jack Dealer course at the East Coast Gaming School between September and October, 1978. Applicant testified that he has never been arrested, nor has he ever been convicted of any felony, misdemeanor or disorderly persons offense. According to the applicant, he attended Philadelphia Community College for two years, studying in the Law Enforcement Program. From 1976 to 1978, applicant advanced from the position of Salesman to Assistant Manager with a clothing and shoe store.

The possibility of disqualification from licensure pursuant to section 86b of the Casino Control Act arises from applicant's employment from June, 1978, to August, 1978, as a Parking Lot Attendant at the Sheraton Seaside Motel in Atlantic City. Applicant testified that he was sent home by his supervisor on his last day of employment at the parking lot, when he was unable to comply with his supervisor's instructions to move two rows of cars to make room for some buses. Applicant stated that he did not return to that job again except to pick up his pay, although it was his impression that he had not been fired. He stated that he did not return because of his dissatifaction with the job and the work hours involved.

Applicant admitted that he had not included his employment at the Sheraton Seaside Motel on his personal history disclosure form, explaining that he thought the fact that he had quit the job would affect his application for licensure adversely. Applicant also admitted that he told an investigator from the Division of Gaming Enforcement that he had worked at the Sheraton Seaside and that his employment there had ended when he had been laid off. Applicant explained that he told the investigator he had been laid off because he was afraid that it would "look worse" if he said that he had quit.

The day after the investigator originally interviewed applicant, he called the applicant at his home and advised him that he had learned that the applicant had been fired from the Sheraton Seaside. Applicant admitted at the hearing that he had then told the investigator that he had been terminated from his employment rather than laid off. Applicant explained that it was not true that he had been terminated, but he had been attempting to avoid upsetting his mother and wanted to end the conversation with the detective quickly. Applicant admitted that he had consciously failed to inform the investigator of the true facts and circumstances surrounding his departure from his employment at the Sheraton Seaside.

Ronald Lemanowicz, an investigator with the Division of Gaming Enforcement, testified concerning his background investigation of the applicant. According to the investigator, applicant disclosed his employment at the Sheraton Seaside during his personal interview with the investigator, and stated at that time that he had been laid off due to lack of work. The investigator testified that he was advised by Ronald Brosius, the parking lot attendant supervisor at the Sheraton Seaside, that applicant had been terminated from his employment for refusing to park cars due to inclement weather. According to the investigator, applicant subsequently admitted to him that he had been terminated but had not revealed it because he felt his termination was unjust and unfair. The investigator also testified that his subsequent investigation conducted at the Sheraton Seaside Motel had produced documents indicating that applicant had been terminated for improperly charging customers to park their cars. Applicant had denied that he had ever attempted to charge a patron a fee for parking his car.

The information concerning his employment with the Sheraton Seaside Motel is significant as to the evaluation of applicant's qualifications for licensure, and as such it constitutes material facts within the meaning of disqualification criteria of section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who, inter alia, fails to reveal any fact material to qualification. Applicant has admitted that his non-disclosure of his employment at the Sheraton Seaside, and the reasons for his leaving that employment, was intentional. Furthermore, if it were to be accepted that he did voluntarily quit this employment, then it is clear that he twice did not tell the truth to the investigator when he stated first that he had been laid off and subsequently, that he had been fired, albeit unjustly. Applicant's conduct falls squarely within the meaning of the disqualifcation criteria of section 86b of the Casino Control Act, and reflects adversely upon applicant's good character, honesty and integrity.

Having reviewed the testimony and other evidence offered in this matter (see inventory of exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

1. Applicant has applied for a license to permit him to work in a Casino as a Dealer.

2. Applicant successfully completed a course in black-jack dealing offered by the East Coast Gaming School.

3. Applicant failed to disclose on his personal history disclosure form any information concerning his employment at the Sheraton Seaside Motel in 1978.

4. Applicant failed to disclose on his personal history disclosure form any information conerning the manner in which his employment at the Sheaton Seaside Motel was terminated.

5. Applicant related to an investigator from the Division of Gaming Enforcement two mutually inconsistent explanations as to the manner in which his employment with the Sheraton Seaside Motel was terminated, both of which explanations are inconsistent with applicant's present version of the employment termination.

6. Applicant's failure to disclose on his personal history disclosure form any information concerning his employment relationship with the Sheraton Seaside Motel was intentional, rather than inadvertent.

7. Applicant intentionally offered varying explanations to a Division of Gaming Enforcement Investigator as to the reasons for the conclusion of his employment relationship with the Sheraton Seaside Motel.

8. The information withheld by applicant, and the false information which was supplied by applicant, were material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

9. Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a Casino employee.

Pursuant to the express public policy of the Casino Control Act to extend strict State regulation to all persons related to the operation of licensed casino enterprises, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that applicant is disqualified from receiving a Casino employee license to work as a dealer, based upon his failure to disclose facts material to his qualifications for licensure, and based upon his supplying of information which is untrue as to a material fact pertaining to the qualification criteria, within the meaning of N.J.S.A. 5:12-86b. It is, therefore, ORDERED that the application of Steven M. Cohen for licensure as a Casino employee be denied.

This Decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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-1, et seq.

I HEREBY FILE with the chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

December 6, 1979
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

esk

INVENTORY OF EXHIBITS

For the Applicant: P-1 Eight letters of recommendation

For the Division of Gamin Enforcement:

R-1 Personal History disclosure form of Steven M. Cohen

R-2 Time Card

R-3 Payroll Print Out

R-4 Daily Time Sheet

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1276-79
CCC DOCKET NO. 79-EA-34

IN THE MATTER OF THE APPLICATION :
OF HARL LEE COOPER FOR LICENSURE :
AS A CASINO EMPLOYEE (MAINTENANCE : FINAL ORDER
AND CLEANING) :

A hearing having been conducted in the above-captioned matter on August 16, 1979 before Administrative Law Judge James A. Ospenson of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the written exceptions thereto filed by the parties, and the Commission having resolved at its public meeting of October 3, 1979 to reject in part and adopt in part the conclusions of law and the findings of fact in the Initial Decision, as particularly set forth in a formal opinion to be issued by the Chairman on behalf of the Commission simultaneously herewith,

It is on this 7th day of February, 1980, ORDERED that the Initial Decision herein is hereby adopted in part and rejected in part as particularly set forth in a formal opinion to be issued by the Chairman on behalf of the Commission simultaneously herewith; and

It is further ORDERED that the application of Harl Lee Cooper for licensure as a Casino employee be and is hereby denied based upon the reasons set forth in a formal opinion to be issued

by the Chairman on behalf of the Commission, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, Chairman

DATED: February 7, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-34
OAL DOCKET NO. CCC 1276-79

IN THE MATTER OF THE APPLICATION :
OF HARL LEE COOPER FOR :
LICENSURE AS A CASINO EMPLOYEE :
(MAINTENANCE AND CLEANING) :

FINAL
COMMISSION DECISION

Harl Lee Cooper [hereinafter: the Applicant] filed an application for licensure as a casino employee (maintenance and cleaning) with the Casino Control Commission on July 3, 1978. The application (Exhibit J-1 in evidence)* was duly forwarded to the Division of Gaming Enforcement [hereinafter: the Division] for appropriate investigation.

By letter-report dated March 14, 1979, the Division apprised the Chairman of the Casino Control Commission of the results of its background investigation, and based thereon, lodged an objection to the licensure of the Applicant. Specifically, the Division's investigation revealed several omissions and inaccuracies in the submitted application (J-1) relating to the Applicant's employment history, criminal history and history of drug use or possession. The Applicant

* "J" denotes jointly offered exhibits.

was so advised by letter of March 23, 1979 and thereafter requested a hearing. The matter was transmitted to the Office of Administrative Law, and set down for hearing on August 16, 1979. On August 31, 1979, the Administrative Law Judge filed an Initial Decision in this matter with the Commission, in which he concluded that the intentional omissions from and inaccuracies contained in the submitted application did not disqualify the Applicant from licensure pursuant to N.J.S.A. 5:12-86(b)[1] because of the candor displayed by the Applicant at the hearing, and other extenuating factors. The Administrative Law Judge also found, in part through application of the standards contained in the Rehabilitated Convicted Offenders Act [hereinafter: the R.C.O.A.], N.J.S.A. 2A:168A-1, et seq.,[2] that the application for a casino

---

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

> The Commission shall deny a ...license to any applicant who is disqualified on the basis of any of the following criteria:
>
> ****
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria...

2. On September 1, 1979, subsequent to the filing of the instant application, most of Title 2A of the New Jersey Statutes was repealed, and replaced by N.J.S.A. 2C:1 et seq. However, the R.C.O.A. was not repealed, N.J.S.A. 2C:98-3, and remains in effect as is until amended or revised by the Legislature. Throughout this Decision the R.C.O.A. will be cited as N.J.S.A. 2A:168A-1 et seq.

employee license should be granted.[3]

For the reasons which follow, we cannot agree that the R.C.O.A. applies to the licensing authority of the Casino Control Commission or that a casino employee license should issue to the Applicant.

In 1968, the Legislature enacted N.J.S.A. 2A:168A-1, et seq., the Rehabilitated Convicted Offenders Act. That enactment contains a legislative declaration of policy that it is in the public interest to assist rehabilitated convicted offenders in obtaining employment by eliminating impediments and restrictions that may be imposed on offenders based solely upon the existence of criminal convictions. Therefore, the Legislature declared, when it appeared to a licensing authority that an applicant had achieved a degree of rehabilitation which indicated that his participation in a business or occupation would not be incompatible with the welfare of society or the aims and objectives of the licensing aurthority, that agency might grant the license application which would make participation in the regulated occupation or business possible.

In 1974, the Legislature amended the R.C.O.A. to afford further protection for rehabilitated offenders against disqualification from licensure. L. 1974, c.161, §2, eff. Nov. 15, 1974.

---

3. The Initial Decision is appended hereto at A-1 to 7.

As amended, the R.C.O.A. provides that in order for a licensing authority to disqualify a convicted offender from licensure, it must explain, in writing, through the application of eight (8) listed criteria, the manner in which the conviction for the crime relates adversely to the occupation or business for which licensure is sought. N.J.S.A. 2A:168A-2.[4]

The Casino Control Act, N.J.S.A. 5:12-1 et seq., [hereinafter: the Act], was enacted in 1977 and amended in 1978, (L. 1978, C. 7). The Act specifies three categories of employee licenses along with particular affirmative qualification standards for each category. See N.J.S.A. 5:12-89, 90 and 91. The affirmative qualification standards for licensure as a casino employee, which status is defined in N.J.S.A. 5:12-7, are set forth in Section of the Act, which incorporates by reference specified portions of Section 89. At the time of issuance of the Initial Decision here, Sections 89 and 90 of the Act contained no language

---

4. N.J.S.A. 2A:168A-2 provides in pertinent part:

> Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, ***agen ***may disqualify ***an applicant for a license***on the ground that the applicant has been convicted of a crime or adjudged a disorderly person, except that a licensing authority may disqualify***an applicant for a license*** if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:
>
> a. The nature and duties of the occupation, trade, vocation profession or business, a license or certificate for which the person is applying,
> b. Nature and seriousness of the crime;
> c. Circumstances under which the crime occurred; (cont'd next page

which would permit consideration of the concept of rehabilitation where applicants for casino employee licenses were found to have incurred disqualifying criminal convictions pursuant to section 86 of the Act. N.J.S.A. 5:12-86. Effective on January 9, 1980, however, section 90 of the Act was again amended. See L.1979 c.282,eff.Jan. 9,1980. As will be seen, the nature of that amendment renders it unnecessary to now decide whether the Administrative Law Judge erred in determining that the R.C.O.A. applies to casino employee licensing proceedings before the Commission.

As noted above Section 90 of the Act sets forth affirmative qualification criteria which must be met by applicants for licensure as casino employees. Section 86 of the Act sets forth disqualificaiton criteria applicable to all applicants for licensure. Subsection c of Section 86 (N.J.S.A. 5:12-86(c)), in pertinent part defines those criminal convictions which must result in disqualification. Subsection e. of section 90 as amended mandates that the Commission must deny casino employee licensure to any applicant who is disqualified on the basis of section 86. However, the recent amendment to section 90 added a

---

4. (con't)

d. Date of the crime;
e. Age of the person when the crime was committed;
f. Whether the crime was an isolated or repeated incident;
g. Social conditions which may have contributed to the crime;
h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatirc 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.

new subsection which limits the effect of subsection e. and whic provides in pertinent part as follows.

> h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

Following the above paragraph is a nearly verbatim listing of the identical factors listed in the pertinent portion of the R.C.O.A. quoted in footnote 4 supra.

The conclusion to be drawn from a comparison of N.J.S.A. 2A:168A-2 and N.J.S.A. 5:12-90(h) is obvious. In the context of the R.C.O.A., a licensing agency may never deny licensure on the basis of a criminal or disorderly persons conviction unless it first finds an adverse relationship of the crime to what may be termed the employment function involved and demonstrates that adverse relationship in writing with specific reference to at least the eight listed factors. Under section 90(h) of the Casino Control Act, however, the procedure is vastly different.

First, under section 90(h), the ultimate subject of the inquiry is not the concept of adverse relationship of the crime to the employment function. The adverse relationship of certain criminal convictions to employment in the casino industry has already been determined in general by the Legislature by reason of its enactment of section 86(c), which, as noted

above, describes disqualifying convictions. Other provisions of the Act support this conclusion. For example, the Act also includes express legislative declarations of public policy which indicate that the gaming industry and persons involved therein must be strictly regulated and controlled in such a manner as to attain, maintain and retain public trust and confidence in the efficacy and integrity of the regulatory process and casino operations. N.J.S.A. 5:12-1(b) (6),(7) and (9). The Legislature further declared that a necessary method of furthering public trust and confidence is the establishment of a system of control and regulation which ensures the exclusion from participation in the gaming industry of persons with known criminal records, habit or associations. N.J.S.A. 5:12-1(b)(6) and (7).[5]

Instead of adverse relationship to the position applied for, the primary subject of inquiry under section 90(h) is whether the applicant is rehabilitated where there exists a conviction with a legislatively mandated adverse relationship to the gaming industry. More importantly, no burden of demonstration or explanation with regard to this issue is placed on the Commission by section 90(h). The Commission is nowhere required to find non-rehabilitation and explain such findi

---

5. N.J.S.A. 5:12-1(b)(7) states in pertinent part:

> Legalized casino gaming in N.J. can attain, maintain and retain integrity, public confidence, and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations....

as a prerequisite of denial of licensure where a disqualifying conviction appears. Such a burden would obviously be similar to that imposed by the R.C.O.A. Instead, Section 90(h) clearly places the burden of affirmatively demonstrating rehabilitation on the Applicant and adjures the Commission to consider eight listed factors in determining whether an Applicant who has attempted such an affirmative demonstration has succeeded.

Both the similarities and differences between Section 90(h) of the Act and the R.C.O.A. are unmistakable. Clearly, the Legislature was aware of the R.C.O.A. when it amended Section 90 of the Act to add subsection (h). The Legislature is, of course, presumed to be thoroughly familiar with its prior enactments. Jacobs v. N.J. State Highway Authority, 54 N.J.393 401 (1969); Brewer v. Porch, 53 N.J. 167, 174 (1969). If the Legislature had intended the R.C.O.A. to apply to Commission licensing proceedings, it certainly would have seen no need to write a provision closely resembling the R.C.O.A. into the Casino Control Act itself. In further support of this inference, it is noteworthy that at the same time the Legislature enacted Section 90(h), it elected to also amend Section 91 of the Act, relating to the licensure of casino hotel employees, to include a provision identical to Section 90(h). N.J.S.A. 5:12-91(d). This amendment replaced a less detailed provision permitting casino hotel employee applicants to avoid disqualification on the basis of criminal offenses by demonstrating rehabilitation or lack of reasonable relationship of the offense to the duties of the

position applied for.

Significantly, however, the Legislature did not include rehabilitation provisions in Section 89 of the Act, relating to affirmative criteria for the licensure of casino key employees, the most sensitive of employee licensing categories under the Casino Control Act. Key employees are those employed in a supervisory capacity in casino operations, or else those empowered to make discretionary decisions which regulate casino operation. N.J.S.A. 5:12-9. Obviously, if the Legislature intended the R.C.O.A. to apply to Commission licensing proceedings, it would apply to all categories of employee licenses, including key employee licenses. Such an imputation of legislative intent would necessarily render Sections 90(h) and 91(d) useless appendages. We cannot accept such a construction. "There is a presumption against useless legislation." Magierowski v. Buckley, 38 N.J. Super. 534, 554 (App. Div. 1956); accord, Monmouth County v. Wissell, 68 N.J. 35, 42 (1975).

The inevitability of this conclusion is further highlighted by the differences between the R.C.O.A. and Sections 90(h) and 91(d) of the Act. As noted above, the primary factual issues and procedures under each scheme are dissimilar. It would therefore be absurd to suggest that the Commission must apply both the R.C.O.A. and Section 90(h) or 91(d), as the case may be, when potentially disqualifying convictions surface in licensing matters. Again, if the R.C.O.A. applies, then Sections 90(h) and 91(d) do not

and are therefore inoperative, ineffective, and superfluous. W We cannot believe the Legislature intended to perform a meaningless exercise in its recent amendments to the Act. See Peper v. Princeton University Bd. of Trustees, 77 N.J. 55, 68(1978); O'Rourke v. Bd. of Review, 24 N.J. 607, 610-611(1957). (Interpretations rendering parts of enactments inoperative or superfluous are disfavored).

For these reasons, it is obvious to us that the Legislature did not intend the R.C.O.A. to apply to licensing determinations under the Casino Control Act. This interpretation of both enactments together does not render the R.C.O.A. inoperative while the contrary interpretation would so render Sections 90(h) and 91(d) of the Act. It is of course our duty to construe these enactments, which are in pari materia (see State v. DiCarlo, 67 N. 321, 324 (1975)), as a unitary and harmonious whole so that each may be effective. No. Bergen Tp. v. Lord, 131 N.J.Super. 280, 282 (App. Div. 1974). We believe our conclusion accomplishes this objective.

Clearly, Sections 90(h) and 91(d) of the Act represent the Legislature's response to the problem of balancing the general policy of the R.C.O.A. to ameliorate employment impediments for rehabilitated offenders against the strong policies of the strict state control of and the exclusion of criminal elements from the casino industry explicitly set forth in the Act. The expressed policies underlying the enactments are, of course, major considerations in interpreting them. In re N., 96 N.J.Super. 415, 422 (App. Div. 1967). The policies of the Casino Control Act a

the R.C.O.A. are in obvious conflict and have been reconciled by the Legislature, in our view, by means of the recent enactment of Sections 90(h) and 91(d) of the Act. While the R.C.O.A. does not apply to Commission licensing proceedings, the opportunity to demonstrate rehabilitation is extended to convicted offender applicants for casino and casino hotel employee licenses. At the same time, it is clear that the Legislature did not intend to extend this opportunity to applicants for the most sensitive category of licensure, that of casino key employee. See N.J.S.A. 5:12-89.

The Administrative Law Judge did not, of course, have at his disposal the recent amendments to the Act in determining this issue. Accordingly, it is not necessary to now examine the issue of whether he erred in holding the R.C.O.A. applicable to Commission proceedings under the law as it then existed. We believe we are entitled to assume that our holding here will end dispute regarding this issue in future Commission licensing proceedings before the Office of Administrative Law. Nor is it necessary to address the issue of whether the Applicant here is rehabilitated within the meaning of Section 90(h) and has therefore overcome any disqualifying factors in his criminal background. We now hold that the Applicant is disqualified on a wholly independent ground, i.e., on the ground that he intentionally failed to disclose information required by the Act and requested by the Commission. N.J.S.A. 5:12-86(b).

In his Initial Decision, the Administrative Law Judge found that:

(a) The Applicant, Harl Lee Cooper, has applied for a casino employee license as a maintenance and cleaning employee;

(b) The Applicant was arrested, charged with and convicted of driving while intoxicated in Washington, D.C. in 1973; of carrying a concealed weapon in Maryland in 1973; and of unlawful possession of stolen credit cards, a disorderly persons offense in New Jersey in 1978;[6]

(c) The Applicant was arrested but not convicted of carrying a concealed weapon in Washington, D.C. in 1970;[7]

(d) The Applicant did not disclose any of the above arrests or convictions on his Personal History Disclosure Form; and finally;

(e) That the Applicant's nondisclosures were intentional, rather than ignorant or inadvertent.

---

6. The question of whether these convictions would render the Applicant's licensure inimical to the policies of the Act and to casino operations pursuant to N.J.S.A. 5:12-86(c), was raised in the Pre-Hearing Conference Order, but not specifically addressed by the Administrative Law Judge in his Initial Decision. However, determination of this issue is both inappropriate, due to the incompleteness of the record on this point, and unnecessary since the Applicant is disqualified on other grounds.

7. An additional potential issue is whether the Applicant may be disqualified from licensure pursuant to N.J.S.A. 5:12-86(g) because of the commission of acts which would constitute any offense set forth in section 86(c), even if such conduct was not prosecuted or did not result in conviction. Here, the Applicant was arrested for carrying a concealed weapon in Washington, D.C. in 1970. This issue was neither raised below nor addressed by the parties. In any event, its resolution is also unnecessary.

We hold that there is ample credible evidence in the record of the hearing to support the above findings of fact. They are hereby adopted by this Commission as its own. The remaining findings and conclusions contained in the Initial Decision are expressly rejected.

In the instant case, the Applicant signed and dated his Personal History Disclosure Form [PHDF] (J-1) on June 15, 1978. The Applicant responded negatively to question 46,[8] which seeks information pertaining to the Applicant's criminal history. The date of the completion of this application is particularly of interest since the Applicant had just been released from imprisonment on the Fort Dix military installation on June 8, 1978 (T75-22 to T77-9).[9]

The Applicant freely admitted that he ommitted information relating to his arrest and conviction record form (J-1) because "he was afraid of losing [his] job." (T77-10 to 13). He also conceded that he knew, at the time, that he was "stating an untruth on the application," and that he had done so before in order to insure that he would obtain employment (T77-14 to 19).

---

8. Question 46 inquires as follows:

> Have you or has any member of your immediate family,... ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction? Yes___ No___. If yes, complete the following...

9. "T" refers to the transcript of the hearing on this matter held on August 16, 1979.

These are some of the facts upon which the Administrative Law Judge based his finding of intentional non-disclosure. Clearly, such a finding is not only justified but mandated by the record herein.

The issue presented was, of course, whether the Applicant's failure to completely disclose his criminal record in response to question 46 required his disqualification pursuant to Section 86(b) of the Casino Control Act, quoted in footnote 1 above. In spite of his finding that the Applicant intentionally failed to disclose important information concerning his criminal history, the Administrative Law Judge concluded that the Applicant was not disqualified thereby. We emphatically disa The Administrative Law Judge's conclusions regarding this issue were stated as follows and we quote:

***

7. That applicant's intentional non-disclosures were nevertheless not fraudulent and are extenuated, though not justified, by the, to him, very real fear that he would not be employed if he made the disclosures.

8. That the facts supporting such extenuation derive from applicant's incomplete formal education, his personal economic instabilities and hardship, his candor and contrition at hearing, his record of attempts to secure high school equivalency accreditation, and his having been employed at Resorts International by Service Master P. B. M. Division, Inc. in 1978 in the job for which he now seeks licensing.

***

These conclusions are unacceptable. They evince an utterly meritless misreading of the statutory licensure qualification scheme, and a specific misinterpretation of the central import of Section 86(b) of the Act.

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the legislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(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 pla upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The Legislative mandate is clear. Unfettered access to information relevant to the statutory qualification criteria is essential to informed decisions concerning licensure. Nondisclosure deprives the Division and the Commission of the wherewithal to carry out legislatively mandated duties and, moreover, needlessly impedes and complicates both the investigatory and decisional processes, which are already tremendously burdensome. Of course, not every failure to truthfully provide requested information or other material facts necessarily compels disqualification. Merely inadvertent or ignorant failures to disclose should cearly not be deemed disqualifying events. However, failures to disclose which are willful or in bad faith or which evince a conscious disregard for the regulatory process cannot be excused on the basis of an applicant's disadvantaged economic and educational background.

While the Commission is sympathetic to the Applicant here, it cannot ignore its statutory duty by condoning intentional conduct which thwarts the investigatory and decisional processes. The Commission is charged with the responsibility of "strict State regulation" of "all persons" related to the operation of the casino industry and of maintaining "public confidence and trust in the credibility and integrity of the regulatory process." N.J.S.A. 5:12-1(b)(6); see also N.J.S.A. 5:12-1(b)(7), (8) and (9).

It is evident from the Applicant's testimony here that he made a conscious decision to withhold from the Commission information which he felt might unfavorably affect his application for licensure, and his employment opportunities. He disclosed none of his extensive criminal history in response to a question directed thereto explicitly. Moreover, he freely admitted doing so deliberately, and for the specific purpose of concealing the information. Indeed, the Applicant could hardly have denied intentional concealment in light of the fact that he completed his disclosure form only several days after having been released from pretrial detention resulting from his most recent arrest. Under these circumstances, the Applicant must be disqualified pursuant to N.J.S.A. 5:12-86(b).

During the proceedings below, the Division of Gaming Enforcement also asserted that the Applicant should be disqualified because of other non-disclosures in response to questions on his PHDF. Specifically, the Division alleged that the Applicant had failed to disclose an employment termination in response to

question 33 on his PHDF.[10] The Administrative Law Judge failed to clearly resolve this issue, upon which ample evidence appears in the record, focusing instead upon the circumstances surrounding the terminations.[11] Because this issue is closely related to the Applicant's failure to disclose his criminal history and because the evidence concerning it further reveals the Applicant's state of mind with regard to omissions on his PHDF, we will now address it.

We need not discuss the facts underlying the matters not disclosed at great length. Suffice it to say, first, that the Applicant's response on his PHDF to question 33, regarding whether he had ever been terminated or asked to resign from employment, was in the negative (See J-1). At the hearing herein, however, he freely admitted having been "fired" from a job he he[l]d for two years as a security guard with a firm known as "Barns Detective Agency" located in Washington, D.C. (T16-9 to T18-22).

---

10. Question 33 states:

> Were you ever discharged or asked to resign from employment? Yes___ No___. If yes how many times?____ Provide the information listed below as to each time you were discharged or asked to resign from employment.
>
> Date, Name and Address of Employer, Supervisor's Name, Reason for Discharge or Resignation.

11. The record is, however, unsatisfactory with regard to the Applicant's allegedly deliberate failure to disclose his prior possession of marijuana in response to question 49 on his PHDF. Accordingly, we will not attempt to resolve this issue here.

The Applicant also failed to list this employer in response to question 31 on his PHDF, which requests a listing of the Applicant's employment history. In addition, the Applicant admitted having been terminated by an employer he did list in response to question 31, i.e., "Starn's Market" in Absecon, New Jersey (T26-6 to T28-25), as well as having been terminated by three other employers not listed in response to question 31 (T40-25 to T42-22).

The reason he offered for having failed to disclose these matters was the same as that he offered for his failure to disclose his criminal history, i.e., that he deliberately did not disclose the matters involved because he feared that if he did he might lose the job he held at the time as a maintenance employee of Resorts International Hotel, Inc. (T39-21 to T40-4; see T57-4 to T58-6). The offered reason no more excuses the Applicant's failures to disclose employment terminations than it does his failure to disclose his criminal history. Significantly, the Applicant admittedly gave a different, and inconsistent, reason for these failures to disclose during a telephone interview with a Division investigator, i.e., that he had been in a hurry when filling out the form and couldn't remember all his jobs (T80-22 to T82-22).

Under these circumstances, we find that the Applicant's failures to disclose with regard to his employment history were intentional and not inadvertent or ignorant. Accordingly, he is disqualified pursuant to N.J.S.A. 5:12-86(b) with regard to these non-disclosures as well as those relating to his criminal history.

However, we decline to determine, as a separate groun for disqualification, whether the Applicant intentionally supplied false and misleading information to a Division investigator in communicating to him a false reason as to why the Applicant failed to disclose the employment terminations discussed above. It is unclear to us, from our review of the record, whether the Applicant gave this reason with specific reference to his employment terminations or whether he was referring at the time as well to the several jobs he failed to list in response to question 31. It should be noted in this connection that the Applicant was not terminated from some of the jobs he failed to disclose.

The Administrative Law Judge also found that the Applicant "has met and presently satisfied the burden of establishing his good character, honesty and integrity." This finding relates to the affirmative qualification criteria set forth in Section 89(b)(2) of the Act, incorporated by reference in Section 90(b) which describes the qualification criteria for casino employee licensure. N.J.S.A. 5:12-89(b)(2) and 90(b). Those sections of the Act require, inter alia, that each applicant for licensure as a casino employee "establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity." (Emphasis added). In light of our findings above concerning the Applicant's failure to disclose information requested in his PHDF, and in light of the evidence in the record respecting the Applicant's criminal history, we must disagree with the Administrative Law Judge's findings in this regard.

While we do not find that any of the Applicant's criminal offenses in and of themselves constitute disqualifying events pursuant to N.J.S.A. 5:12-86(c) or (g), we may nevertheless consider the evidence in the record with regard to them in determining whether the Applicant has established his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, at 12. Viewed with regard to this statutory standard, we find the record concerning the Applicant's criminal history disturbing at the least. We refer specifically to the Applicant's two most recent convictions.

The first of these is the Applicant's 1974 conviction in Maryland for carrying a concealed weapon (See D-2). The weapon involved was a handgun (T52-1). This is a serious offense. In terms of New Jersey law, it is the equivalent of a violation of N.J.S.A. 2C:39-5(b), a crime of the third degree punishable by imprisonment for between three and five years and by fine of up to $7,500.00. N.J.S.A. 2C:43-3; 43-6. Nor are we overly impressed with the Applicant's exclupatory explanation of this offense, such that the gun belonged to hitchhikers who were picked up by the Applicant's brother while the Applicant was asleep on the back seat of his car. (T52-2 to T53-11). The fact of the Applicant's conviction for this offense remains unchallenged and that fact hardly reflects positively upon his good character.

The Applicant's most recent offense is also most disturbing. While the Applicant was ultimately convicted,

pursuant to a plea bargain, of the disorderly persons offense of receiving stolen property valued under $200.00, his explanation of the offense reveals more. The stolen property the Applicant was convicted of possessing was a number of stolen credit cards. At the time of his arrest for this offense, he was also charged with possession of marijuana, which charge was dismissed in connection with the plea bargain.

The Applicant explained that the marijuana found in his personal possession was not his, but instead belonged to the same brother who had been in his company when he was arrested for carrying a concealed weapon in 1973 (T83-6 to 23). The arrest occurred when the police stopped the Applicant's car, which his brother was driving, for a reason undisclosed in the record (T54-14 to 20; T55-4 to 9). The Applicant, upon the car being pulled over, allegedly took his brother's marijuana and put it in his own pocket (T84-10 to 20), in order to "keep [his brother] out of jail" (T55-4 to 9). He later transferred the bag of marijuana to the inside of one of his stockings, where it was found when he was searched (T55-4 to 9; T75-2 to 13). The Applicant specifically admitted, albeit somewhat evasively, giving a false statement to the police about who the marijuana belonged to (T75-14 to 21).

As to the stolen credit cards, which were found in his wallet during the same search which revealed the marijuana in his sock, the Applicant explained that he had found the same "in the trash." (T54-21 to T55-3). At the time of his arrest, he had "eight" of them in his wallet and "about 25 or 30" more of them at home (T85-15 to 24). While the Applicant denied having used them,

and characterized them as having "no value" (T56-20 to 25), he could not reasonably explain his possession of them, especially his carrying of eight of them in his wallet.

First of all, the image of the Applicant digging through in his own words, "a lot of trash" and coming up with a "handful" of credit cards in the names of several different people, allegedly without at least suspecting their contraband nature, is bizzare enough (T73-18 to T74-20). When asked, essentially, why he kept the cards if they had no value, and why he carried some of them in his wallet if he did not use or intend to use them, the Applicant responded: "A good question. I just had them." (T74-2 to 4; see also T85-25 to T86-7).

We find this explanation of the Applicant's conviction totally incredible for, we think, obvious reasons. While we do not know what the truth is, we cannot conceive that anyone would remain in possession of more than 30 credit cards belonging to other persons for as long as four months (T73-25 to T74-1), and carry some of them about in his wallet, for no reason or purpose whatsoever. This obviously dissembling explanation by the Applicant under oath must certainly be held to seriously impugn his honesty. Moreover, even if we were to credit the Applicant's assertion that he did not intend to use the cards unlawfully, his admitted behavior in remaining in possession of them and carrying some in his wallet would raise serious questions regarding his judgment under the circumstances described above.

We have held that the Applicant here is disqualified

for intentionally failing to disclose requested information with regard to his criminal history and past employment terminations. N.J.S.A. 5:12-86(b). These failures represent strong factors tending to demonstrate that the Applicant does not possess the good character, honesty and integrity required by statute as the central qualification for licensure as a casino employee. N.J.S.A. 5:12-89(b)(2); 90(b). Moreover, the Applicant's conviction record tends further to call into question his good character and integrity. And finally, the Applicant's admission that he essentially lied to the police in connection with his most recent offense, coupled with what we have found to be an incredible, evasive and dissembling account under oath of the circumstances surrounding that offense, reflects even more negatively upon the Applicant's honesty and integrity.

These factors, in light of the record as a whole, fairly mandate the conclusion that the Applicant here has not carried his heavy burden of demonstrating his good character, honesty and integrity by clear and convincing evidence. In our view, the issue is not a close one on this record. Accordingly, we are constrained to reject the conclusion of the Administrative Law Judge in this regard.

For the reasons set forth herein, the Initial Decision of the Administrative Law Judge is adopted in part and rejected in part as noted above. The application of Harl Lee Cooper for licensure as a casino employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

Dated: February 7, 1980

IN THE MATTER OF THE APPLICATION OF HARL LEE COOPER FOR LICENSURE AS A CASINO EMPLOYEE

INITIAL DECISION

O.A.L. DKT. NO.C.C.C.1276-79

APPEARANCES:

Harl Lee Cooper, applicant.

David G. Sciarra, Esquire,
Cape Atlantic Legal Services, Inc.,
attorney for applicant.

David R. Arrajj, Esquire,
attorney for the Casino Control Commission.

John J. Degnan, Attorney General of New Jersey,
by Howard Barman, Deputy Attorney General,
for the Division of Gaming Enforcement.

BEFORE THE HONORABLE JAMES A. OSPENSON, A. L. J.:

On July 3, 1978, Harl Lee Cooper (applicant) filed application for license as a casino employee, "maintenance and cleaning". By letter of March 23, 1979, he was informed by the Casino Control Commission that based information contained in the report of the Division of Gaming Enforcement on March 14, 1979, there was "substantial possibility that the Casino Control Commission will deny your application." On May 1, 1979 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.S.A. 5:12-107 and N.J.A.C. 19:42-2.3. The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on July 17, 1979 and an order entered. The matter proceeded to formal hearing on August 16, 1979.

At issue are whether applicant has proven by clear and convincing evidence that he is qualified for licensure under N.J.S.A. 5:12-90 and 5:12-89 (b) by good character, honesty and integrity

and, correlatively, whether applicant is disqualified therefor under N.J.S.A. 5:12-86 by failure to reveal facts material to qualification (contrary to N.J.S.A. 5:12-86 (b)) or by conviction of offenses that indicate licensure would be inimical to the policy of the act and to casino operations (contrary to N.J.S.A. 5:12-86 (c)).

Both the Commission and the Division of Gaming Enforcement are parties to the proceeding. N.J.A.C. 19:42-1.2. The Division, by N.J.S.A. 5:12-76, is charged with investigation of licensure applications and prosecuting defense thereof in hearings according to the results of its investigations. Here the Division objects to licensure on the basis of less than candid answers to questions on applicant's Personal History Disclosure Form (J-1 in evidence), particularly as to his past arrest and conviction record and his employment history. Otherwise, the Division found that the information compiled on the applicant "verifies for the most part the individual's personal reputation for integrity and financial stability and responsibility." (See the Division letter to the Commission dated March 14, 1979). Specifically, the Division found that the applicant failed to disclose on J-1 four arrests and three convictions. The Division also found that applicant, though he denied ever being fired from a job, was fired twice, the last from employment by a casino service industry in September, 1978.

Applicant, a 32 year old Atlantic City resident, testified he was born in Rocky Mountain, North Carolina, and has a ninth grade education. He is married but separated, lives with his girlfriend and has three children. He has had a series of non-skilled jobs, mostly of short-term, in Washington, D. C., Maryland and New Jersey. He has been employed several times as a security guard. Now living in Atlantic City, where he came several years ago at his mother's behest, he is presently on city welfare and has undertaken work at Atlantic City Community College looking to acquire a high school equivalency degree. Last summer, in July, 1978, he was persuaded to apply for casino employee licensure in order to get a job as maintenance janitor at Resorts International with Service Master P. B. M. Division, Inc., a casino service industry contractor. On filing application, he was in fact so employed (see D-4 evidence) and left, as he said, under a misunderstanding over an unverified sick day excuse. The year before, in the summer of 1977, he was employed at Starn's Market in Absecon as a janitor. He was laid off or fired, as he said, but he attributed the termination to the circumstance that his boss didn't like him and that an absence from work for sickness was misunderstood. He said he had to drive or be driven to work, a circumstance that occasionally was difficult for him.

From the evidence, it is evident that applicant's job terminations in these instances were the result of employer dissatisfactions, but whether circumstances from applicant's view were at least extenuating is reasonably susceptible of equivocal inferences: that is to say, one cannot reasonably conclude that applicant was justifiably or unjustifiably terminated from either job.

Applicant admitted, in his testimony, that when he answered no to question #46 of J-1, his Personal History Disclosure Form: "Have you ..... ever been arrested ....., charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" he did not tell the truth. He denied any arrests or convictions because he was afraid he wouldn't get the maintenance job at Resorts. He did not deny being aware his license might be denied for untruthful answers (see p. 5 of J-1). At the time he was perfectly aware of his own record (indeed, he had just been released from a 60 day incarceration in Mt. Holly on charges of marijuana possession under 25 grams (N.J.S.A. 24:21-20 (a)), which was dismissed under a plea bargain in which he pleaded guilty to the disorderly persons offense of possession of or receiving stolen property (credits cards) under the value of $200.00 (N.J.S.A. 2A:170-41.1)). The plea bargain was struck, he testified, after his 60 day confinement, where he was awaiting trial unable to make bail. With his plea, he was sentenced to time spent and set free.

Applicant's untruthful answers on J-1 do not match his candor in testimony at the hearing. There, he readily admitted his checkered background with law enforcement authorities. His reasoning, while not to be condoned, is nevertheless entirely comprehensible. In other words, applicant's logic and, perhaps, his system of ethical values are Aristotelian in the classical sense: i.e., empirical and not metaphysical or absolute. His values are those built on the shifting sands of a generally disadvantaged background; but from a careful perusal of his background and economic circumstance one can be readily persuaded that his dissembling where written forms are involved is but the means to a job; that is, he merely hoped he wouldn't be found out. The Commission's finding out was serendipitous, since its applicants are routinely checked for criminal convictions.

I

Is applicant disqualified, without more, for conviction of offenses inimical to the act and to casino operations? Neither the 1973 concealed weapon conviction in Maryland or the 1978 disorderly persons conviction under N.J.S.A. 2A:170-41.1 in New Jersey are specifically enumerated statutory disqualifiers under N.J.S.A. 5:12-86. The Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., adopted in 1968, is predicated upon the express legislative finding that "it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment based solely upon the existence of a criminal record." N.J.S.A.2A:168A-1.

Thus, under the act, every state and local licensing authority, without exception, is prohibited from such disqualification unless the licensing authority determines, upon consideration of eight enumerated factors, that the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license is sought. N.J.S.A. 2A:168A-2. The RCOA has been held inapplicable to alcohol beverage control because the liquor business is unique and has been so treated by the Legislature. But the inapplicability of the RCOA to alcohol beverage control licensure is expressly because the Division of Alcohol Beverage Control is an exempt law enforcement agency under N.J.S.A. 2A:168A-6. Cf. in re C. Schmidt & Sons, Inc., 79 N.J. 344, 354, 355 (1979). It, the ABC, has arrest, search and seizure powers in addition to the power of licensure. Though perhaps unique, the Casino Control Commission does not have such arrest, search and seizure powers because under the Casino Act those have been vested in the Division of Gaming Enforcement, which is not a licensing authority, of the Department of Law and Public Safety. N.J.S.A. 5:12-55, 76, 77, 79. It is a reasonable construction of the statutes in pari materia, therefore, that the Casino Control Commission is not an exempt law enforcement and licensing agency under section 6 of the RCOA (N.J.S.A. 2A:168A-6). See Mimkon v. Ford, 66 N.J. 426, 433, 434 (1975). It follows that in licensure the Casino Control Commission is subject to the remedial provisions of N.J.S.A. 2A:168A-2. The record in this matter, however, is barren of evidence that the Commission, as a licensing authority, has considered the eight criteria individually or in conjunction, although the issue was expressly raised at the prehearing conference. Accordingly, licensure denial to this applicant cannot rest independently or solely upon his disorderly persons convictions. So far as applicant's arrests without conviction are concerned, it has long been held that they are not acceptable indices of character because a mere accusation is quite consistent with innocence. See Costanzo v. N.J. Racing Com., 126 N.J. Super. 187, 194 (App. Div. 1974).

II

Is applicant disqualified for material non-disclosure of facts pertaining to qualification? His non-disclosures were on J-1, the Personal History Disclosure Form. Applicant readily admitted such on the witness stand at the hearing. While he may have thus demonstrated a disregard for the investigatory process, which is not otherwise to be condoned, I nevertheless am content to believe that applicant's candor at the hearing in admitting his background and in explaining his reasoning, however, misguided, has served to demonstrate an essential good character sufficient, in this case, to meet the rigors of the statute. One may not always demand of the disadvantaged the perfection of absolute truth. While casino regulation is necessarily stringent, one must apply those stringencies individually enough to recognize the expediencies offered by one are the frauds of another. Here, applicant's motivations were not fraudulent.

The Division of Gaming Enforcement argues in its brief that the material non-disclosures on the Personal History Disclosure Form per se require denial of license, citing Higgins v. N.J. Bureau of Securities, 100 N.J. Super. 267 (App. Div. 1968); Hyland v. Ponzio, 15 N.J. Super. 234 (App. Div. 1978) and Costanzo v. N.J. Racing Com., supra. These are three license revocation proceedings in each of which the Appellate Division found ample evidence in the respective records to support the agency determinations to revoke. Cf. Higgins, at p. 274 of 100 N.J. Super.; and Hyland, at p. 238 of 159 N.J. Super.; and Costanzo, at p. 195 of 126 N.J. Super., where the Court itself declined to say that proven falsifications on the license application were sufficient for revocation, leaving that conclusion to the agency. I hesitate to read (and therefore do not) these cases as decisional authority for the proposition that license application falsifications that are explained and extenuated at a hearing before licensure are necessary and sufficient of themselves for denial. Nor do I read N.J.S.A. 5:12-86 (b) as a peremptory statutory bar to this agency's consideration of credible testimony at the licensure hearing that tends reasonably to explain and extenuate falsifications on the Personal History Disclosure Form. In short, it is a wrong, not an apostasy, to falsify that Form.

Having reviewed all the briefs and exhibits, having heard and observed the witnesses, and having in particular observed the demeanor of the applicant, I FIND as follows:

1. The foregoing discussion is incorporated herein by reference.

2. That applicant, Harl Lee Cooper, has applied for a casino employee license to do maintenance and cleaning.

3. That applicant was arrested, charged and convicted of driving while intoxicated in Washington, D. C. in 1973; of carrying a concealed weapon in Maryland in 1973; and of unlawful possession of stolen credit cards, a disorderly persons offense, in New Jersey in 1978.

4. That applicant was arrested but not convicted of carrying a concealed weapon in Washington, D. C. in 1970.

5. That applicant did not disclose any of the above arrests or convictions on his Personal History Disclosure Form of his casino license application.

6. That applicant's non-disclosures then were intentional.

7. That applicant's intentional non-disclosures were nevertheless not fraudulent and are extenuated, though not justified, by the, to him, very real fear that he would not be employed if he made the disclosures.

8. That the facts supporting such extenuation derive from applicant's incomplete formal education, his personal economic instabilities and hardship, his candor and contrition at hearing, his record of attempts to secure high school equivalency accreditation, and his having been employed at Resorts International by Service Master P. B. M. Division, Inc. in 1978 in the job for which he now seeks licensing.

9. That the Division of Gaming Enforcement has found that information complied on the applicant verifies for the most part his reputation for integrity and financial stability and responsibility.

10. That evidence as to the true circumstances surrounding termination of applicant's employments at Servicemaster and at Starn's Market is inconclusive of any other fault in applicant than unexcused employee absenteeism; and that applicant's non-disclosure of the exact circumstances was not specious.

11. That there is no evidence in the record that applicant's employment in maintenance-cleaning will positionally entail undue risks inimical to casino operations.

12. That there is no evidence in the record of agency compliance with the exigencies and constraints of N.J.S.A. 2A:168A-2.

13. That applicant has met and presently satisfied the burden of establishing his good character, honesty and integrity.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE that applicant should not be disqualified from casino employee licensure for work in maintenance-cleaning based on the reasons advanced by the Division of Gaming Enforcement in this proceeding. I ORDER, therefore, that such licensure be granted him.

This initial decision does not become final until forty-five (45) days from agency receipt hereof unless the agency head acts to affirm, modify or reverse it during the forty-five (45) day period, pursuant to N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

August 29 1979
DATE

James A. Ospenson
JAMES A. OSPENSON, A. L. J.

Receipt Acknowledged:

August 31 1979
DATE

Thomas N. Auriemma for Casino Control Commission
AGENCY HEAD

Mailed to Parties:

Sept. 4, 1979
DATE

Ronald L. Parks
FOR OFFICE OF ADMINISTRATIVE LAW

ahk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-42
OAL DOCKET NO. CCC 1274-79

IN THE MATTER OF THE APPLICATION OF FRANK CRUZ FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)	:	FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law and the Commission having considered the entire record of that hearing and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of March 19, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 15th day of April, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Frank Cruz for a casino employee license be and hereby is denied on the basis of the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

Joseph P. Lordi, Chairman

DATED: April 15, 1980

IN THE MATTER OF:)
THE APPLICATION OF FRANK CRUZ)
FOR LICENSURE AS A CASINO)
EMPLOYER (DEALER))

INITIAL DECISION

OAL DKT. NO. CCC 1274-79
Agency Dkt. No. 79-EA-42

APPEARANCES:

F. Frederick Perrone, Esq.
for the Applicant, Frank Cruz

John J. Degnan, Attorney General of New Jersey
By: Robert J. Melillo, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
By: Anthony Sposaro, Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Frank Cruz to the Casino Control Commission for licensure to work in a casino as a dealer. His application, including a Personal History Disclosure Form, was filed with the Commission on December 8, 1978. Applicant was advised by letter from the Casino Control Commission, dated April 9, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated March 28, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on October 12, 1979, and the hearing was held on November 19, 1979, at the Office of Administrative Law, Trenton, New Jersey. The final supplemental paper of the parties was received on November 30, 1979, which is deemed to be the concluding date of the hearing.

At issue is whether Applicant should be disqualified from licensure as a casino dealer on the grounds that he has failed to reveal a fact material to his qualification criteria. Also at issue is whether Applicant should be disqualified from licensure on the grounds that his convictions for, or alleged commission of, certain specified offenses indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations. If not so disqualified, the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining issue of whether Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act relied upon by the Division of Gaming Enforcement in its opposition to Applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the Applicant shall show by "clear and convincing evidence the Applicant's reputation for good character, honesty and integrity." Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. N.J.S.A. 5:12-86c provides, inter alia, that the Commission shall deny licensure to any applicant disqualified on the basis of a conviction for an offense which indicates that licensure would be inimical to the policy of the Act and to casino operations. N.J.S.A. 5:12-86g provides that the Commission shall deny licensure to any applicant disqualified on the basis of the commission of any act which would constitute any offense under subsection c of section 86, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that Applicant successfully completed a blackjack dealer course offered by the East Coast Gaming School in January 1979. Applicant testified that he qualified in 1975 for employment in casinos in Las Vegas, Nevada, and presently remains so qualified. According to the Applicant, he is currently employed at a sandwich shop, and part-time at a parking lot, in Atlantic City, New Jersey. From 1975 to 1978, the Applicant was employed as a proposition poker player in Las Vegas casinos.

The possibility of disqualification from licensure pursuant to section 86b of the Casino Control Act arises from Applicant's 1971 arrest and conviction for the disorderly persons offense of depositing a slug into an automatic toll collector on the Garden State Parkway, in violation of N.J.S.A.2A:170-49, and his 1972 arrest for atrocious assault and battery, in violation of N.J.S.A.2A:90-1, and his conviction of the downgraded offense of simple assault. Applicant admitted his omission of any mention of these two arrests and convictions in his answer to question No. 46 of his Personal Hist Disclosure Form, which requires complete disclosure of an applica criminal and disorderly persons arrest and conviction record.

Applicant offered two inconsistent explanations for the omission from his Personal History Disclosure Form of the 1971 arrest and conviction for use of a slug at a toll booth. Applicant testified on direct examination that he had been employed as a cab driver, and had been driving a fare to New York City at the time of his arrest. He stated that he had approached a tollgate on the Parkway and had put what he thought was the correct money into the automatic toll collector, when he was arrested by a State Trooper for the use of a slug. Applicant stated that the coin which he thought was a quarter was probably a foreign coin collected in fares. It was the Applicant's testimony on direct examination that he did not disclose this arrest and conviction because he thought it was a motor vehicle moving violation. Applicant repeated this explanation on cross examination. However, upon a second inquiry on cross examination as to the reason the Applicant did not disclose this arrest and conviction, the Applicant stated that he told the investigator from the Division of Gaming Enforcement that he had forgotten it.

Explaining the circumstances surrounding his 1972 arrest for atrocious assault and battery, Applicant testified that he was employed as a cab driver and had taken a passenger to his destination, when an altercation arose over the passenger's refusal to pay the correct fare. It was the Applicant's testimony that the passenger went berserk and attack the Applicant. In order to defend himself, the Applicant grabbed a tire iron from under the driver's seat and struck the passenger on the arm and the forehead, and then notified his dispatcher and the police. It was Applicant's testimony that at that time many cab drivers had been attacked and he feared for his life. According to the Applicant, he was arrested on the charge of atrocious assault and battery, and obtained his release after paying $25.00 bail. Applicant filed a counter charge against the passenger for assault and battery in violation of N.J.S.A. 2A:170-26. Applicant testified that he was found guilty of the downgraded disorderly person offense of assault, and both he and the passenger, who was also found guilty of assault, were fined by the court. Applicant's explanation for his omission of this arrest and conviction from his Personal History Disclosure Form was that he did not remember the incident when he prepared the form. Applicant stated that he did not intend to misrepresent or deceive when he failed to include the 1971 and 1972 arrests and convictions on his Personal History Disclosure Form. It was the Applicant's testimony that he had no reason to hide them.

Applicant testified at length on direct and cross examination concerning the remainder of his arrest and conviction record, which was disclosed on his Personal History Disclosure Form. In response to question 29 of the form, Applicant listed two absent without leave offenses which he committed during his service in the United States Navy between 1958 and 1960. Applicant was honorably discharged from the service on April 8, 1960. Applicant also listed in response to question 46 of his Personal History Disclosure Form his arrest and conviction in Las Vegas in 1977 on the charge of battery, and his arrest in Las Vegas in 1978 on the charge of battery, which charge was dismissed for lack of prosecution. Applicant testified that

both arrests in Las Vegas for battery arose from disagreements he had with women he had been dating. Applicant denied that he struck either woman or made any threatening gestures, but he acknowledged that he had been found guilty of battery on the 1977 arrest and had been fined $75.00.

Concerning his employment history, Applicant testified on direct examination that he had been employed as a greeter or host at Duffy's Cocktail Lounge in Las Vegas on a part-time basis of four to six nights a month from 1974 until 1978, when the establishment went out of business. Applicant denied that anyone had ever complained that he mishandled any money received on behalf of the establishment. Applicant testified on cross examination that he collected State Unemployment Compensation during part of the time he was working on a part-time basis for Duffy's Cocktail Lounge. Applicant repeated without hesitation on redirect and recross-examination that he had been working part time at Duffy's while he was receiving unemployment compensation. It was only after it was expressly stated on the record in the presence of the Applicant that the evidence concerning his receipt of unemployment benefits while being employed might give rise to an issue concerning the disqualification criteria under the Casino Control Act, that Applicant attempted to explain that he worked at Duffy's in between the times he was eligible for unemployment benefits. This explanation is inconsistent with the Applicant's repeated earlier testimony that he collected unemployment compensation during part of the time he was employed at Duffy's Cocktail Lounge, and it is inconsistent with his testimony that he worked at Duffy's an average of four to six nights per month from 1974 until 1978.

Anthony J. Caporale, an investigator with the Division of Gaming Enforcement, testified concerning his background investigation of the Applicant. According to the investigator, he conducted a personal interview with the Applicant on January 31, 1979, at which time the investigator reviewed with the Applicant his entire Personal History Disclosure Form. It was the investigator's testimony that he inquired of the Applicant if he had disclosed all of his arrests in response to question 46 of the form, and the Applicant responded that he had. According to the investigator, he then inquired of Applicant concerning the aforementioned 1971 arrest for use of a slug and the 1972 arrest for atrocious assault and battery, and Applicant responded that there must be a mistake. When the investigator advised the Applicant that the name, date of birth and social security number which the Applicant had provided the Commission was the same as that which appeared on the official police reports for the aforementioned arrests, Applicant stated that the events had happened so long ago that he had forgotten them, but that he did recall them at that point. On cross-examination, the investigator acknowledged that the information concerning Applicant's offenses during his military service, which ought to have been set forth in his answer to question 46, was set forth in his answer to question 29.

Applicant was less than a credible witness on his own behalf. Without explanation, he offered contradictory reasons for his failure to disclose his 1971 arrest for use of a slug in an automatic toll collector. His belated testimony that he did not receive unemployment compensation while working at Duffy's Cocktail Lounge lacked clarity and was unpersuasive when compared to his repeated testimony on redirect and cross-examination that he had collected unemployment compensation during his part-time employment at Duffy's.

Applicant explained that he failed to disclose his 1972 arrest for atrocious assault and battery, and his subsequent conviction for the disorderly persons offense of assault, because he did not remember it when he was preparing his application. Yet, Applicant testified that the incident which gave rise to his arrest had caused him to fear for his life. It is inherently improbable that Applicant would not have remembered such an admittedly traumatic event when faced with a specific request to provide just such information on his Personal History Disclosure Form. Applicant's explanation is especially suspect when it is noted that he was able to recall and disclose two absences without leave during his military service between 1958 and 1960. The Applicant's arrest and conviction record is clearly significant as to the evaluation of his qualifications for licensure, and as such it constitutes material facts within the meaning of the disqualification criteria of section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who, inter alia, fails to reveal any fact material to qualification. Applicant's explanation that his nondisclosure of part of his arrest and conviction record was inadvertent is incredible, and the Applicant's nondisclosure therefore falls squarely within the meaning of the disqualification criteria of section 86b of the Casino Control Act. While the credible proofs in the whole record concerning the Applicant's convictions for, and alleged commission of, certain specified offenses do not establish that licensure of Applicant would be inimical to the policy of the Casino Control Act, within the meaning of section 86c and section 86g, nonetheless, the credible proofs in the whole record reflect adversely upon Applicant's good character, honesty and integrity.

Having reviewed the testimony and other evidence offered in this matter (see inventory of exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

1. Applicant has applied for a license to permit him to work in a casino as a dealer.

2. Applicant successfully completed a course in blackjack dealing offered by the East Coast Gaming School.

3. Applicant failed to disclose on his Personal History Disclosure Form any information concerning his arrest and conviction in 1971 for the disorderly persons offense of depositing a slug in an automatic toll collector on the Garden State Parkway, in violation of N.J.S.A. 2A:170-49.

4. Applicant failed to disclose on his Personal History Disclosure Form any information concerning his 1972 arrest for atrocious assault and battery, pursuant to N.J.S.A. 2A:90-1, and his subsequent conviction for the downgraded disorderly persons offense of assault, pursuant to N.J.S.A. 2A:170-26.

5. Applicant's failure to disclose any information concerning the aforementioned 1971 and 1972 arrests and convictions was intentional, rather than inadvertent.

6. The arrest and conviction information which Applicant failed to disclose on his Personal History Disclosure Form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

7. Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

It is the express public policy of the Casino Control Act to extend strict State regulation to all persons related to the operation of licensed casino enterprises. Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant is disqualified from receiving a Casino employee license to work as a dealer, based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A.5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a. It is, therefore, ORDERED that the application of Frank Cruz 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 agency 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.

CCC 1274-79

I HEREBY FILE with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

January 9, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

January 11, 1980
DATE

Receipt Acknowledged:
AGENCY HEAD

Jan 16, 1980
DATE

Mailed to Parties:
OFFICE OF ADMINISTRATIVE LAW

esk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3714-79
CCC DOCKET NO. 79-EA-73

IN THE MATTER OF THE APPLICATION :
OF ARCHIE CURTIS FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (FLOORPERSON) :

A hearing having been held in the above-captioned matter before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law on November 8, 1979; and the Commission having carefully considered the entire record of the proceeding, the Initial Decision of the Administrative Law Judge which was filed with the Commission on February 4, 1980, and the written exceptions filed thereto by the parties; and the Commission having divided equally in its vote regarding this matter;

IT iS on this 7th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby deemed adopted by operation of law pursuant to N.J.S.A. 52:14B-10(c).

IT IS FURTHER ORDERED that the casino employee license application of the Applicant be and is hereby granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

DATED: May 7, 1980

IN THE MATTER OF	:	INITIAL DECISION
THE APPLICATION OF ARCHIE CURTIS	:	
FOR LICENSURE AS A CASINO	:	OAL DKT. #CCC 3132-79
EMPLOYEE (FLOOR PERSON)	:	
	:	AGENCY DKT. #79-EA-73

APPEARANCES:

Bloom & Zlotnick
By: Ronald I. Bloom, Esq.
For the Applicant, Archie Curtis

John J. Degnan, Attorney General of New Jersey
By: Maris Konray, Deputy Attorney General
For the Division of Gaming Enforcement,
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Archie Curtis to the Casino Control Commission for licensure to work in a casino as a Floor Person. Applicant was advised by letter from the Casino Control Commission, dated July 13, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated June 19, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 27, 1979, and the hearing was held on November 8, 1979, at the Office of Administrative Law, Trenton, New Jersey. The final post-hearing brief of the parties was received on December 20, 1979, which is deemed to be the concluding date of the hearing.

At issue is whether Applicant should be disqualified from licensure as a Floor Person on the grounds that he has failed to reveal facts material to his qualification criteria, and has supplied information which is false or misleading as to material facts pertaining to his qualification criteria. If not so disqualified, the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining issue of whether Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) relied upon by the Division of Gaming Enforcement in its opposition to Applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in Section 89b of the Act, including the requirement that the Applicant shall show by "clear and convincing evidence the Applicant's reputation for good character, honesty and integrity." Section 90 of the Act also incorporates the disqualification criteria of Section 86. N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

Applicant has a total of approximately eight years' experience in the casino gaming industry, including employment as a Black Jack Dealer and as a Floorman. The Division of Gaming Enforcement has agreed by stipulation that the Applicant has the necessary experience for the position of Floor Person in Black Jack, and additionally has agreed that the Commission has approved a petition waiving the Applicant's New Jersey Residency requirement under the Casino Control Act. Applicant produced an Affidavit of Recommendation (Exhibit P-5) from one Richard Sheridan, Applicant's Shift Supervisor at the Castaways Casino in Las Vegas, Nevada for a period of approximately two years. Applicant also produced an Affidavit of Recommendation (Exhibit P-6) from one Herbert L. Waldman, an Attorney at Law licensed to practice in the state of Nevada, who has known the Applicant since 1955. Both affiants recommended the Applicant for employment in the casino gaming industry due to his honesty and high moral character. Testifying on behalf of Applicant was Ralph S. Delligatti, a Shift Manager at the Boardwalk Regency Casino. According to Mr. Delligatti, he has known the Applicant for approximately five or six years, and has admired him because of his attitude toward his work and his family. Mr. Delligatti testified that he asked the Applicant to come to Atlantic City to be a Floorman after receiving excellent reports from the Applicant's supervisors concerning his attitudes and ability. Michael N. Eakins, and John H. Bullock, employed at the Boardwak Regency Casino as a Floor Person and as a Supervisor, respectively, testified as to their knowledge of the Applicant. Neither witness had knowledge of any information adverse to the Applicant's character.

The possibility of disqualification from licensure pursuant to the disclosure criteria of Section 86b of the Casino Control Act arises from the Applicant's criminal and disorderly person's arrest record, and from his having been named as a defendant in five Small Claims Court actions between 1964 and 1971. Applicant was arrested on November 15, 1959 for assault with a deadly weapon, on March 15, 1970 for assault and battery and disturbing the peace, and on May 22, 1971 for aggravated assault and battery. In each instance, the

charges against the Applicant were subsequently dismissed. Applicant's first wife was named as a defendant in each of the Small Claims Court actions, and the judgment in each action has apparently been fully satisfied. Applicant admitted his omission of any mention of his three arrests in his answer to question number 46 of his Personal History Disclosure form, which requires complete disclosure of an applicant's criminal and disorderly persons arrest and conviction record. Applicant also admitted his omission of any mention of the five Small Claims Court actions to which he was named as a defendant, in his answer to question number 51 of his Personal History Disclosure form, which requires complete disclosure of each instance in which an applicant has been a party in a Civil Suit.

Question number 46 of the Personal History Disclosure form asks the following: "Have you or has any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" Applicant testified with sincerity and without artifice on both direct and cross-examination that he misread question number 46, thinking that it required disclosure only of arrests which resulted in convictions. Applicant acknowledged that he also read a separate page in his Personal History Disclosure form which offers an additional explanation as to what information was required to be disclosed in response to question number 46. Applicant testified very forthrightly that upon reading the additional explanation, he still thought that question number 46 sought disclosure of only arrests which resulted in convictions.

Applicant explained with equal candor his failure to disclose in response to question number 51 his status as a party defendant in five Small Claims Court actions in Nevada. Applicant testified at length concerning a severe medical problem which began in 1965 and which caused him to be totally disabled from 1968 to 1972. Applicant required extensive and repeated surgery between 1968 and 1972, and his marriage to his first wife also came to an end during this period. According to the Applicant, his stressful preoccupation with his medical condition at the time of the civil suits caused him to have no recollection of the action at the time he filled out his Personal History Disclosure form.

Frank Nixon, an Investigator assigned to the Division of Gaming Enforcement, testified concerning his background investigation of the Applicant. According to the Investigator, he interviewed Applicant prior to obtaining any information concerning the Applicant's arrests and the Applicant's involvement in any civil actions. Investigator Nixon stated that he and the Applicant went over the entire Personal History Disclosure form together, and the Applicant responded negatively to the Investigator's inquiry concerning arrests and convictions pursuant to question number 46. Applicant's negative response indicates continuation of his confusion as to the arrest information required to be disclosed.

Investigator Nixon testified that subsequent to his discovery of Applicant's arrest record, he conducted another interview with the Applicant. According to the Investigator, he advised the Applicant that something had been uncovered during his investigation and he then asked the Applicant if the

Applicant wanted to tell him anything. It was the Investigator's testimony that the Applicant told him nothing, so he then inquired of the Applicant concerning each of the aforementioned arrests. Investigator Nixon testified that Applicant explained as to each arrest that he had misread question number 46. When confronted with information concerning the Small Claims Court actions, the Applicant explained that he had not recalled them.

The Applicant's statements to Investigator Nixon are entirely consistent with the Applicant's credible explanation of his misreading of the arrest and conviction question on his Personal History Disclosure form, and of his failure to recall the relatively minor civil actions which occurred during a painfully stressful and distracting time in the Applicant' life. The information concerning the Applicant's arrest record and his status as a party defendant in civil actions is significant as to the evaluation of his qualifications for licensure, and as such it constitutes material facts within the meaning of the disqualification criteria of Section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who fails to reveal a fact material to qualification. However, Section 86b ought not to be construed as requiring automatic disqualification of the Applicant herein, who failed to disclose material facts without any intent to mislead or deceive.

Having reviewed the testimony and other evidence offered in this matter (see Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I FIND:

1. Applicant has applied for a license to permit him to work in a casino as a Floor Person.

2. Applicant possesses the experience requisite for licensure as a Floor Person, and has satisfied the Casino Control Commission's requirements concerning New Jersey residency.

3. Applicant failed to disclose on his Personal History Disclosure form any information concerning his arrests on November 15, 1959 for assault with a deadly weapon, on March 15, 1970 for assault and battery and disturbing the peace, and on May 22, 1971 for aggravated assault and battery, which charges each resulted in a subsequent dismissal.

4. Applicant failed to disclose on his Personal History Disclosure form any information concerning his status as a party defendant in five Small Claims Court actions in Nevada.

5. The arrest and civil action information which Applicant failed to disclose on his Personal History Disclosure form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of Section 86b of the Casino Control Act.

6. Applicant's failure to disclose any information concerning his arrests and civil actions was inadvertent rather than intentional.

7. Applicant presently maintains a reputation for good character, honesty and integrity, and Applicant has demonstrated by clear and convincing evidence that he possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant should not be disqualified from receiving a Casino Employee License to work as a Floor Person, and that Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure. It is therefore ORDERED that a Casino Employee License, permitting Applicant to work as a Floor Person, be granted to Applicant.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

January 30, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

INVENTORY OF EXHIBITS

For the Applicant:

P-1 1977 employment application to Summa Corporation.

P-2A Letter from Department of HEW to Applicant, dated 1972.

P-2B Notice of medical insurance enrollment, dated 1973.

P-3 Letter from Nevada Rehabilitation Division to Applicant, dated 1973.

P-4 Report of Jack S. Hirsh, M.D., dated October 4, 1979.

P-5 Affidavit of Richard Sheridan, dated October 2, 1979.

P-6 Affidavit of Herbert L. Waldman, dated October 1, 1979.

For the Division of Gaming Enforcement:

R-1 Personal History Disclosure form of Applicant.

R-2 1971 arrest report.

R-3 1959 arrest report.

R-4 Reno, Nevada Police Department Record Cards.

R-5 Records of five Small Claims Court actions.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-93
OAL DOCKET NO. CCC 3176-79

IN THE MATTER OF THE APPLICATION :
OF JAMES J. DE SANTIS FOR :
LICENSURE AS A CASINO EMPLOYEE :
(ALCOHOL BEVERAGE EMPLOYEE) :

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on May 21, 1980, and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge; and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 29th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

It is further ORDERED that the application of James J. DeSantis be and hereby is denied based upon: (1) the reasons set forth in the report of the Division of Gaming Enforcement dated July 12, 1979 which is incorporated herein by reference and made a part hereof, and (2) the Applicant's failure to clearly and convincingly establish his individual qualifications pursuant to N.J.S.A. 5:12-89(b)(2), 90(b);

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 29, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:

James J. DeSantis for
Licensure as a Casino
Employee (Alcoholic
Beverage Employee)

INITIAL DECISION

OAL DKT. NO. CCC 3176-79

APPEARANCES:

Michael Lee, Deputy Attorney General,
Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

The applicant, James J. DeSantis, filed an application for a license as a casino employee (alcoholic beverage employee). On July 12, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. DeSantis based upon his failure to disclose his arrest and conviction record in response to question 46 of his Personal History Disclosure Form (PHD). The Commission advised the applicant that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

Upon receipt of the applicant's request for a hearing, 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 matter was set down for prehearing conference on September 21, 1979, December 11, 1979 and March 10, 1980.. On all scheduled prehearing dates the applicant failed to appear. On March 10, 1980, Deputy Attorney General Michael Lee waited an hour prior to being dismissed.

By letter dated March 12, 1980, the petitioner was asked to submit reasons for his nonappearance.

New Jersey Is An Equal Opportunity Employer

No correspondence has been received.

I FIND:

1. No appearance was made by the applicant, James J. DeSantis, for a prehearing conference on September 21, 1979, December 11, 1979 and March 10, 1980. The Office of Administrative Law has received no communication from the applicant or anyone else on his behalf giving a satisfactory reason for his failure to appear on the aforementioned time.

I CONCLUDE the applicant has abandoned his request for a hearing.

It is, therefore, ORDERED that the applicant's hearing for a casino employee license (alcoholic beverage employee) be terminated.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Comission who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1 et seq.

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

April 15, 1980
DATE

R. JACKSON DWYER, A.L.J.

April 25, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1882-79
CCC DOCKET NO. 79-EA-59

IN THE MATTER OF THE APPLICATION :
OF ROMEO DI STEFANO FOR LICENSURE :
AS A CASINO HOTEL EMPLOYEE :
(MUSICIAN) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter on February 14, 1980 before Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law; and the Chairman having considered the record of that hearing, and the Initial Decision of the Administrative Law Judge; and the Chairman having determined to adopt the Initial Decision of the Administrative Law Judge and grant the application for licensure,

It is on this 21st day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Chairman; and

It is further ORDERED that the application of Romeo DiStefano for licensure as a casino hotel employee be and is hereby granted based on the findings of fact and conclusions of law 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 the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 21, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF ROMEO DI STEFANO FOR LICENSURE AS A CASINO HOTEL EMPLOYEE (MUSICIAN)	INITIAL DECISION OAL DKT. NO. CCC 1882-79

APPEARANCES:

Charles H. Jurman, Esq. appeared on behalf of the applicant Romeo DiStefano (Kirkman, Mulligan, Bell & Armstrong, attorneys)

John J. Degnan, Attorney General of New Jersey by Joseph F. Mussomeli, Deputy Attorney General for the Division of Gaming Enforcement.

EXHIBITS:

P-1 New Jersey Voter Registration Card

P-2 Musician's Union Card, Local 661, 25 North Albany Street, Atlantic City, New Jersey

P-3 Current New Jersey Driver's License

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In October 1978, Romeo DiStefano (Applicant) filed an application for licensure as a casino hotel employee (musician). On January 9, 1979 the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein it stated that "whether or not Mr. DiStefano can be considered a resident of New Jersey as defined under the Casino Control Act, as amended, must be resolved by the Commission. Mr. DiStefano's domicile is in Philadelphia, Pennsylvania. Nevertheless, he has spent every summer in New Jersey since 1953. His summer address is 717 Asbury Avenue, Ocean City, New Jersey 08226.

The applicant was advised by letter dated June 6, 1979 from the Casino Control Commission's Senior Assistant-Counsel, with a copy of the Division's report enclosed, that there was a substantial

possibility that the Commission would deny his application "because you are not a New Jersey resident as required by N.J.S.A. 5:12-91, nor have you met the three-month residency requirement of N.J.A.C. 19:41-4.2(g). The applicant was also informed that he had a right to a hearing. By letter dated June 14, 1979 the applicant requested a hearing. 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 November 27, 1979, and a hearing was held on February 14, 1980.

The applicant testified briefly. He has resided at 717 Asbury Avenue, Ocean City, New Jersey for five years. Prior thereto he resided at 1136 Asbury Avenue, Ocean City, New Jersey. He has resided in Ocean City approximately thirty-five years. He votes in Ocean City, New Jersey. He belongs to Musician's Union Local 661 located at 25 North Albany Avenue, Atlantic City, New Jersey 08401. His dues have been paid in full for 1980. He is licensed to drive in the State of New Jersey, and his driver's license reflects his current address at 717 Asbury Avenue, Ocean City, New Jersey.

He further stated that he has worked as a musician in New Jersey his "entire career" and at the Flanders Hotel in New Jersey approximately thirty-five years. He also maintains an apartment in Philadelphia. During the past year, he worked five and one half months, from approximately May until October, at the Flanders Hotel, six days a week. He spent "roughly" two or two and one half months in Philadephia, and the other nine and one half or ten months in Ocean City and Atlantic City, New Jersey.

I FIND as follows:

1. Romeo DiStefano is an applicant for licensure as a casino hotel employee (musician).

2. He has resided at 717 Asbury Avenue, Ocean City, New Jersey for the past five years.

3. Prior thereto, he has resided at 1136 Asbury Avenue, Ocean City, New Jersey.

4. He votes in Ocean City, New Jersey.

5. He belongs to Musician's Union, Local 661, located at 25 North Albany Street, Atlantic City, New Jersey. His dues have been paid in full for 1980.

6. He is licensed to drive in New Jersey and his driver's license reflected his current address at 717 Asbury Avenue, Ocean City, New Jersey.

7. He has worked at the Flanders Hotel in New Jersey for the past thirty-five years.

8. He maintains an apartment in Philadelphia. During the past year, he worked approximately five and one half months at the Flanders Hotel. He spent "roughly" two or two and one half months in Philadelphia and the remaining nine and one half or ten months in Ocean City, New Jersey and Atlantic City, New Jersey.

CONCLUSIONS OF LAW

N.J.S.A. 5:12-91(b) provides that one of the criteria for licensure as a casino control employee is that an individual must be a resident of the State of New Jersey. The term "resident" is defined in the Casino Control Act N.J.S.A. 5:12-42.1, as:

> "any person who occupies a dwelling within the state has a present intent to remain within the state for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indicia that his presence within the state is something other than merely transitory in nature".

N.J.S.A. 5:12-91(c) provides that all casino control employee licensees shall be residents of this state for a period of three (3) months immediately prior to the issuance of such license, but the application for such licensees may be made prior to the required period of residency. The Chairman of the Casino Control Commission has the power to waive the required residency period for an applicant upon showing that the residency period would cause undue hardship upon the casino licensee which intends to employ said applicant or upon a showing of other good cause.

N.J.A.C. 19:41.4.3 provides:

"(a) the employee standards set forth in sections 89, 90 and 91 of the Act and the regulations of the Commission are as follows:

1. . . .

2. . . .

3. . . .

4. . . .

5. . . .

6. "all casino hotel employees shall be residents of this state for a period of three (3) months immediately prior to the issuance of such licenses, but application for such licensees may be made prior to the required period of residency. The Chairman shall waive the required residency period for an applicant upon a showing that the residency period would cause undue hardship upon the casino licensee which intends to employ said applicant or upon the showing of other good cause by such a casino licensee by said applicant".

I am clearly convinced that the applicant is not a seasonal resident in the State of New Jersey and that his presence is not "transitory in nature". He possesses a sufficient "ongoing physical presence within the State" to satisfy the Commission's licensing requirement both under the definition of the Casino Control Act, N.J.S.A. 5:12-91, N.J.S.A. 5:12-42.1 and N.J.A.C. 19:41-4.3(6). Accordingly, I recommend that licensure as a casino hotel employee (musician) be granted to Romeo DiStefano.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lore, who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1.

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

Date

R. Jackson Dwyer, A. L. J.

Date

Receipt Acknowledged:

Agency Head

Mailed to Parties:

Date

Office of Administrative Law

jrp
2/26/80

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1052-80
CCC DOCKET NO. 80-EA-3

IN THE MATTER OF THE APPLICATION :	
OF FRANK W. DRAGONI, SR., FOR :	
LICENSURE AS A CASINO EMPLOYEE :	FINAL ORDER
(BAR MANAGER) :	

This matter having been opened to the Casino Control Commission at its public meeting on May 21, 1980, and the Commission having considered the entire record of the proceedings, and the Applicant having withdrawn his request for a hearing, and the Initial Decision of the Administrative Law Judge having ordered the dismissal of the proceedings before the Office of Administrative Law and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and further having resolved to deny the application for licensure,

IT IS on this 29th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Frank W. Dragoni, Sr., for licensure as a casino employee be and hereby is denied based upon the reasons stated in the report of

the Division of Gaming Enforcement in this matter dated November 28, 1979 which is incorporated herein by reference and made a part hereof, and based further upon the Applicant's failure to prove by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 29, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF	)	INITIAL DECISION
FRANK W. DRAGONI, SR.	)	OAL DKT. NO. CCC 1052-80
FOR LICENSURE AS A CASINO EMPLOYEE	)	CASINO CONTROL COMMISSION
(BAR MANAGER)	)	DOCKET NO. 80-EA-3

APPEARANCES:

John J. Degnan, Attorney General of New Jersey, by Deputy Attorney General Robert J. Melillo, on behalf of the Division of Gaming Enforcement, Department of Law and Public Safety

Blatt, Blatt, Mairone and Biel, Esqs., by Martin S. Wilson, Jr., Esq., on behalf of Frank W. Dragoni, Sr.

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., A.L.J.:

This matter concerns the application of Frank W. Dragoni, Sr., petitioner, for licensure by the Casino Control Commission as a casino employee (bar manager) pursuant to N.J.S.A. 5:12-90. His application, including a Personal History Disclosure Form, was filed with the Commission during February 1979. The applicant was advised by letter from the Commission, dated January 28, 1980, that based upon information received by letter from the Division of Gaming Enforcement, dated November 28, 1979, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. Mr. Dragoni requested a hearing on his application and the

matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was scheduled for April 15, 1980.

By letter dated April 3, 1980 from counsel for the petitioner, his request for a hearing on his application was withdrawn.

I FIND and CONCLUDE that the applicant has withdrawn his request for a hearing.

Therefore, it is ORDERED that the proceedings in this matter before the Office of Administrative Law are 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 Commission does not so act in forty-five (45) days from receipt hereof and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby file with Joseph P. Lordi, Chairman of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

April 18, 1980
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., A.L.J.

DATE

Receipt Acknowledged:

AGENCY HEAD

April 28, 1980
DATE

Mailed to the Parties:

Ronald L. Parker/sh
OFFICE OF ADMINISTRATIVE LAW

plb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 2256-79
CCC DOCKET NO. 79-EA-66

IN THE MATTER OF THE APPLICATION :
OF MARK L. FRANCIS FOR :
LICENSURE AS A CASINO EMPLOYEE : FINAL ORDER
(DEALER) :

A hearing, having been conducted in the above-captioned matter on September 27, 1979, before Administrative Law Judge James A. Ospenson of the Office of Administrative Law, and the Commission having considered the record of that hearing and the Initial Decision of the Administrative Law Judge, and the exceptions to said Initial Decision which were filed with the Commission by the Applicant; and the Commission having resolved at its public meeting of January 9, 1980 to adopt the Initial Decision of the Administrative Law Judge as modified herein, and to deny the application for licensure,

It is on this 9th day of January, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and is hereby adopted by the Commission with the following modification: The grounds for denial of licensure being, specifically, failure of the Applicant to establish in a clear and convincing manner, his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2), and the Applicant's intentional failure to

disclose material facts within the meaning of N.J.S.A. 5:12-86 The Commission specifically does not adopt the finding in the Initial Decision of disqualification of the Applicant pursuant to N.J.S.A. 5:12-86(g), such finding being unnecessary to the result herein; and

It is further ORDERED that the application of Mark L. Francis for a casino employee license be and hereby is denied for the reasons herein stated; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

Dated: January 14, 1988

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

IN RE:

In the Matter of the Application of Mark L. Francis for Licensure as a Casino Employee (Dealer)

INITIAL DECISION

O.A.L. DKT. NO. C.C.C. 2256-79

APPEARANCES:

Mark L. Francis, Pro Se

Division of Gaming Enforcement by
Patricia Arons, Esq., Deputy Attorney General

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.

On June 20, 1978 Mark L. Francis (applicant) filed application for licensure as a casino employee (dealer). By letter of June 25, 1979 he was informed by the Casino Control Commission that based on the information contained in the report of the Division of Gaming Enforcement on June 8, 1979 there is a "substantial possibility that the Casino Control Commission will deny your application." By letter of June 29, 1979 applicant exercised his right to request a hearing on the proposed denial pursuant to N.J.A.C. 19:42-2.2. On July 17, 1979 that matter was transmitted to the Office of Administrative Law for hearing and determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq.

A prehearing conference was held on August 24, 1979 and a prehearing order entered. The matter proceeded to formal hearing on September 27, 1979.

At issue are whether applicant has proven by clear and convincing evidence that he is qualified for licensure under N.J.S.A. 5:12-90 and 5:12-89(b) by good character, honesty and integrity and, correlatively, whether applicant is disqualified therefor by failure to reveal facts material to qualification (contrary to N.J.S.A. 5:12-86(b)); or by conviction of offenses that indicate licensure would be inimical to the policy of the act and to casino operations (contrary to N.J.S.A. 5:12-86(c)); or by commission of an act or acts which would constitute an offense inimical to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of this State (contrary to N.J.S.A. 5:12-86(g)).

Both the Commission and the Division of Gaming Enforcement are parties to the proceeding. N.J.A.C. 19:42-1.2. The Division, by N.J.S.A. 5:12-76, is charged with investigation of licensure applications and prosecuting defense thereof in licensure hearings. Here the Division objects to licensure on the basis that applicant failed to disclose on his Personal History Disclosure Form - II (J-1 in evidence) an arrest and conviction for loitering in Ridley Township, Pennsylvania, on August 1, 1977 and an arrest without conviction (dismissal) for impersonating a police officer (N.J.S.A. 2A:170-20.5) in Margate City, New Jersey, on March 13, 1978. More importantly, perhaps, the Division objects to licensure on the basis of an arrest in Ridley Township, Pennsylvania, on August 12, 1978 (subsequent to the filing of his application) for unlawful possession of a loaded .22 calibre Ruger handgun. Police testimony indicated that the criminal complaint was based on section 6106(a) of Pennsylvania's Uniform Firearms Act, which prohibits the carrying of firearms without a license. The equivalent crime in New Jersey is N.J.S.A. 2A:151-41, a high misdemeanor. It is stipulated by the parties that the charge has not been prosecuted and that applicant is enrolled in an Accelerated Rehabilitative Disposition (ARD) Probation program for one (1) year as a result of an order of the Court of Common Pleas, Delaware County, Pennsylvania, dated October 4, 1978 (R-4 in evidence). The program is similar to New Jersey's pre-trial intervention system set forth in R.3:28 of N.J. Court Rules. It should be noted that Pennsylvania's Uniform Firearms Act, 18 Pa. C.S. §6106, provides that "no person shall carry a firearm in any vehicle or concealed on or about his person..." It has been held that the essence of the offense is the "concealed carrying" of a weapon, whether it is in a vehicle or on the person. The means by which it is transported --- car or person -- is only detail to describe the method of concealment in which the gun is carried. See Commonwealth v. Walker, 219 Pa. Super 167, 280 A2d 590, 591 (Sup. Ct. Pa. 1971); and Commonwealth v. Williams, -- Pa. Super ---, 346 A2d 308, 310, (Sup. Ct. Pa. 1975).

EVIDENCE AT HEARING

Applicant is a 22 year old graduate of Ridley Township High School, whose home address, he said, is with his parents at 415 Virginia Avenue, Milmont Park, Pennsylvania. He has successfully completed a 240 hour course in Craps taught at the Casino Career Institute of Atlantic County Community College in compliance with N.J.A.C. 19:44-8.3. He is unemployed.

Of the first two incidents, applicant insisted he had been cleared. Of the third, he said it occurred after he filed the Personal History Disclosure Form. On cross-examination, he said his answer "No" to question #46 of the Personal History Disclosure Form concerning arrests and convictions was, firstly, because he did not remember the incident and, secondly, because he was not convicted of the loitering charge. He denied having pleaded guilty to it even though he paid a $51 fin The only reason he did that, he said, was in order not to be harassed. He preferred that to paying $251 to get a lawyer. He denied even being charged

with anything because he defined "charged" as being arrested and found guilty. The incident itself, he said, though it occurred at 2:45 a.m., involved no more than his taking a walk. He was not drinking, he said.

Through Officer Vincent Gallagher of the Ridley Township Police Department a police incident form was introduced into evidence as R-1. He testified and the report showed that he was assigned to investigate a report of disturbance at the Nassau Swim Club about 2:45 a.m. He found four other persons there with applicant. Open beer bottles lay nearby. All had strong odors of alcohol on their breath. All were arrested, brought to the police station and locked up.

Of the second incident in Margate on March 13, 1979, applicant said he did not consider the complaint was a "charge". He considered the complainant, a Mr. Hicks, to be a mentally disturbed fool. He went to court but the traffic court judge dismissed the matter.

Of the third incident in Ridley Township on August 12, 1978, applicant testified he merely was in the company of another person whose car was driven to the Nassau Swim Club at night. He had with him the .22 calibre Ruger pistol, which, he said, he was transferring, loaded, to a friend named Timothy Swerzik. Swerzik was being harassed by someone and applicant wanted to help him defend himself. He admitted he had no license to carry the weapon. He insisted he was not "carrying" it, merely transferring it. By applicant's lexicon, "carrying it" is "concealing it." This weapon, he said, was not concealed but in plain view on the seat. He had purchased the weapon for target practice. Applicant refused at first to identify the driver of the car. Only after the administrative law judge ordered him to answer the question of the Division's attorney did applicant name the driver as one Peter Camaro.

Officer Gallagher testified he was concerned in the August 12, 1978 incident also. On routine patrol at night he came upon a car at the Nassau Swim Club occupied by two males. Investigating, he was given the name "John Hoffman" by the driver. This turned out to be fictitious. The other occupant was the applicant, whom he knew by sight. Looking inside the car, he saw a plastic bag of marijuana and ordered both occupants to exit the car using the driver's door. Instead, the applicant exited the car by the passenger door, stooping while doing so as if to drop something on the ground. Gallagher secured both men and then found the .22 calibre Ruger lying on the ground beside the car. Investigation showed it belonged to applicant, who had no license to carry (R-2 and R-3 in evidence). The gun was loaded and lethal. According to Gallagher, Peter Camaro is known by the Ridley Police Department to be a drug possessor and distributer in the area.

DISCUSSION

At summation, applicant argued that he seemed to be on trial for his honesty. He said the Division impugned his honesty because of a loitering charge he didn't disclose. "That", he said, "is a big joke." He announced he would sue for harassment and discrimination. He didn't need a job that badly that he had to come begging for it. He demanded return of his license application fee and dealer school tuition.

Applicant was given some latitude at the hearing, not simply because he appeared pro se. His outbursts were to some extent revelatory of his character. It shortly became apparent that applicant was both evasive and devious, a conclusion that lends credence to the proposition that his answers to the Personal History Disclosure Form and question #46 are likewise evasive and devious. Though the firearms incident post-dated the application filing, applicant's explanations were by no means effective in extenuation of the incident. Instead, they raise serious questions about why he should have possessed an unlicensed loaded weapon in an automobile late at night at a place that should have been known to him, as it was known to the authorities, as a trouble spot. Though one may give him the benefit of the doubt that a valid charge was filed against him in the Margate police impersonation incident, there appears no reasonable reason why applicant should have failed to disclose in his application the 1977 Ridley Township loitering incident. His justification of it as not a "charge" or conviction merely fortifies the conclusion that applicant is evasive. A challenge to his honesty in that respect is no joke. It is validly raised.

CONCLUSION

Having considered all the testimony and exhibits, and having in particular observed the demeanor of the applicant, I make the following FINDINGS OF FACT:

1. The foregoing, to the extent of any mediate conclusions of fact, is incorporated herein by reference.

2. Applicant, Mark L. Francis, has applied for a casino employee license as a dealer of craps.

3. He has completed a 240 hour course in craps taught at the Casino Career Institute of Atlantic Community College.

4. Applicant was arrested, charged and convicted of loitering on August 1, 1977 in Ridley Township, Pennsylvania.

5. Applicant was arrested and charged with impersonating a police officer on March 13, 1978 in Margate City, New Jersey.

6. Applicant did not disclose either arrest or a conviction of loitering on his Personal History Disclosure Form of casino license application.

7. The non-disclosures were intentional and intended, as demonstrated at hearing, to mislead.

8. The non-disclosures were neither justified nor extenuated, at hearing, by merit of the alleged relative inconsequence of the charges. In short, applicant's explanations were specious.

9. The non-disclosures in each instance here were of facts material to license qualifications.

10. Applicant was arrested and charged with unlawfully carrying an unlicensed firearm on August 12, 1978 in Ridley Township, Pennsylvania, contrary to the Crimes Code of Pennsylvania, 18 Pa. C.S. § 6106, prosecution of which is suspended under a pre-trial intervention proceeding. The circumstances post-dated the filing of applicant's casino employee application.

11. The act predicating the arrest and charge would, even though not prosecuted or prosecutable under the criminal law of this State, constitute an offense inimical to the policy of N.J.S.A. 5:12-1, et seq, and to casino operations, by merit of the nature, quality and gravity thereof, the date thereof in relation to applicant's casino application, and the lack of any credible explanation by applicant in extenuation or mitigation thereof.

12. No request for delay in consideration of this application has been made by applicant under N.J.S.A. 5:12-86(d).

13. Applicant has failed to sustain the burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE that applicant has failed to sustain the burden of proof required of him by N.J.S.A. 5:12-89(b)(2); that

applicant is disqualified for licensure by reason of material non-disclosures, contrary to N.J.S.A. 5:12-86(b); and that applicant is further disqualified for licensure by reason of acts inimical to the policy of the act and to casino operations, contrary to N.J.S.A. 5:12-86(g).

I ORDER, therefore, that his license application be DENIED.

This Initial Decision does not become final until forty-five (45) days from the date of agency receipt hereof unless the agency head acts to affirm, modify or reverse it during the forty-five (45) day period, pursuant to N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

DATE JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

DATE AGENCY HEAD

Mailed to Parties:

DATE FOR OFFICE OF ADMINISTRATIVE LAW

ame

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-22

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	:	
v.	:	FINAL ORDER
GARY S. GEORGE, Respondent.	:	

The New Jersey Casino Control Commission, having read and considered the December 10, 1979 Report and Recommendation of Commissioner Kenneth H. MacDonald, which is incorporated herein by reference, at its public meeting of January 9, 1980, and having received no exceptions from the Respondent or the Division of Gaming Enforcement, and having voted to adopt the said Report and Recommendation;

It is on this 21st day of January, 1980,

ORDERED, that the casino employee license of Respondent Gary S. George be and hereby is suspended retroactively from September 4, 1978 through September 17, 1978; and it is further

ORDERED, that a copy of this Order be served upon the Charging Party and Respondent within five (5) days of the date of this Order.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi, Chairman

DATED: January 21, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-10

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW AND PUBLIC	:	
SAFETY, DIVISION OF GAMING	:	
ENFORCEMENT,	:	
Charging Party,	:	
v.	:	REPORT AND RECOMMENDATION
GARY S. GEORGE,	:	
Respondent.	:	

Patricia Arons, Deputy Attorney General, appeared for the Division of Gaming Enforcement.
Gary S. George appeared pro se.
David Arrajj, Senior Assistant Counsel, appeared for the Casino Control Commission Legal Staff.

The Respondent, Mr. Gary S. George, is the holder of a casino employee license duly issued by the Casino Control Commission bearing No. 00540-21. Resorts International Hotel, Inc. has employed the Respondent as a craps dealer since May 26, 1978. On or about August 19, 1978, the Respondent was allegedly observed by four employees of Resorts International playing craps at table No. 9, pit No. 8. As a direct and proximate result of these acts, the Respondent was suspended from employment by Resorts International from September 4, 1978 to September 17,1978,without pay.

On May 16, 1979, the Charging Party, the Division of Gaming Enforcement [hereinafter "Division"] filed with the Casino Control Commission a Complaint against the Respondent setting forth the facts detailed above and charging that Respondent's activity was

violative of N.J.S.A. 5:12-100(n). This statute provides in pertinent part that it is..."unlawful for...any casino employee... to wager at any game in any casino in this State." The Division sought judgment suspending the Respondent's casino employee license to coincide with his previous two week suspension from employment by Resorts International or, in the alternative, such relief as the Commission deemed equitable and just. The Complaint was duly served upon the Respondent under cover letter dated May 16,1979. Thereafter, the Respondent exercised his right to request a hearing.

On September 28, 1979, a Pre-Hearing Conference was held, attended by the Respondent, appearing pro se, the Division, Patricia Arons, Deputy Attorney General, appearing and the Casi Control Commission Legal Staff, Senior Assistant Counsel, David Arrajj appearing. At the Pre-Hearing Conference the Respondent, after being advised of his right to counsel, admitted that he did in fact commit the violation of N.J.S.A. 5:12-100(n) alleged in the Complaint. The Respondent orally consented to the entry of a Final Order by the Commission finding that he has committed the aforementioned violation without a plenary hearing, and further consented to the retroactive suspension of his casino employee license for a period of two weeks to coincide with his suspension from employment by Resorts International from September 4, 1978 to September 17, 1978. The Division also consented to the foregoing disposition of its Complaint.

A Pre-Hearing Conference Order of Settlement, which embo the terms and conditions orally agreed to by the Respondent and

the Division was served upon the parties. The Pre-Hearing Conference Order of Settlement provided that the proposed settlement would not be submitted to the Casino Control Commission for consideration unless and until the Division and Respondent consented in writing to both its form and substance and affirmed that it accurately set forth the settlement reached at the Pre-Hearing Conference. Thereafter, both the Division and the Respondent, by affixing their respective signatures to the Order, so consented, and so affirmed. [A copy of the Pre-Hearing Conferenc Settlement Order is annexed hereto and made a part hereof].

Under all the circumstances, I find that the settlement was entered into knowingly and intelligently by the Respondent. I further find that the settlement is reasonable, consistent with the policy of the Casino Control Act, and with the public interest. Accordingly, I recommend that the Settlement be accepted by the Commission and that the casino employee license of the Respondent be suspended retroactively from September 4, 1978 to September 17, 1978.

Kenneth H. MacDonald/A.A.

COMMISSIONER KENNETH N. MACDONALD
HEARING EXAMINER

Dated: December 10, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-10

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. GARY S. GEORGE, Respondent.	:	PREHEARING CONFERENCE ORDER OF SETTLEMENT

A prehearing conference having been held in this matter before the undersigned on September 28, 1979 at the offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey, the Respondent appearing pro se, Patricia Arons, Deputy Attorney General, appearing for the Charging Party, the Division of Gaming Enforcement [the Division], and in the presence of David Arrajj, Senior Assistant Counsel, the following matters were determined:

A. PROPOSED SETTLEMENT

Respondent admits that he did in fact commit the violation of N.J.S.A. 5:12-100(n) alleged in the Division's Complaint herein and consents to the entry of a Final Order of the Commission so finding without a hearing. He further consents to the imposition upon him of the sanction requested in the

Division's Complaint, i.e., the retroactive suspension of his license for a period of two (2) weeks to coincide with his previous suspension from employment by Resorts International Hotel, Inc. from September 4, 1978 until September 17, 1978.

The Division consents to the foregoing proposed disposition of these proceedings.

B. FINAL DISPOSITION BY COMMISSION

Final disposition of this matter in accordance with the foregoing proposed settlement upon which the parties have agreed will not occur until and unless the said settlement is approved by majority vote of the Casino Control Commission. Said settlement will not be submitted to the Commission for approval until and unless the Division and Respondent have affirmed their agreement upon the proposed settlement in writing by signing this Order in the spaces designated below.

It is on this 9th day of October, 1979,

ORDERED that this Pre-Hearing Conference Order of Settlement be served upon the Respondent for his signature forthwith and that it be promptly served upon the Division for the signature of its representative upon the return of said Order to the Commission by Respondent with his signature affixed thereto.

COMMISSIONER KENNETH N. MACDONALD
HEARING EXAMINER

BY: David Arrajj
David Arrajj
Senior Assistant Counsel

Dated: October 9, 1979

I hereby consent to both the form and substance of the foregoing Pre-Hearing Conference Order Of Settlement. I further hereby affirm that the foregoing Pre-Hearing Conference Order Of Settlement accurately memorializes the agreements reached at the Pre-Hearing Conference in this matter held on September 28, 1979.

Dated: Oct 30 1979

Gary S George
Gary S. George
Respondent

Dated: Oct 30, 1979

Patricia Arons
Patricia Arons
Deputy Attorney General
Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-45
OAL DOCKET NO. CCC 1045-79

IN THE MATTER OF THE APPLICATION :
OF HAROLD K. GOOD FOR LICENSURE AS : FINAL ORDER
A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions filed by the Applicant, no exceptions or objections having been filed by the Division of Gaming Enforcement, and the Commission having resolved at its public meeting of May 1, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 14th day of May, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Harold K. Good for a casino employee license be and hereby is denied on the basis of the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the application of Harold K. Good for a casino employee license be and is hereby denied based upon the finding that the Applicant has failed to demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90(h), as supported by the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission, and which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: May 14, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1045-79
CCC DOCKET NO. 79-EA-45

IN THE MATTER OF THE APPLICATION :
OF HAROLD K. GOOD FOR LICENSURE : FINAL COMMISSION DECISION
AS A CASINO EMPLOYEE (DEALER) :

Jack Edward Granzow, Esquire, appeared for the Applicant.

Patricia J. Arons, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On October 20, 1978 Harold K. Good [hereinafter "Applicant"] filed an application for licensure as a casino employee in the position of dealer with the Casino Control Commission [hereinafter "Commission"]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter "Division"] which shortly thereafter conducted an investigation into the background of the Applicant.

As a result of this investigation, the Division submitted a letter-report dated March 26, 1979 to the Chairman of the Commission interposing an objection to the licensure of the Applicant. By letter dated April 9, 1979, the Applicant was advised by the Commission's legal staff that there was a substantial possibility that the Commission would deny his application for licensure. The Applicant thereupon requested

a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1, et seq. A prehearing conference was held on June 18, 1979. The matter proceeded to formal hearing on October 10, 1979.

Administrative Law Judge Joseph F. Fidler filed his Initial Decision on February 25, 1980, a copy of which is appended hereto at A-1 through A-8. Judge Fidler recommended that the Applicant be denied licensure. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded the opportunity to file a statement of exceptions or objections to the findings and conclusions of the Administrative Law Judge. On March 24, 1980, the Applicant's attorney filed exceptions to Judge Fidler's Initial Decision. No exceptions or objections have been filed by the Division. For the reasons which follow, the Commission affirms and adopts the Administrative Law Judge's Initial Decision and denies licensure.

In his Initial Decision, the Administrative Law Judge concluded that the licensure of the Applicant would be inimical to the policy of the Casino Control Act [hereinafter "Act"] and casino operations under N.J.S.A. 5:12-86(c)(4). This conclusion is based upon the finding that the Applicant was convicted in 1978 of larceny of under $200 in violation of N.J.S.A. 2A:170-30.1. A review of the record reveals that this conviction resulted from the Applicant's theft of currency from a dwelling occupied

by a person with whom he was visiting. Based upon a careful review of the entire record, it appears that there is ample credible evidence to support the conclusion of the Administrative Law Judge in this regard. Thus, it will not be disturbed. A finding that the commission of an offense would render an applicant's licensure inimical to the policies of the Act and casino operations, by its very nature, requires consideration of 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 are the offenders' conduct since the offense to the present are all matters to be considered." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 79-CL-1 at 15. This decision should not, therefore, be read to imply that all petty larceny offenses in and of themselves render the licensure of the applicants involved inimical to the policy of the Act and casino operations. The question of the Applicant's rehabilitation under N.J.S.A. 5:12-90(h) will be addressed infra.

A second basis upon which the Administrative Law Judge relied in recommending the denial of licensure is the Applicant's failure to sustain his burden of establishing, by clear and convincing evidence, his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and N.J.S.A. 5:12-90(b). There is ample credible evidence to support this conclusion as well. Apart from the larceny conviction previously

noted, the Applicant was convicted in 1974 of shoplifting one pair of sneakers in violation of N.J.S.A. 2A:170-98. Based upon the foregoing, the Administrative Law Judge's findings and conclusions, as set forth in the Initial Decision, are affirmed and adopted in their entirety. Although this holding would ordinarily be dispositive of the instant licensing matter, the Commission deems it appropriate to address the issue of the Applicant's rehabilitation under N.J.S.A. 5:12-90(h).

The hearing in this matter was conducted on October 10, 1979. At that time, applicants for licensure as casino employees were not afforded the opportunity to demonstrate their rehabilitation with regard to otherwise disqualifying offenses under N.J.S.A. 5:12-86(c). Thus, this issue was not addressed at the hearing or in the Initial Decision. However, pursuant to the recent amendments to the Act, L. 1979, c.282, which became effective on January 9, 1980, applicants for licensure as casino employees are afforded this opportunity. N.J.S.A. 5:12-90(h) provides:

> Notwithstanding the provisions of subsection e. of this section [referring to the disqualification of a casino employee applicant on the basis of the criteria contained in N.J.S.A. 5:12-86], no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

Assuming arguendo that the Applicant has demonstrated his rehabilitation, the ultimate conclusion reached herein remains unaffected, inasmuch as the demonstration of rehabilitation has no bearing upon the Applicant's disqualification for having failed to establish his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 90(b). See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113. Nevertheless, in light of our adoption of the Administrative Law Judge's conclusion that the Applicant's conviction renders

his licensure inimical to the policy of the Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4), it is appropriate to briefly address this issue.

The Commission has determined that while the proofs necessary to establish rehabilitation and a reputation for good character, honesty and integrity are not necessarily coextensive, there is, in most instances, significant overlap. See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket Number 79-EA-113, at 22 (1980). This principle is clearly applicable to the within matter. Certainly the Applicant, who was represented by counsel at the hearing, sought to establish his good character by resorting to every available probative means. It is inconceivable that the Applicant withheld evidence which would have been probative only of his rehabilitation, based upon the theory that such evidence only tended to establish rehabilitation, which was not at issue at the hearing, and not good character.

All of the factors relevant to the issue of rehabilitation under N.J.S.A. 5:12-90(h), were focused upon by the Applicant in his unsuccessful attempt to demonstrate good character. The Commission notes that although all of these factors were duly considered, those that follow weigh heavily in its determination on this issue of rehabilitation. First, as a dealer in a casino, the Applicant would have ready access to large sums of money. While the offense of larceny of under $200, pursuant to N.J.S.A. 2A:170-30.1,is a disorderly persons offense, it is of a serious nature in light of the position the Applicant seeks to hold. Second and perhaps more important, is the recent date of the offense in question. The Applicant committed the above-described theft on or about September 14, 1977, and was tried on February 10, 1978. Because of the relatively short period of time that has transpired, we cannot say that the Applicant has sufficiently demonstrated either a course of conduct of appreciable duration reflecting a departure from his prior larcenous activity, or that such behavior was merely abberrational. It is the view of the Commission that, considering all the relevant factors, there has been an insufficient passage of time since the offense occurred. Hence, we conclude that Applicant has failed to affirmatively demonstrate his rehabilitation and further that a remand to the Office of Administrative Law is unnecessary on this issue.

For the foregoing reasons, the Commission is satisfied that licensure of the Applicant would be inimical to the policy of the Act and casino operations under N.J.S.A. 5:12-86(c)(4). In addition we conclude that the Applicant has failed to affirmatively demonstrate his rehabilitation under N.J.S.A. 5:12-90(h). Finally, we are satisfied that the Applicant has failed to demonstrate his reputation for good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b)(2), and 90(b). The application of Harold K. Good for licensure as a casino employee is there denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: May 14 1980

IN THE MATTER OF:) INITIAL DECISION

THE APPLICATION OF) OAL DKT. NO. CCC 1045-79
HAROLD K. GOOD
FOR LICENSURE AS A CASINO) AGENCY DKT. NO. 79-EA-45
EMPLOYEE (DEALER)

APPEARANCES:

Jack E. Granzow, Esq.,
American Civil Liberties Union
for the Applicant, Harold K. Good

John J. Degnan, Attorney General of New Jersey
by: Patricia J. Arons, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Harold K. Good to the Casino Control Commission for licensure to work in a casino as a dealer. His application, including Personal History Disclosure Form, was filed with the Commission on October 20, 1978. Applicant was advised by letter from the Casino Control Commission, dated April 9, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated March 26, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on June 18, 1979, and the hearing was held on October 10, 1979, in Atlantic City, New Jersey. The final post-hearing brief of the parties was received on January 8, 1980, which is deemed to be the concluding date of the hearing.

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

1. Whether Applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2) as incorporated in N.J.S.A. 5:12-90b.

2. Whether Applicant has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria in his responses to questions No. 33 and No. 46 of the Personal History Disclosure Form, within the meaning of N.J.S.A. 5:12-86b.

3. Whether Applicant has been convicted of any offense not enumerated in subsection 86c which would indicate under subsection 86c, as incorporated in subsection 90e, that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations.

4. Whether the Applicant has committed any acts which would constitute a disqualifying offense under N.J.S.A. 5:12-86c, even if such conduct has not been or may not be prosecuted under the criminal laws of this State, within the meaning of N.J.S.A. 5:12-86g.

At the prehearing conference, a stipulation was entered into by and between counsel for the Applicant and the Division of Gaming Enforcement that no objection to licensure was raised with respect to the Applicant's financial stability or requisite experience pursuant to subsection 90b of the act.

The possibility of disqualification from licensure pursuant to Section 86b of the Casino Control Act arises from Applicant's arrest on March 6, 1976 for the offense of contributing to the delinquency of a minor, N.J.S.A. 2A:96-4, which charge was "No Billed" by the Grand Jury. Applicant admitted his omission of any mention of this arrest in his answer to question No. 46 of his Personal History Disclosure Form, which requires complete disclosure of an applicant's criminal and disorderly persons arrest and conviction record. Applicant explained that his omission was due to his misunderstanding of question No. 46, since he thought that when a charge was dropped it would no longer be a black mark on his record.

Applicant also admitted his omission of any mention of his employment as a vacuum cleaner salesman with Central Kirby Company of Hammonton, New Jersey, during 1977, from his answer to question No. 33 of his Personal History Disclosure Form, which requires complete disclosure of an applicant's employment history. Applicant did disclose his employment during 1977 with Atlantic Kirby Company, and he explained that he failed to mention his employment with Central Kirby because, in essence, he did not distinguish between the two companies as separate employers.

Applicant testified at length on direct and cross-examination concerning the remainder of his arrest and conviction record, which was disclosed on his Personal History Disclosure Form. Applicant was convicted in 1974 of shoplifting one pair of sneakers in violation of N.J.S.A. 2A:170-98, and was fined one hundred fifty dollars ($150). On February 10, 1978, Applicant was convicted of the disorderly person offense of larceny of property of the price or value of two hundred dollars ($200) or less, pursuant to N.J.S.A. 2A:170-30.1, for which offense Applicant was fined a total of two hundred dollars ($200). Testifying concerning the events which led to his larceny arrest, Applicant stated that he had attended a party in the trailer park where he lived. According to the Applicant, he had been drinking and did not remember exactly what happened, but he knew that he had been accused of stealing some money while at the party. Applicant denied even knowing from where the money was supposedly taken. It was implicit in the testimony of the Applicant that he maintained his innocence of the larceny charge. The transcript of the Applicant's larceny trial in the Egg Harbor Township Municipal Court on February 10, 1978, including the finding of Applicant's guilt and the imposition of a fine upon his conviction, has been admitted into evidence as Exhibit R-4.

Applicant had been a vacuum cleaner salesman for Atlantic Kirby Company and Central Kirby Company during 1977. Applicant denied that he ever stole any equipment from an employer. He acknowledged that Bruce Pergament, manager of Central Kirby Company, had come to the Applicant's house to collect a complete Kirby set which was in the Applicant's possession. Applicant stated that he did not know that Mr. Pergament had been looking for the equipment, and he voluntarily returned it to Mr. Pergament. Applicant denied the accusation that he had taken money from the car of Mr. Pergament's wife, when the car was loaned to him by Mr. Pergament. Applicant also specifically denied having told Mr. Pergament that he had taken some equipment from Mr. Richard Rasner, president of Atlantic Kirby Company.

Testifying on the Applicant's behalf was Gary Smith, formerly a sales manager for Central Kirby Company. Mr. Smith testified that he assisted Mr. Pergament in picking up some equipment from the Applicant in 1977. According to Mr. Smith, the Applicant had the equipment so he could demonstrate it for sales. Mr. Smith stated that the Applicant did not deny that he had the equipment, nor did he claim that Mr. Pergament did not have a right to the equipment. It was the Witness' testimony that the Applicant produced the equipment right away when it was requested. On cross-examination, Mr. Smith testified that he was familiar with the company policy which required return of equipment to the company within three days. He acknowledged that the Applicant had not returned the equipment in question within three days. Mr. Smith also acknowledged that the Applicant's reputation at Central Kirby Company and Atlantic Kirby Company is not very good, and he would not be welcomed back as an employee. Mr. Smith stated that he assumed the Applicant was through working for Central Kirby Company when he and Mr. Pergament went to pick up the equipment which had remained in the Applicant's possession.

The first witness to testify on behalf of the Division of Gaming Enforcement was Mr. Richard Rasner, who stated that the Applicant had been a sales representative for Atlantic Kirby Company for approximately three or four months during 1977. Mr. Rasner stated that he had concluded the Applicant would not work out with his company and had suggested that he see Mr. Pergament at Central Kirby Company. According to Mr. Rasner, he was told by Mr. Pergament that the Applicant boasted that he had taken several vacuum cleaner attachments from Mr. Rasner. Mr. Rasner testified that he felt some equipment was taken, but that his inventory system would not confirm whether or not the Applicant took any equipment or carpet samples. It was Mr. Rasner's testimony that he would not rehire the Applicant.

The second witness to testify on behalf of the Division of Gaming Enforcement was Randall Eccles, a shift foreman at Wheaton Plastics Company, where the Applicant is employed as a utility man. According to Mr. Eccles, the Applicant has on occasion received verbal warnings concerning the performance of his job in a manner which did not conform with his instructions. It was Mr. Eccles' testimony that the Applicant has also been warned concerning absenteeism and lateness. Nevertheless, Mr. Eccles testified that the Applicant was a relatively reliable employee who had not received an uncommonly large number of verbal warnings. Mr. Eccles acknowledged that the Applicant's job performance evaluation supported his promotion to the utility position.

Mary Ann Vorndran, an investigator with the Division of Gaming Enforcement, testified concerning her background investigation of the Applicant. According to the Investigator, she conducted a personal interview with the Applicant on January 2, 1979 at which ti the Investigator reviewed with the Applicant his Personal History Disclosure Form. It was the Investigator's testimony that the Applicant attempted to explain to her the details of his larceny conviction, which he had listed on his Disclosure Form as a burglary conviction. The Investigator testified that the Applicant stated the allegation against him had been that he stole two hundred fifty dollars ($250) worth of household appliances. The transcript of the municipal court proceeding in this matter revealed that the allegation against the Applicant was actually that he had stolen money from a neighbor.

Investigator Vorndran also testified that she obtained an affidavit of Bruce Pergament, dated October 9, 1979, which alleges that Mr. Pergament was not able to obtain the return of his vacuum cleaner equipment from the Applicant until approximately five or six weeks after the Applicant left his employment with Central Kirby Company. The Affiant also expressed his opinion that the Applicant had not intended to return the vacuum cleaner equipment in his possession. In his affidavit, Mr. Pergament also expressed the opinion that he would not rehire the Applicant, nor would he recommend him for unsupervised employment near money or valuable equipment (Exhibit R-3).

The Applicant's employment history and arrest record are clearly significant as to the evaluation of his qualification for licensure, and as such constitute material facts within the meaning of the disqualification criteria of Section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who, inter alia, fails to reveal any fact material to qualification. However, the testimony at the hearing which reveals the close relationship between Atlantic Kirby Company and Central Kirby Company demonstrates that the Applicant's belief that the companies were not distinguishable was reasonably held. It is also apparent that the Applicant misunderstood the requirements of question No. 46 of his Personal History Disclosure Form when he failed to disclose his arrest for contributing to the delinquency of a minor, and his failure to disclose was not an attempt to conceal material facts. Section 86b of the Act ought not to be construed as requiring automatic disqualification of the Applicant herein, who failed to disclose material facts without any intent to mislead or deceive.

Applicant was convicted on February 10, 1978, of the disorderly person offense of larceny of property valued at two hundred dollars ($200) or less, in violation of N.J.S.A. 2A:170-30.1. The elements of this offense necessary for obtaining a conviction may not be collateraly challenged in this licensing proceeding. Although the complainant in the municipal court proceeding testified that the amount of money stolen was two hundred sixty dollars ($260), the municipal court judge made no express finding as to the amount stolen, and therefore found the Applicant guilty beyond a reasonable doubt of larceny of property of some value, not in excess of two hundred dollars. N.J.S.A. 2A:170-30.1 is not one of the specifically enumerated offenses under Section 86c of the Act, a conviction of which would automatically disqualify the Applicant from licensure. However, this recent conviction of the Applicant for stealing a neighbor's money, obtained by the standard of proof beyond a reasonable doubt, indicates that licensure of the Applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Licensure of the Applicant would therefore be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of Section 86c of the Act.

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

1. Applicant has applied for a license to permit him to work in a casino as a dealer.

2. Applicant possesses the necessary financial stability and requisite experience for licensure pursuant to Section 90b of the Act.

3. Applicant failed to disclose on his Personal History Disclosure Form any information concerning his employment in 1977 with the Central Kirby Company.

4. Applicant failed to disclose on his Personal History Disclosure Form any information concerning his March 6, 1976 arrest for contributing to the delinquency of a minor, pursuant to N.J.S.A. 2A:96-4.

5. Applicant's failures to disclose his complete employment history and his complete arrest record were not intentional.

6. Applicant was convicted on February 10, 1978, of larceny of two hundred dollars ($200) or less, in violation of N.J.S.A. 2A:170-30.1.

7. The Applicant's recent conviction of N.J.S.A. 2A:170-30.1, larceny of two hundred dollars ($200) or less, indicates that licensure of Applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations, and licensure of the Applicant would therefore be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of the disqualification criteria of Section 86c of the Casino Control Act.

8. Although the credible proofs in the whole record do not establish that Applicant has committed any other acts which would constitute a disqualifying offense under N.J.S.A. 5:12-86c, the Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

It is the express public policy of the Casino Control Act to extend strict State regulation to all persons related to the operatio of licensed casino enterprises. Based upon the facts adduced at th hearing and the applicable statutory provisions, I CONCLUDE that Applicant is disqualified from receiving a casino employee license to work as a dealer, due to his conviction of an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c, and due to his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a. It is, therefore, ORDERED that the application of Harold K. Good 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 agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

February 21 1980
DATE

Joseph F Fidler
JOSEPH F. FIDLER, A.L.J.

February 25, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD
BY: BENJAMIN COHEN
GENERAL COUNSEL.

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

INVENTORY OF EXHIBITS

For the Applicant:

P-1 Personal History Disclosure Form of Harold K. Good.

P-2 Egg Harbor Township Municipal Court Notice of Postponement.

P-3 Letter from Egg Harbor Township Municipal Court to Applicant, dated June 19, 1978.

P-4 Affidavit of Bobby K. Good, dated September 28, 1979.

For the Division of Gaming Enforcement:

R-1 Wheaton Plastics Company Employee Verbal Warnings.

R-2 Arrest report dated March 6, 1976.

R-3 Affidavit of Bruce Pergament, dated October 9, 1979.

R-4 Transcript of February 10, 1978 Egg Harbor Township Municipal Court proceedings.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 2655-79
CCC DOCKET NO. 79-EA-76

IN THE MATTER OF THE APPLICATION :
OF CHRISTINE HILLARD FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (ALCOHOLIC :
BEVERAGE EMPLOYEE) :

This matter, having been opened to the Casino Control Commission at its public meeting on May 21, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the written exceptions thereto filed by the Applicant, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Christine Hillard's application for licensure,

IT IS on this 29th day of May, 1980 ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Christine Hillard be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated June 26, 1979 which is incorporated hereby by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 29, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF CHRISTINE E. HILLARD FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)	:	INITIAL DECISION
	:	OAL DKT. #CCC 2655-79
	:	CASINO CONTROL COMMISSION
	:	DKT. #79-EA-76

APPEARANCES:

John J. Degnan, Attorney General of New Jersey, by
Deputy Attorney General Patricia Arons, on behalf
of the Department of Law and Public Safety,
Division of Gaming Enforcement

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., A.L.J.:

This matter concerns the application of Christine Hillard, petitioner, for licensure as a casino employee (alcoholic beverage) by the Casino Control Commission, issuing forum. The Department of Law and Public Safety, Division of Gaming Enforcement, respondent, opposes licensure. The Commission, on July 13, 1979, determined there was a substantial possibility that it would deny the petitioner's application. The petitioner requested a hearing. 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 hearing was scheduled for 9 a.m., February 22, 1980, Pleasantville Municipal Court, 18 North First Avenue, Pleasantville, New Jersey.

All parties were properly notified of the scheduled hearing by the Office of Administrative Law. On the scheduled hearing date, nobody appeared on behalf of Christine Hillard. Deputy Attorney General Arons and three witnesses appeared on behalf of the Division and remained until one hour had elapsed.

By letter dated March 3, 1980 (copy attached), the petitioner was asked to submit her reasons for her non-appearance. No response has been received.

I also note that the petitioner failed to appear for the first scheduled prehearing conference on August 27, 1979. The conference was rescheduled at her request and held on January 2, 1980. The hearing date of February 22, 1980 was agreed to by all parties during the prehearing conference and, Pleasantville was chosen as the site for the petitioner's convenience.

New Jersey Is An Equal Opportunity Employer

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

1. No appearance was made by Christine Hillard.
2. The Office of Administrative Law has received no communication from the petitioner giving a satisfactory explanation for her failure to appear.

I CONCLUDE that the petitioner has abandoned her request for a hearing.

Therefore, I ORDER that the proceedings in this matter before the Office of Administrative Law BE DISMISSED, and the matter be returned to 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-1, et seq.

I HEREBY FILE with Joesph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

April 2, 1980
DATE

Richard L. Voliva Jr
RICHARD L. VOLIVA, JR., A.L.J.

April 7, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

Ms. Christine Hillard
836 D. Maryland Avenue
Atlantic City, New Jersey 08401

RE: ABANDONED CASE - OAL Docket No. CCC 2655-79

Dear Ms. Hillard:

Pursuant to your request, a hearing was scheduled on Friday, February 22, 1980 at the Pleasantville Municipal Court in Pleasantville, New Jersey. Notice of the time and place of this hearing was included in our notice to you dated January 18, 1980.

We have been advised that you failed to appear for the scheduled hearing and gave no notice of your intention not to appear. A representative from the Office of the Deputy General was present, as arranged, to participate in the hearing.

We will, therefore, consider your request for a hearing to have been abandoned unless we have 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 hearing or were unable to appear due to an unforseen emergency.

Very truly yours,

RONALD I. PARKER, ESQUIRE
DIRECTOR, JUDICIAL MANAGEMENT

Date: 3/3/80
RIP:nob

CC: R. BENJAMIN COHEN, CASINO CONTROL COMMISSION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-46
OAL DOCKET NO. CCC 1277-79

IN THE MATTER OF THE APPLICATION OF :
LYNN A. HOLOPIGIAN FOR LICENSURE AS : FINAL ORDER
A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law and the Commission having considered the entire record of that hearing and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of January 9, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 16th day of January, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Lynn Holopigian for a casino employee license be and hereby is denied on the basis of the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI, CHAIRMAN

DATED: January 14, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF LYNN HOLOPIGIAN FOR A CASINO EMPLOYEE LICENSE (DEALER)	INITIAL DECISION O.A.L. DKT. NO. CCC 1277-79 AGENCY DKT. NO. 79-EA

APPEARANCES:

Robert A. Hollis, Esq., appeared on behalf of the applicant, Lynn A. Holopigian

Frederick E. Gushin, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

The procedural history is as follows: On June 25, 1978, Lynn A. Holopigian (applicant) filed an application for a license as a casino employee (dealer). On February 9, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Ms. Holopigian based upon the fact that she was asked to resign from her job after she was accused of the misappropriation of money. The applicant was advised by letter dated April 23, 1979, from the Commission's counsel, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny her application and that she had a right to a hearing.

By letter dated April 30, 1979, the applicant requested a hearing; 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. After notice, a prehearing conference was held on July 19, 1979, at which time the specific issues to be resolved at the hearing were identified. The matter was heard on September 13, 1979. Proposed Findings of Fact and Conclusions of Law were received from Deputy Attorney General Frederick E. Gushin on October 11, 1979, and from Robert Hollis, Esq. on November 13, 1979. The hearing is closed on the latter date.

The pertinent testimony was as follows: The applicant was employed as a manager at Rose's Celebration, a retail bridal shop, specializing in bridal gowns and bridal accessories, from 1972 until 1977. Her employment was terminated in November of 1977, by her employer, Nathan Kirsch, after it was discovered that she was misappropriating money from the store. She unlawfully took money from the cash register and failed to ring up receipts approximately 50 to 70 times, once a week, for a period in excess of a year. The average amount of money taken would vary from week to week. She estimated that over the years she took approximately $4,000. to $5,000. She put a part of each sale in the register; however, the final payment for an article would not be rung up. She stated that she knew what she was doing and attempted to cover her unlawful acts up. She did not believe that taking money once a week would be missed.

She misappropriated the money because she was "working very hard" and felt she was not being adequately compensated. She asserted that certain promises made to her by Kirsch were not kept. Psychologically, Kirsch represented a "father figure" to her, and she could not understand why "Kirsch hadn't treated her like a daughter". She further conceded that her acts were motivated by "a little bit of jealousy".

When she was working at the store, she maintained her own apartment, paid $270. a month rent. Her outstanding indebtedness was about $1,500. She used some of the misappropriated money to pay her bills. She went to the race track every other week with her immediate supervisor and her boyfriend. She would limit her losses between $30. and $50. at the track. She denied that she took money from the store to bet on the races.

After the applicant's termination from employment, her parents and Nathan Kirsch signed a release, dated February 14, 1978, wherein her parents agreed to pay a thousand dollars a month to Kirsch to liquidate a $5,000. indebtedness for their daughter's taking of "any money, goods or property rightfully the property of the releasor corporation taken without authorization". Final payment was made in June of 1978. The release was "further conditioned upon the releasee undergoing psychiatric treatment for at least one year". The applicant received psychotherapy from Dr. Haikaz M. Grigarian twice a week, until June 23, 1979, at which time psychotherapy was discontinued "because of no need as she developed good insight into her problems and has not shown any symptoms of previous situation".

The applicant detailed her prior employment history. She has been employed for approximately a year as an assistant manager and cashier at the Preakness Luncheonette, a family owned business.

She has successfully completed a course in Blackjack. She desires to become a dealer because she enjoys playing cards, feels that it offers an excellent career potential. She is aware that dealers handle large sums of money. However, she has "worked out" all of her problems and would not be susceptible to any pressures that would cause her to misappropriate any money.

The applicant's father, Nubar C. Holopigian, testified that he is the owner of the Preakness Luncheonette in Wayne, New Jersey, which sells newspapers, magazines, cigars and various other sundries. His daughter has worked for him approximately a year, and operates the cash register and assists with various paper work and record keeping. She manages the store in his absence. He checks the receipts on a daily basis, and there has not been a cash shortage since she has been working for him. He is satisfied with his daughter's performance. Her salary is $275.00 a week.

After his daughter's termination from the store, he discovered that his daughter had misappropriated money. His initial reaction was both shock and concern. Pursuant to the terms of her release, it was agreed that Kirsch would not press criminal charges, and that he would make restitution, and his daughter would undergo psychiatric treatment. The terms of that release have been fulfilled.

Nathan S. Kirsch testified that he is presently a part owner of Rose's Retail Chain Stores; however, he is not very active. From 1972 to 1977 he was Chairman of the Board of a chain of eight retail stores, four of which were Rose's Retail Stores. He established those businesses in 1946. Rose's Celebration, which is located at the Bergen Mall, specializes in bridal gowns and bridal accessories. There were approximately fifteen employees at that store. Its gross revenue was approximately $320,000. a year.

Kirsch knew the Holopigian family many years, and Ms. Holopigian had a reputation of being an excellent manager. She was intelligent, resourceful and extremely capable; and he characterized her as the best manager that he ever had. She had complete managerial control at the Bergen Mall store and did occasional buying. Kirsch visited the store once a week and usually remained there about an hour or an hour and a half. He delegated responsibilities among his employees. He did not review the store's bookkeeping on a day to day basis. He would receive various reports once a week. Management meetings were held at which meetings store policy was discussed together with other matters of common concern, including pilferage and shoplifting. At a certain point, his accountants informed him that money was being taken. The Bergen Mall store was not taking in enough money in relationship to the amount of goods that were being sent to the store. Shortages were above and beyond normal pilferage. Kirsch related that, as time progressed, Ms. Holopigian became very flagrant in her activities. Certain co-employees observed her taking money out of the cash register, and

it was reported to him. Apparently, she did not realize that she was being observed or did not think that she would be caught. Kirsch made certain telephone calls to some 50 customers and 38 of them indicated that they had paid for their merchandise in full. These people had been given a new kind of ticket by Ms. Holopigian which was designed to mislead the bookkeeper and accountant into believing that the merchandise had not been paid for. Ms. Holopigian pocketed the final payment.

Kirsch estimated that the amount of his loss in 1976 was $8,300. and the amount of the loss for the first six months of 1977 was approximately $4,800. He approximated the total loss somewhere between $12,000. and $13,000.

In February of 1978, a release was agreed upon after conversations with Ms. Holopigian's attorney, Robert Hollis, Esq., and members of the family. Kirsch estimated that if Ms. Holopigian was taking approximately $100. a week over a period of a year or a year and a half, that $5,000. would be a fair figure for such a release. He was also adamant that she agree to undergo psychiatric treatment for at least a year as a condition precedent to the release.

The following exhibits were placed into evidence:

1. A Release signed by Nathan Kirsch, President of Rose's Celebration, Inc., and Mr. and Mrs. Holopigian for Lynn Holopigian (DAG-1).

2. A one page document setting forth certain incidents involving Ms. Holopigian and the names of certain people that would testify as to her acts (DAG-2).

3. A Notice of Determination from the Unemployment Insurance Claims stating that Ms. Holopigian was disqualified from benefits because she was discharged on November 19, 1977 for misappropriation of company funds. (DAG-3)

4. A letter dated December 15, 1977 to Ms. Holopigian's attorney, Robert A. Hollis, Esq., setting forth the background circumstances of this matter (DAG-4).

5. A standard Casino Control personnel history disclosure form (JE-1).

6. A letter from the Division of Gaming Enforcement to the Chairman of the Casino Control Commission setting forth its position regarding the applicant's fitness (JE-2).

7. A letter from Dr. Haikaz M. Grigorian, psychiatrist, dated July 18, 1979 (P-1).

I FIND as follows:

1. Ms. Lynn A. Holopigian was employed as a manager at Rose's Celebration at the Bergen Mall, a retail bridal shop, specializing in bridal gowns and bridal accessories from November, 1972 to November, 1977. The store had approximately fifteen employees and its gross revenue was approximately $320,000. a year.

2. Ms. Holopigian managed the store and did very occasional buying.

3. Sometime in the spring or early summer of 1976, Ms. Holopigian failed to ring up receipts from sales and took money out of the cash register for her own gain between 50 to 70 separate times. When buyers would pay for their merchandise in full, she would give them a new kind of ticket which was designed to mislead the bookkeeper and accountant into believing that the final merchandise had not been paid for. She would pocket the final payment.

4. Ms. Holopigian misappropriated between $5,000. and $13,000. from Rose's Celebration over a period of a year or a year and a half.

5. Ms. Holopigian took the money from Rose's Celebration because she felt she was not being adequately compensated, and that certain promises were made to her that were not kept by Mr. Kirsch. Her acts were intentional.

6. As time progressed, she did not become very careful or circumspect in her acts. She was observed taking money and co-employees reported those acts to Kirsch. Kirsch had a conference with her and she was discharged November 19, 1977 for misappropriation of funds.

7. Kirsch knew the Holopigian family for many years and did not pursue criminal charges against Ms. Holopigian.

8. On February 14, 1978, Nathan Kirsch, President of Rose's Celebration, Inc., and Robert Hollis, Esq., representing the Holopigian family, entered into a release whereby criminal charges would not be brought against Ms. Holopigian in exchange for restitution of $5,000. and that she undergo psychiatric treatment for at least one year.

9. The Holopigian family repaid the sum of $5,000. to Kirsch.

10. Ms. Holopigian saw Dr. Haikaz M. Grigorian initially on December 3, 1977, and thereafter received psychotherapy from him twice a week until June 23, 1979. He opined "She developed good insight into her problems and has not shown any symptoms of previous situation. I do not think at this time there will be any repetition of the problems in the future."

Under N.J.S.A. 5:12-86, the Casino Control Act (Act) reads in pertinent part as follows:

> "The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a . . .
>
> b . . .
>
> c The conviction of the applicant or of any person required to be qualified under this Act as a condition of any offense in any jurisdiction which would be under New Jersey law at the time of application a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the statutory law" . . ."

Both larceny, N.J.S. 2A:119-2 and embezzlement, N.J.S. 2A:102-1 are enumerated among numerous other offenses.

Whether the applicant's acts are characterized as larceny or embezzlement is of no concern (now theft, N.J.S. 2C:20-2). Both acts are per se statutory disqualifiers under the Act.

N.J.S.A. 5:12-86(g) of the Act reads in pertinent part as follows:

> "The commission by the applicant or any person who is required to be qualified under this Act as a condition of a casino license of any act or acts which would constitute an 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 . . ."

I CONCLUDE that the clear legislative intent is that the applicant's acts, even though not prosecuted, are still a pro se statutory disqualification under the Act.

The central question is whether the Rehabilitated Offenders Convicted Act (ROCA) N.J.S. 2A:168A-1, et seq. applies to the applicant. She asserts that she is rehabilitated after having undergone psychotherapy for approximately a year.

While I am not unsympathetic to the applicant's efforts at rehabilitation, my views are discordant with her statutory interpretation. I CONCLUDE that the Legislature has not given me authority to apply the (ROCA) to her. While the Casino Control Act

specifically applies the (ROCA) to hotel employees under N.J.S.A. 5:12-91(c), it fails to include it as a criteria for licensure of "casino employee" and "casino key employee" applicants. Thus, I CONCLUDE that if the Legislature intended to apply the (ROCA) to applicant's desired position, a dealer, it would have said so in clear and unmistakeable terms.

I CONCLUDE that the applicant has not met her burden by clear and convincing evidence that she possessed the requisite "good character, honesty and integrity" under N.J.S.A. 5:12-90 of the Casino Control Act which incorporates by reference N.J.S.A. 5:12089(b)(2).

It is, therefore, ORDERED that the application of Lynn A. Holopigian for a casino employee license (dealer) be DENIED.

This decision shall not become final until forty-five (45) days after agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

Mar. 20, 1979
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

Mar. 20, '79
DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ad

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-150
OAL DOCKET NO. CCC 4749-79

THE MATTER OF THE APPLICATION :
ZELBRA A. ISSAC FOR LICENSURE : FINAL ORDER
A CASINO EMPLOYEE (DEALER) :

A hearing having been held in this matter on February 4, 0 before Administrative Law Judge Joseph F. Fidler; and the inistrative Law Judge having rendered an Initial Decision the above-captioned matter recommending that the license ication be granted; and the Commission having carefully ed the entire record of the proceedings and the written eptions to the Initial Decision filed by the Division of ing Enforcement; and the Commission having determined at its lic meeting of May 1, 1980 to adopt the Initial Decision and grant the within application for casino employee licensure;

It is on this 2nd day of May, 1980, ORDERED that the tial Decision in this matter be and is hereby adopted by Commission; and

It is further ORDERED that the application for licensure of bra A. Issac be and is hereby granted for the reasons set th in the Initial Decision in this matter which is orporated herein by reference and made a part hereof;

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 2, 1980

MATTER OF:) INITIAL DECISION

THE APPLICATION OF) OAL DKT. NO. CCC 4749-79
ZELBRA A. ISAAC
FOR LICENSURE AS A CASINO) AGENCY DKT. NO. 79-EA-150
EMPLOYEE (DEALER)

ANCES:

Cape-Atlantic Legal Services
by: David G. Sciarra, Esq.
for the Applicant, Zelbra A. Isaac

John J. Degnan, Attorney General of New Jersey
by: Robert J. Melillo, Deputy Attorney General
for the Division of Gaming Enforcement

THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Zelbra A. Isaac
Casino Control Commission for licensure to work in a
as a dealer. Applicant was advised by letter from the
Control Commission, dated October 9, 1979, that based
e information received by letter from the Division of
Enforcement dated September 15, 1979, there was a "sub-
l possibility" that the Commission would deny her application,
t she had the right to a hearing.

pplicant requested a hearing on her application and the
was transmitted to the Office of Administrative Law for a
nation as a contested case pursuant to N.J.S.A. 52:14F-1
This matter was brought on for hearing on February 4, 1979
Atlantic City City Hall, Atlantic City, New Jersey.

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

. Whether Applicant for licensure as a casino employee has established by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b (2) as incorporated in N.J.S.A. .12-90b.

2. Whether Applicant has been convicted of any offense which is an enumerated statutory disqualifier within the meaning of N.J.S.A. 5:12-86c, as incorporated in N.J.S.A. 5:12-90e.

3. Whether, notwithstanding a conviction of any offense enumerated in the Act as disqualification criteria, Applicant has demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90h.

At the commencement of the hearing, Applicant's Personal History Disclosure Form, received by the Casino Control Commission on April 6, 1979, was admitted into evidence as Exhibit J-1. Also prior to the taking of testimony, it was revealed by the Division of Gaming Enforcement that it would call no witnesses and would rely upon documentary evidence (Exhibits R-1 to R-6) concerning Applicant's arrest and conviction record. It is undisputed that Applicant was arrested on March 16, 1974, in Atlantic City, New Jersy for the disorderly person offense of street fighting. Applicant pled guilty to this offense and was fined $200.00. Applicant was also indicted on October 21, 1976, on four counts of welfare fraud. On January 28, 1977, Applicant entered a plea of guilty to the third count of the indictment, and the remaining counts were dismissed. The third count of the indictment against the Applicant alleged that she had fraudulently received financial assistance from the Atlantic County Welfare Board between November, 1973 and May, 1975 by concealing her employment at Spencer Gifts, contrary to the provisions of N.J.S.A. 2A:111-2. Upon her conviction, Applicant was sentenced to the county jail for a term of sixty (60) days, with credit for one day of confinement, and twelve days to be served on weekends, with the balance of her sentence suspended. In addition, Applicant was placed on probation for a term of one year and until she had made restitution in the amount of $1,598.00 to be paid to the Atlantic County Welfare Board.

N.J.S.A. 5:12-86c, as amended by P.L. 1979, c.282, provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. Pursuant to Section 86c (2), a conviction for welfare fraud under N.J.S.A. 2A:111-2 is an automatic disqualifier for licensure. However, pursuant to Section 90h of the Casino Control Act, Applicant shall not be denied a casino employee license on the basis of her welfare fraud conviction, provided that she has affirmatively demonstrated her rehabilitation. In determining whether the Applicant has affirmatively demonstrated her rehabilitation, the following factors should be considered:

(1) the nature and duties of the position applied for;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the Applicant when the offense was committed;

(6) whether the offense was an isolated or a repeated incident;

(7) any social conditions which may have contributed to the offense;

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

The first witness to testify on behalf of the Applicant was Harry A. Clark, Director of Budget and Accounting for Stockton State College. According to Mr. Clark, Applicant was employed at the college as a bookkeeping assistant under the CETA program, from October, 1976 until April, 1977. The Applicant's position involved reconciling and verifying students' bills and answering students' questions. Characterizing the Applicant's performance as satisfactory, and noting that her work involved the handling of cash and checks, Mr. Clark testified that there were no complaints or shortages involving the Applicant. Mr. Clark stated that he would recommend the Applicant for similar employment.

The second witness to testify on behalf of the Applicant was her probation officer. Atlantic County Senior Probation Officer Rosemarie L. Pisano testified that the Applicant will remain on probation as a result of her welfare fraud conviction until she has completed making restitution to the Atlantic County Welfare Board. Noting that the Applicant's restitution payments are recouped automatically from her welfare check, Officer Pisano testified that the Applicant has been very cooperative and her probation performance has been satisfactory. It was Officer Pisano's testimony that the Applicant had requested the amount deducted from her welfare check be increased in order that her restitution be completed more quickly.

The third witness to testify on behalf of the Applicant was Social Services Technician Barbara Walker, who was the Applicant's Income Maintenance Technician from 1974 until early 1980. According to Ms. Walker, the Applicant is employed and collects a reduced welfare payment as an AFDC recipient. Stating that the Applicant has properly reported changes in her income since her welfare fraud was established, Ms. Walker testified that nothing has come to her

attention to make her question the good character, honesty, and integrity of the Applicant. According to Ms. Walker, she has encouraged the Applicant to seek the dealer position.

The fourth witness to testify on behalf of the Applicant was Carl Lindow, Parking Operations Manager for the Boardwalk Regency Hotel since May, 1979. Prior to that date, Mr. Lindow was employed for approximately one year in a similar capacity by Seashore parking the parking concessioner for Resorts International Hotel. According to Mr. Lindow, the Applicant was employed by Seashore Parking in May, 1978 as a cashier for the remote parking lots. It was Mr. Lindow's testimony that the Applicant handled from $500.00 to $1500.00 during a normal eight-hour shift as cashier. Mr. Lindow stated that the Applicant was an excellent employee and that there were no shortages or accounting problems involving her.

Mr. Lindow testified that he brought the Applicant with him when he became the Parking Operation's Manager at the Boardwalk Regency Hotel, based upon her excellent performance for Seashore Parking. According to Mr. Lindow, Applicant has been a valet dispatcher since June, 1979, and she remains one of his best employees. He stated that he has not received any complaints concerning the Applicant from either customers or fellow employees. Expressly noting that nothing has come to his attention which reflects adversely on the Applicant's good character, honesty and integrity, Mr. Lindow testified that he would recommend the Applicant for employment as a casino dealer.

Testifying on her own behalf, the Applicant stated that she successfully completed a blackjack dealer course offered by the Casino Career Institute. Applicant is twenty five years old and is a lifelong resident of Atlantic City. It was Applicant's testimony that she was married in August, 1971 at the age of seventeen and was subsequently divorced in 1978 after a number of periods of separation from her husband. Applicant has custody of the two children of her marriage, who are eight and five years old. According to the Applicant, her former husband does not contribute to the support of their children.

Applicant's testimony established that she is a high school graduate and has completed one and one-half semesters in accounting at the Atlantic County Community College. In addition to explaining the many jobs she has held since her marriage to attempt to support her children, Applicant testified at length and with candor and sincerity concerning her employment with Spencer Gifts from time to time between 1973 and 1975, which employment resulted in her conviction for welfare fraud. Applicant stated that the welfare grant which she received of $235.00 per month did not leave her enough money after payment of her bills to purchase such necessaries as clothing for her children. She stated that she therefore neglected to tell the Welfare

Board that she was working at Spencer Gifts and that she collected unemployment during the seasonal layoffs from Spencers. Applicant acknowledged that she had been aware of the requirement to disclose her employment and earnings to the Welfare Board. She stated that she had been young and wanted to make it on her own, but that she had nothing left from her welfare check after payment of all her bills. Because disclosure of her earnings would reduce her welfare grant, she did not make the required disclosure to the Welfare Board.

Applicant testified that since her conviction for welfare fraud she is making automatic restitution to the Welfare Board from her monthly welfare grant. According to the Applicant, she has reported to the Welfare Board all of her income since her conviction. Stating that she could receive more welfare if she did not work, the Applicant testified that she does not want to accept welfare but must in order to support her children.

It is undisputed that the Applicant has exhibited good conduct since her conviction for welfare fraud. The Applicant has in no manner attempted to conceal the circumstances surrounding her receipt of welfare benefits while employed. She candidly explained the factors which caused her to fail to disclose her employment to the Atlantic County Welfare Board. The witnesses who testified on behalf of the Applicant have clearly demonstrated the Applicant's reputation for good character, honesty and integrity. The Applicant's extensive work record, in the face of low wages and a difficult family situation, affirmatively demonstrates her sincere motivation and her success in improving her lot in life. The Applicant has clearly shown that she is capable of and may be trusted in the handling of large sums of money. The credible proofs produced by the Applicant established by clear and convincing evidence her reputation for good character, honesty and integrity, and she has affirmatively demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90h.

Having reviewed the testimony and other evidence offered in this matter (see Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I FIND:

1. Applicant has applied for a license to permit her to work in a casino as a dealer.

2. Applicant successfully completed a course in blackjack dealing offered by the Casino Career Institute.

3. Applicant was convicted in 1974 of the disorderly person offense of street fighting and was fined $200.00.

4. Applicant was convicted upon a plea of guilty on January 28, 1977 of fraudulantly receiving financial assistance from the Atlantic County Welfare Board between November, 1973 and May, 1975 by concealing her employment at Spencer Gifts, contrary to the provisions of N.J.S.A.2A:111-2.

5. N.J.S.A. 2A:111-2 is a specifically enumerated automatic disqualifier for licensure under Section 86c (2) of the Casino Control Act.

6. Since her conviction for welfare fraud pursuant to N.J.S.A. 2A:111-2, the Applicant has held responsible positions and has performed her employment duties with honesty and integrity.

7. Applicant has demonstrated by clear and convincing evidence that she possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

8. Applicant has overcome her disqualification from licensure on the basis of her conviction of an offense enumerated under Section 86c (2) of the Act by demonstrating her rehabilitation pursuant to Section 90h of the Act by clear and convincing evidence.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has demonstrated by clear and convincing evidence her rehabilitation, within the meaning of N.J.S.A. 5:12-90h, and has sustained her affirmative burden of establishing by clear and convincing evidence her requisite qualifications for licensure, within the meaning of N.J.S.A. 5:12-89b (2), as incorporated in N.J.S.A. 5:12-90b.

It is therefore ORDERED that a casino employee license, permitting Applicant to work as a dealer, be granted to Applicant.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

March 19, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

MARCH 21, 1980
DATE

AGENCY HEAD

Mailed to Parties:

amm

INVENTORY OF EXHIBITS

FOR THE GAMING ENFORCEMENT

R-1 1974 Atlantic City Police Department Arrest Record

R-2 Atlantic County Clerk's Certification

R-3 1976 Welfare fraud indictment

R-4 Welfare fraud plea bargain agreement

R-5 Welfare fraud judgement of conviction

R-6 Plea of guilty and sentence for welfare fraud

JUDGES EXHIBIT

J-1 Personnel History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4284-79
CCC DOCKET NO. 79-EA-133

IN THE MATTER OF THE APPLICATION	:	
OF CARROLL A. JOHNSON FOR	:	
LICENSURE AS A CASINO HOTEL	:	ORDER
EMPLOYEE.	:	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Chairman having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the exceptions thereto filed by the Applicant and the Division of Gaming Enforcement,

It is on this 2nd day of June 1970, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is affirmed in part and rejected in part by the Chairman; and

It is further ORDERED that the application of Carroll A. Johnson for a casino hotel employee license be and hereby is denied based upon the reasons set forth in the Final Decision of the Chairman which is being issued simultaneously herewith; and

It is further ORDERED that copies of this Order and the Final Decision of the Chairman be served upon the Applicant

and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: June 2, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4284-79
CCC DOCKET NO. 79-EA-133

IN THE MATTER OF THE APPLICATION	:	
OF CARROLL A. JOHNSON FOR	:	FINAL
LICENSURE AS A CASINO HOTEL	:	DECISION
EMPLOYEE	:	OF THE CHAIRMAN

Jorge Aviles, Esquire, appeared for the Applicant.

Robert J. Melillo, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On February 12, 1979 Carroll A. Johnson [hereinafter: Applicant] filed an application for licensure as a casino hotel employee in the position of waiter with the Chairman of the Casino Control Commission [hereinafter: Chairman]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter: Division] which shortly thereafter conducted an investigation into the background of the Applicant.

As a result of this investigation, the Division submitted a letter-report dated July 16, 1979, to the Chairman, interposing an objection to the licensure of the Applicant. By letter dated September 20, 1979, the Applicant was advised by the Casino Control Commission's legal staff that there was a substantial

possibility that the Chairman would deny his application for licensure. The Applicant thereupon requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1, et seq.

A prehearing conference was held on November 1, 1979, with the following issues being framed for administrative review:

> A. Whether the Applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).
>
> B. Whether the Applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-86(c) and (g) on the basis of having possessed and sold illegal lottery slips in Maryland in 1976, which resulted in the conviction of the Applicant for operating a lottery.
>
> C. Whether the Applicant has demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d).

The matter proceeded to formal hearing on January 8, 1980.

Administrative Law Judge R. Jackson Dwyer filed his Initial Decision in this matter on February 7, 1980. A copy of the same is appended hereto at A-1 through A-6. The Initial Decision was served upon the parties on February 11, 1980. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded 10 days from their receipt of said Initial Decision to file a statement of exceptions or objections to the findings and conclusions of the Administrative Law Judge.

The Applicant's exceptions were filed on April 8, 1980. The Division filed its exceptions on March 3, 1980. Pertinent issues raised therein will be addressed infra.

In his Initial Decision the Administrative Law Judge concluded that the Applicant should be denied licensure. This conclusion is based in part upon the finding that the Applicant had entered a plea of guilty to the possession and sale of lottery slips in the State of Maryland in 1976. Prior to its recent amendment, N.J.S.A. 5:12-86(c) listed N.J.S.A. 2A:170-18 (possession of illegal lottery slips), as an enumerated statutory disqualifier.[1] The Administrative Law Judge also found that the Applicant had failed to demonstrate his rehabilitation under N.J.S.A. 5:12-91(d). No express conclusion was reached by the Administrative Law Judge concerning the Applicant's reputation for good character, honesty and integrity, N.J.S.A. 5:12-89(b)(2) and 91(b). Although I affirm the ultimate decision denying licensure, there are certain issues which require further discussion.

The recent amendments to N.J.S.A. 5:12-86(c), L.1979, c.282, eff. January 9, 1980, not only modify the list of enumerated offenses under N.J.S.A. 2A:1-1, et seq., they also list those offenses which are statutory disqualifiers under

---

[1] The Legislature's amendments to N.J.S.A. 5:12-86(c) and their effect upon this issue will be discussed in detail infra.

the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. which became effective on September 1, 1979. On the date of the hearing, January 8, 1980, the recent amendments to N.J.S.A. 5:12-86(c) were not law. Close scrutiny of these amendments and the entire record in this matter reveals that the resolution of certain issues not addressed in the Initial Decision must be undertaken and that certain other issues have been rendered moot.

In July 1976, the Applicant was charged in the State of Maryland with the possession and sale of lottery slips. A review of the Annapolis, Maryland police department records introduced into evidence at the hearing reveals that the Applicant was found guilty of having sold lottery slips, the charge of possession of lottery slips apparently having been merged therewith.[2] Under N.J.S.A. 2A:1-1 et seq., these offens translate to violations of N.J.S.A. 2A:170-18 (possession of lottery slips) and N.J.S.A. 2A:121-1 (sale of lottery slips).

---

[2] Notwithstanding the apparent dismissal of the possession charge, it is clear that the Applicant engaged in conduct violative of laws proscribing both the possession and sale of lottery slips and therefore is subject to the mandate of N.J.S.A. 5:12-86(g) which provides for the disqualification from licensure for the commission of any act or acts which would constitute an offense under N.J.S.A. 5:12-86(c), even if such conduct has not or may not be prosecuted under the criminal laws of this State.

As noted above, prior to its amendment, N.J.S.A. 5:12-86(c) listed N.J.S.A. 2A:170-18 as a per se disqualifying offense. N.J.S.A. 2A:121-1 was not so listed. Under N.J.S.A. 5:12-86(c)(2) as amended, N.J.S.A. 2A:121-1 is now a listed disqualifying offense. However, N.J.S.A. 2A:170-18 has been deleted from this subsection.

At first blush, the end result of this amendment appears to be inconsequential since under N.J.S.A. 5:12-86(c)(2) and/or (g), it would appear that the Applicant faced disqualification for either offense. However, pursuant to N.J.S.A. 5:12-86(c)(4), all applicants are now afforded the opportunity to demonstrate by clear and convincing evidence that the offense forming the basis for disqualification (in this case the sale of lottery slips), would not form the basis for disqualification from licensure pursuant to N.J.S.A. 5:12-86(c)(1), which lists disqualifying offenses as defined in the new penal code, N.J.S.A. 2C:1-1 et seq. It should be noted here that although N.J.S.A. 2A:170-18 (possession of lottery slips) is no longer listed in N.J.S.A. 5:12-86(c)(2) as amended, in limited instances the possession of gambling records is an enumerated offense under N.J.S.A. 5:12-86(c)(1) as amended. Therefore, analysis of the underlying conduct which gave rise to the aforedescribed criminal charges against the Applicant, as well as of N.J.S.A. 2C:37-1 et seq. (gambling offenses), is necessary to determine whether this conduct constitutes the commission of any offenses enumerated under N.J.S.A. 5:12-86(c)(1), as amended.

At the hearing the Applicant testified on direct examination that people would ask him to put in numbers for

them because they were in a hurry to go to work or someplace else and that this course of conduct became a regular activity. (T11-22 to T12-4).[3] The Applicant nevertheless denied being a bookmaker and also denied "taking" the numbers himself. It is apparent from the context in which this testimony was offered that the Applicant attempted to portray himself as having transmitted bets on numbers to a third party as an accommodation to the bettors, as distinguished from a person who accepts bets on numbers from third parties and realizes a profit from their efforts.

On cross-examination a different picture of the nature and scope of the Applicant's illegal activities came into focus. At the time of the Applicant's arrest and after being advised of his constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966) and its progeny, the Applicant made the following statement:

> The money that you found on me, in my 1974 Plymouth Black in color ENJ123 and in my home 203 Center Street Apt "G" Ann.A.A.Co.Md. are a results of my playing numbers and taking bets on numbers. I hit the number myself. I played 210 for (6 to 1, $1200) $2.00 and it came out that day. This was in the past two weeks. I don't go anywhere or spend a lot of money so I saved it. Part of it is were[sic] someone will hit a number on my book and I get 10% of what every [sic] the money that is paid out plus the person that plays the number will give me a tip. I have been in the in this business for about 2 years. I want to stop right here. I don't want to say anymore. I want to consult an attorney. I rather talk to him before I say anymore.

---

3 "T" refers to the transcript of the hearing herein held on January 8, 1980.

The Applicant acknowledged at the hearing that he had been advised of his "Miranda" rights and further that the statement given to the Maryland authorities was accurate (T36-16 to T37-23). Further testimony at the hearing revealed that the Applicant would deduct 10% from the amount collected from bettors as his fee and would then pay the remainder to some third party (T38-14 to T39-3).

Applying these facts to the relevant sections of N.J.S.A. 2C:37-1 et seq., it appears that N.J.S.A.2C:37-2 and 37-3 are controlling. N.J.S.A. 2C:37-3 provides in pertinent part:

> a. A person is guilty of possession of gambling records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:
>
> (1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, including any paper or paper product in sheet form chemically converted to nitrocellulose having explosive characteristics as well as any water soluble paper or paper derivative in sheet form; or
>
> (2) Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise.
>
> * * * *
>
> c. Grading. Possession of gambling records is a crime of the third degree and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $25,000.00 and any other appropriate disposition authorized by 2C:43-2b. when the writing, paper, instrument or article:

* * * *

> (2) In the case of a lottery or policy scheme or enterprise, constitute, reflect or represent more than one hundred plays or chances therein.
>
> Otherwise, possession of gambling records is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $10,000.00 and any other appropriate disposition authorized by 2C:43-2b.

A careful review of the entire record, although there is evidence of possession of lottery slips, yields no indication as to the number of plays or chances the Applicant possessed. Consequently, it is impossible to determine whether the Applicant engaged in conduct under N.J.S.A. 2C:37-3 which would constitute a crime of the third or forth degree or a disorderly persons offense. The distinction is critical since pursuant to N.J.S.A. 5:12-86(c)(1), only those offenses characterized as third or fourth degree offenses under N.J.S.A. 2A:37-1, et seq., are enumerated disqualifying offenses.

With respect to N.J.S.A. 2C:37-2, it is similarly apparent that the record fails to reflect what gradation the Applicant's illegal conduct deserves. N.J.S.A. 2C:37-2 provides in pertinent part:

a. Promoting Gambling Defined. A person is guilty of promoting gambling when he knowingly:

(1) Accepts or receives money or other property, pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of gambling activity; or

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

b. Grading. A person who violates the provisions of subsection a. by:

* * * *

(2) Receiving, in connection with a lottery or policy scheme or enterprise (a) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (b) more than $100.00 in any 1 day of money played in such scheme or enterprise, is guilty of a crime of the third degree and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $25,000.00 and any other appropriate disposition authorized by 2C:43-2b.

* * * *

*** Otherwise, promoting gambling is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $10,000.00 and any other appropriate disposition authorized by 2C:43-2b.

* * * *

The record is silent as to whether the Applicant received, in connection with a lottery or policy scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records, or more than $100 in any one day of money played in a lottery or policy scheme or enterprise.

As noted previously, an Applicant must ordinarily demonstrate by clear and convincing evidence that a Title 2A disqualifying offense, listed in N.J.S.A. 5:12-86(c)(2) would not form the basis for disqualification under N.J.S.A. 5:12-86(c)(1), listing Title 2C disqualifying offenses. N.J.S.A. 5:12-86(c)(4). In the instant matter, since N.J.S.A. 5:12-86(c)(4), as amended, was not law at the time of the hearing, the Applicant was deprived of the opportunity to make such a showing. In light of this fact, and also because the record is unclear as to whether the Applicant's offenses would constitute per se disqualifying events pursuant to N.J.S.A. 5:12-86(c)(1), I decline to find the Applicant automatically disqualified for having committed an offense listed in N.J.S.A. 5:12-86(c). Nevertheless, in view of the nature and duration of the Applicant's illegal gambling conduct, it is necessary to consider whether the licensure of the Applicant would be inimical to the policy of the Casino Control Act [hereinafter: Act] and casino operations. N.J.S.A. 5:12-86(c)(4).

The Commission has settled, In the Matter of the Application of Resorts International for a Casino License, Docket No. 79-CL-1 at 15, that:

> *** 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.

Without again reciting all of the facts surrounding the Applicant's lottery conviction, it is apparent that the Applicant's conduct was a means of earning income and was not limited to accommodating bettors with whom he was acquainted. It is also clear that the Applicant engaged in this unlawful activity on a regular basis from 1974 to 1976. Hence, the Applicant's conduct was not sporadic. It evinced a life-style inextricably intertwined with unlawful criminal activity. Apart from the duration and extent of the Applicant's unlawful conduct, it is important to focus upon the nature of the offense in issue.

It is readily apparent that a cornerstone to the policy of the Act is the prevention from participation of any person who has pursued economic gain in an occupational manner or context which is in violation of the criminal laws of this State, either directly or indirectly, in casino operations or ancillary industries. N.J.S.A. 5:12-1(b)(9). In this regard, I agree entirely with the observation of the Administrative Law Judge that illegal gambling activities are known have close ties to, and in many instances to be dependant upon, organized crime. See State v. Destasio, 49 N.J. 247 (1967). Accordingly, the nature of the illegal gambling offenses here is particularly repugnant to the policies of the Act. N.J.S.A. 5:12-1(b)(7) and (9).

I am not insensitive to the fact that the Applicant's illegal lottery offenses occurred in 1976 and that there appears to be nothing in the record to suggest that the Applicant has continued to engage in illegal gambling activities. Notwithstanding these factors, it is clear to me that participation of the Applicant in legalized gaming would justifiably undermine public confidence in the integrity of the regulatory process and gaming operations in the circumstances noted above. Therefore, based upon a careful review of the entire record, I have concluded that the Applicant's offenses render his licensure inimical to the policy of the Act and casino operations. N.J.S.A. 5:12-86(c)(4).

Inasmuch as the issue I have resolved was not addressed at the hearing, it might conceivably be argued that the Applicant has suffered some prejudice as a result of my conclusion upon it. However, upon close scrutiny it is apparent that all relevant evidence which might inure to the benefit of the Applicant on this issue was addressed by the Applicant's proofs in the context of his attempt to demonstrate his reputation for good character, honesty and integrity. N.J.S.A. 5:12-91(b). In attempting to demonstrate his reputation for good character, honesty and integrity, the Applicant testified concerning the offense of which he was convicted, the events and circumstances surrounding his arrest and conviction, and his conduct since the offense. In addition, the Applicant, who was represented by counsel at the hearing, had the opportunity and incentive to bring to the fore any mitigating factors which may have been present with respect to the conduct in issue. Based upon all the foregoing, I conclude that the Applicant has suffered no prejudice in this regard.

Having determined that licensure of the Applicant would be inimical to the Act and casino operations, it is necessary to consider whether the Applicant has successfully demonstrated his rehabilitation. N.J.S.A. 5:12-91(d). The Administrative Law Judge concluded that the Applicant failed in this regard. Upon careful review of the entire record, I am compelled to agree and to adopt that conclusion.

Although the conclusion reached by the Administrative Law Judge is supported by ample, credible evidence, I note the particular significance of the following factors. First, the Applicant was 52 years of age at the time of his illegal lottery conviction. At such an age, the decision to engage in an extended course of illegal conduct creates a greater obstacle to a showing of rehabilitation than the same or similar conduct by a juvenile or young adult, in whom it is generally assumed that notions of good character, honesty and integrity may be more readily instilled after an encounter with law enforcement authorities. Secondly, the Applicant's criminal conduct was not isolated. Thirdly, and perhaps most importantly, the Applicant's lottery conviction is less than four years old.

In his Initial Decision, the Administrative Law Judge concluded that a minimum of two additional years should elapse before the Applicant is permitted to reapply to the Commission for licensure. This conclusion must be rejected. The Office of Administrative Law is simply not vested with the jurisdiction to consider whn and if this or any other Applicant may reapply for licensure. Cf. In the Matter of the Application of Benjamin Kirk for Licensure as a Gaming School Instructor, Docket No. 79-EA-24.[4]

---

[4] The Commission has recently adopted N.J.A.C. 19:41-8.8 governing reapplication by natural persons following denial of licensure. N.J.R. 165 (March 6, 1980).

The final issue framed for administrative review was whether the Applicant has demonstrated by clear and convincing evidence, his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 91(b). As noted earlier on, no express conclusion was reached by the Administrative Law Judge on this issue. Therefore, a de novo review of the entire record is necessary in order to properly assess the proofs on this issue.

The Commission has recognized that while the proofs necessary to establish rehabilitation, and a reputation for good character, honesty and integrity are not necessarily coextensive, there is, in most instances, significant overlap. See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113, at 22 (1980). The facts of this case substantiate this principle. In the instant matter, the factors which reflect adversely upon the Applicant's rehabilitation also impact negatively upon his reputation for good character, honesty and integrity. Hence, repetition of the detailed discussion above in the context of the Applicant's disqualification from licensure under N.J.S.A. 5:12-86(c)(4) and his failure to demonstrate his rehabilitation under N.J.S.A. 5:12-91(d) is unnecessary.

In addition to the foregoing, some comment regarding the candor of the Applicant's hearing testimony is appropriate. On direct examination, the Applicant testified that various persons would ask him to put numbers in for them as an accommodation. (T11-22 to T12-4). This, of course, is to be distinguished from a person who accepts bets on numbers for the

purpose of profiting from their efforts. On cross-examination the Applicant, after being confronted with his prior written statement to the Annapolis, Maryland police at the time of his arrest, conceded that he had accepted bets on numbers, not merely as an accommodation to third parties but for profit (T38-14 to T39-3). The Applicant's obvious lack of candor in his direct testimony impacts negatively upon his good character, honesty and integrity. I so find. Based upon the questionable credibility of certain of the Applicant's testimony and all of the foregoing, I am convinced that the Applicant has failed to establish by clear and convincing evidence, his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 91(b).[5]

For the reasons set forth herein, I find that the licensure of the Applicant would be inimical to the policy of t Act and casino operations. N.J.S.A. 5:12-86(c)(4). Furthermore, the Applicant has failed to sufficiently demonstrate either his rehabilitation pursuant to N.J.S.A. 5:12-91(d) or his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 91(b). Accordingly, the application of Carroll A. Johnson for licensure as a casino hotel employee is denied.

---

[5] At A-3 of the Initial Decision, the following language appears:

> The applicant was arrested and/or convicted of intoxication nine times in Washington, D.C. between 1958 and 1963. Alcoholism is an illness. I CONCLUDE that no adverse inferences should be drawn about the applicant's character, honesty and integrity pursuant to N.J.S.A. 5:12-91(b) and N.J.S.A. 5:12-89(b) based upon his overall arrest or conviction record.

To the extent that such language might be construed to mean that the Applicant's 1976 conviction for sale of lottery slips does not reflect adversely upon his character, honesty and integrity, it is expressly rejected.

JOSEPH P. LORDI, CHAIRMAN
NEW JERSEY CASINO CONTROL COMMISSION

DATED: June 2, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:	:	INITIAL DECISION
	:	
THE APPLICATION OF CARROLL A. JOHNSON FOR LICENSURE AS A CASINO AND HOTEL EMPLOYEE (WAITER)	:	OAL DKT. NO. CCC 4284-79 AGENCY DKT. NO. 79-EA-133

APPEARANCES:

Jorge Aviles, Esq., Cape-Atlantic Legal Services, appeared on behalf of the Applicant, Carroll A. Johnson

Robert J. Melillo, Esq., Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

Anthony J. Sposoro, Esq., appeared on behalf of the Casino Control Commission

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In January, 1979, Carroll A. Johnson (Applicant) filed an application for a license as a Casino Hotel Restaurant Employee. On January 16, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Johnson based upon the fact that he was arrested nine times for intoxication and convicted of that charge several times, and that he was convicted of the possession and sale of lottery slips, N.J.S. 2A:170-18, and N.J.S. 2A:121-1, a statutory disqualifier under N.J.S.A. 5:12-86(c) of the Casino Control Act.

On September 20, 1979, the Commission's counsel advised the applicant by letter, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

By letter dated September 27, 1979, the applicant requested a hearing. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on November 1, 1979, at which time, the specific issues to be resolved at the hearing were identified. The matter was heard on January 8, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on January 30, 1980 and from Jorge Aviles, Esq. on January 29, 1980. The hearing was closed on the former date.

The applicant testified briefly. He was arrested and/or convicted of intoxication nines times between 1958 and 1963 in Washington, D.C. He sought professional assistance and stopped drinking in 1970. He pleaded guilty to both the possession and the selling of lottery slips in the State of Maryland in 1976. He asserts that he will never again become involved in illegal gambling activities. He set forth his prior employment history. He arrived in Atlantic City in 1977 and held various jobs, including waiter and bus driver in a Comprehensive Employment Training Act (CETA) program. He intends to pursue a general equivalency diploma for high school. He was honorably discharged from the United States Army in 1944 after having served overseas. He had been working at Bally's Park Place for two weeks under a temporary casino permit, which was temporarily suspended pending the outcome of this hearing. He has been issued an Unlimited Rehabilitative Permit by the Division of Alcoholic Beverage Control which allows him to work with and sell alcoholic beverages.

Certain character witnesses, Ms. Rosalyn A. Farrell, Ms. Geneva Middleton and Ms. Dorothy T. Henderson testified that they had contact with the applicant while he was employed by the Atlantic County Human Resources; that they were unaware of his prior gambling convictions; however, those convictions did not alter their opinion that he was a man of honesty, integrity and good character.

FINDINGS OF FACT

1. Carroll A. Johnson is an applicant for a license as a casino hotel restaurant employee.

2. He was arrested and/or convicted of intoxication nine times between 1958 and 1963 in Washington, D.C.

3. He sought professional help and stopped drinking in 1970.

4. He pleaded guilty to the possession and sale of lottery slips in the State of Maryland in 1976.

5. The possession of lottery slips, N.J.S. 2A:170-18 (now N.J.S.A. 2C:37-1 et seq.) is a disqualifier under N.J.S.A. 5:12-86(c) of the Casino Control Act.

6. He came to Atlantic City in 1977 and worked at various jobs, including waiter and bus driver. He has twenty-nine years experience as a waiter.

7. He intends to pursue a general high school equivalency diploma in the future.

8. He was honorably discharged from the United States Army in 1944 after serving overseas.

9. He has been working at Bally's Park Place as a waiter for two weeks prior to this hearing under a temporary casino permit. That permit was temporarily suspended pending the outcome of this hearing.

10. He was issued an Unlimited Rehabilitative Permit (URP) by the Division of Alcoholic Beverage Control which allows him to work with and sell alcoholic beverages.

CONCLUSIONS OF LAW

I CONCLUDE that the Rehabilitated Convicted Offenders Act (RCOA) N.J.S.A. 2A:168-A 1-6 does not come within the purview of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. However, N.J.S.A. 5:12-91(d), as recently amended, contains an almost verbatim recitation of the eight rehabilitation criteria set forth in the (RCOA).

The applicant was arrested and/or convicted of intoxication nine times in Washington, D.C. between 1958 and 1963. Alcoholism is an illness. I CONCLUDE that no adverse inferences should be drawn about the applicant's character, honesty and integrity pursuant to N.J.S.A. 5:12-91(b) and N.J.S.A. 5:12-89(b) based upon his overall arrest or conviction record.

I have considered the eight criteria set forth under N.J.S.A. 5:12-91(d), as recently amended.

1. The applicant is applying for the position as a casino hotel employee (waiter).

2. I regard the applicant's 1976 Maryland lottery convictions as serious because the offenses are directly related to the business for which the license is now being sought.

Possession of lottery slips, N.J.S.A. 2A:170-18 is a per se statutory disqualifier under N.J.S.A. 5:12-86(c). Justice Weintraub in State v. Destasio 49 N.J. 247 (1967) cited a report by the President's Commission on Law Enforcement and The Administration of Justice called "The Challenge of Crime in a Free Society" (February 1967). With respect to organized crime the report read at page 188:

> "Law enforcement officials agreed almost unanimously that gambling is the greatest source of revenue for organized crime. It ranges from lotteries, such as 'numbers' or 'bolita', to off-track horse betting, bets on sporting events, large dice games and illegal casinos. In large cities where organized criminal groups exist, very few of the gambling operators are independent of a large organization. Anyone whose independent operation becomes successful is likely to receive a visit from an organization representative who convinces the independent through fear or promise of greater profit, to share his revenue with the organization".

It adds (at p. 199):

> "Gambling is the largest source of revenue for the criminal cartels, but the members of organized crime know they can operate a free of significant punishment. Street workers have little reasons to be deterred from joining the ranks of criminal organizations by fear of long jail sentences or large fines. Judges are reluctant to jail bookmakers and lottery operators. Even when offenders are convicted, the sentences are often very light. Fines are paid by the organization and considered a business expense".

3. The circumstances under which the offenses occurred are set forth in the applicant's statement (JE-1D) given to the Annapolis, Maryland Police Department which reads as follows:

> "The money that you found on me, in my '74 Plymouth Black in color ENJ 123 and in my home 203 Center Street Apt. "G" Ann. A.A.Co. Md. are a result of my playing numbers and taking bets on numbers. I hit the number myself. I played 210 for (6 to 1 $1,200 at $2.00) and it came out that day. This was in the past two weeks. I don't go anywhere or spend a lot of money so I saved it. Part of it is were some one will hit a number on my book and I get 10% of what every the money that is paid out plust the person that plays the number will give me a tip. I have been in the in this

business for about 2 years. I want to stop right here. I don't want to say anymore. I want to consult an attorney. I rather talk to him before I say anymore. Carroll A. Johnson C.A.J.".

The applicant was operating a book and was receiving ten per cent of all monies which he collected upon the sale of number slips.

4. The gambling offenses occurred in Maryland in 1976. In my opinion, those convictions are not sufficiently remote in time to affirmatively establish rehabilitation. The greatest evidence of rehabilitation is the passage of time. Had the applicant been convicted of non-gambling offenses, a different opinion might obtain.

5. It can be stipulated that the applicant was 52 years of age at the time of his lottery convictions.

6. It is clear that the offenses were not isolated. The applicant was engaged in the lottery business at that time for approximately two years.

7. I have considered the testimony of the character witnesses with respect to the social conditions which may have contributed to the offense. They have asserted that there is a general acceptances of illegal numbers operations in the urban black community. However, to accept such an argument would undermine the public policy consideration that the New Jersey legislature has enunciated with respect to the strict regulatory framework established by the Casino Control Act.

8. I have considered the testimony of the applicant and the character witnesses with respect to any and all evidence of his rehabilitation, including his employment history since he arrived in the Stated of New Jersey in 1977. I note that he received a temporary work permit as a waiter at the Bally Park Place casino hotel in Atlantic City, New Jersey and worked full-time until January 5, 1980 when he was suspended pending the outcome of this proceeding. I have also considered that he has been issued an Unlimited Rehabilitative Permit by the New Jersey State Division of Alcoholic Beverage Control and has applied for a renewal of that permit upon the expiration of his current one.

The casino control industry is highly sensitive and susceptible to the inherent evils of organized crime. It occupies a unique status. My responsibility is to strike a proper balance between the public interest and the applicant's opportunity to offer evidence of rehabilitation.

Based upon the totality of circumstances presented here, I am not clearly convinced that the applicant has "affirmatively demonstrated his rehabilitation" under N.J.S.A. 5:12-91(d). I do not believe that the 1976 lottery convictions are sufficiently remote in time, considering that the convictions are directly related to the business for which the license is now being sought. I CONCLUDE that a minimum of two additional years should elapse before the applicant can reapply for licensure to the commission.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1 et seq.

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceeding.

Feb 4, 1980
Date

R. JACKSON DWYER, A.L.J.

Feb 7, 1980
Date

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

Date

OFFICE OF ADMINISTRATIVE LAW

jrp
2/4/80

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-1358-79
CCC DOCKET NO. 79-EA-25

IN THE MATTER OF THE APPLICATION :
OF RONALD S. JONES FOR LICENSURE : FINAL ORDER
AS A CASINO SECURITY EMPLOYEE. :

This matter, having been opened to the Casino Control Commission at its public meeting on March 19, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the written exceptions thereto filed by the Applicant, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Ronald S. Jones' application for licensure,

It is on this 21st day of March, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Ronald S. Jones be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated February 8, 1979 which is incorporated hereby by reference and made a part hereof, and further based upon the Applicant's failure to establish by clear and convincing evidence his reputation for good character, honesty and integrity; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY _____
Joseph P. Lordi, Chairman

DATED: March 21, 1980

IN THE MATTER OF) INITIAL DECISION

THE APPLICATION OF RONALD S. JONES) OAL DKT. # CCC 1358-79

FOR LICENSURE AS A CASINO EMPLOYEE (SECURITY)) AGENCY DKT. # 79-EA-25

APPEARANCES:

John J. Degnan, Attorney General
by: Howard M. Barman, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
by: Denise A. Cobham, Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Ronald S. Jones to the Casino Control Commission for licensure to work in a casino as a security employee. Applicant was advised by letter from the Casino Control Commission, dated March 12, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated February 8, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

Applicant requested a hearing on his application 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 Pre-Hearing Conference was scheduled for Thursday, September 13, 1979, at the Health and Agriculture Building, Trenton, New Jersey.

All parties were properly notified of the scheduled pre-hearing by the Office of Administrative Law. On the scheduled pre-hearing date, no one appeared on behalf of the applicant, Ronald S. Jones. Deputy Attorney General Barman and Assistant Counsel Cobham appeared on behalf of the Division of Gaming Enforcement and the Casino Control Commission, respectively. They were instructed to wait until one hour had elapsed from the scheduled pre-hearing time, after which they were excused.

By letter to the applicant dated October 18, 1979, a copy of which is attached hereto, applicant was asked to submit his reasons for his non-appearar No response was received from the applicant.

I FIND:

1. No appearance was entered by applicant, Ronald S. Jones.

2. The Office of Administrative Law has received no communication from him, or a representative on his behalf, offering an explanation for his failure to appear.

I CONCLUDE:

The applicant has abandoned his request for a hearing.

For the foregoing reasons, it is ORDERED that the proceedings in this matter before the Office of Administrative Law are 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 recommend decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

January 3, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

January 8, 1980
DATE

AGENCY HEAD

Mailed to Parties:

Jan 11, 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC Docket Number 79-EA-24
OAL Docket No. CCC-755-79

IN THE MATTER OF THE APPLICATION OF :
BENJAMIN W. KIRK FOR LICENSURE AS A :
GAMING SCHOOL INSTRUCTOR. :

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on February 27, 1980, and the Commission having considered the entire record of proceedings and the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 21st day of March, 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and it is further

ORDERED that the application of Benjamin W. Kirk be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated February 6, 1979, which is incorporated herein by reference and made a part hereof; and it is further

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

Dated: March 21, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. 755-79
CCC DOCKET NO. 79-EA-24

IN THE MATTER OF THE APPLICATION :
OF BENJAMIN W. KIRK FOR LICENSURE:
AS A GAMING SCHOOL INSTRUCTOR. :

ORDER

An oral application for permission to withdraw the application for licensure of Benjamin W. Kirk having been entertained by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the Initial Decision of the Administrative Law Judge as to that petition along with the objections and exceptions filed with the Commission by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of September , 1979, for the reasons stated on the record, to reject the Initial Decision of the Administrative Law Judge and to deny permission to withdraw said application licensure as the Commission is not satisfied that permission to withdraw said application for licensure would be consistent with the public interest, and the policies of the Casino Control Act, and because of the failure on the part of the applicant to comply with the formal requirements for requesting such permission,

It is on the 21st day of September, 1979, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected by the Commission; and

It is further ORDERED that the request for the withdrawal of the application of Benjamin W. Kirk for licensure as a gamin school instructor be and is hereby denied for the reasons stated

herein; and

It is further ORDERED that this matter be remanded to the Office of Administrative Law for determination as to whether this license application has been abandoned by the applicant, or whether this is an appropriate case to reschedule for a hearing on the merits; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI, CHAIRMAN

Dated: 9-21-79

IN THE MATTER OF THE APPLICATION OF BENJAMIN W. KIRK FOR LICENSURE AS A GAMING SCHOOL INSTRUCTOR	)	INITIAL DECISION DKT. NO. CCC 755-79

APPEARANCES:

F. Frederick Perone, Esq., for applicant Benjamin W. Kirk

Patricia Arons, Deputy Attorney General, for the Division of Gaming Enforcement

Thomas N. Auriemma, Esq., for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, ALJ:

In February 1978, Benjamin W. Kirk (applicant) filed an application for a license as a gaming school instructor. On February 6,1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Kirk based upon his alleged lack of financial stability and responsibility. Applicant was advised by letter dated March 12, 1979, from the Casino Control Commission General Counsel, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

By letter dated March 21, 1979, the applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. After notice, a pre-hearing conference was held on May 17, 1979, at which time the specific issues to be resolved at the hearing were identified. After an adjournment was granted from the original hearing date of June 27, 1979, the matter was set down for hearing on August 3, 1979.

On August 2, 1979, counsel for applicant advised by telephone that he had received information indicating his client was then in Las Vegas, Nevada, possibly for the purpose of gathering certain information necessary for going forward at a hearing on his license application. Due to applicant's inability to proceed on the scheduled date for the hearing, counsel requested that the matter be dismissed without prejudice to applicant, subject to reinstatement for good cause shown.

The parties were promptly notified that a dismissal without prejudice had been granted upon counsel's representations, subject to the condition that the instant application be reinstated for good cause shown by August 10, 1979. No showing of good cause for reinstatement was made by August 10, 1979, nor has any such showing been made to date.

Under the circumstances herein, no policy of the Casino Control Act would be contravened by granting a dismissal without prejudice to applicant, since applicant will not have received licensure permitting employment in the casino industry. To forever bar applicant from seeking employment in New Jersey as a gaming school instructor, by dismissing his application with prejudice, is to place upon applicant a burden for outweighing the burden placed upon the State when it is required to process a new application for licensure. While such a harsh result cannot be supported, it must be recognized that the burden upon the State of processing applications for licensure is nevertheless substantial, and it is therefore appropriate that applicants not be permitted to withdraw and reapply at will. Accordingly, the applicant herein should not be permitted to reapply for licensure as a gaming school instructor for a period of 12 months, as provided in N.J.A.C. 19:41-8.6.

The applicant herein being unable to go forward to a hearing on his application for licensure, it is therefore ORDERED that the instant matter be DISMISSED without prejudice, and it is FURTHER ORDERED that the applicant shall not reapply for licensure as a gaming school instructor for a period of 12 months from the effective date of this Order, pursuant to N.J.A.C. 19:41-8.6.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period. N.J.S.A. 52:14B-10.

I hereby file with Joseph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

August 17, 1979
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

August 22, 1979
DATE

Receipt Acknowledged:
AGENCY HEAD
Robert J. Genatt, Senior Asst Counsel

Aug 27, 1979
DATE

Mailed to Parties:
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF	)	INITIAL DECISION
THE APPLICATION OF BENJAMIN W. KIRK	)	OAL DKT. # CCC 4545-79
FOR LICENSURE AS A GAMING SCHOOL INSTRUCTOR	)	AGENCY DKT. # 79-EA-24

APPEARANCES:

F. Frederick Perone, Esq.
for the applicant, Benjamin W. Kirk

John J. Degnan, Attorney General of New Jersey
by: Patricia Arons, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
by: Thomas N. Auriemma, Senior Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Benjamin W. Kirk to the Casino Control Commission for licensure to work as a gaming school instructor. His application, including a personal history disclosure form, was filed with the Commission during February 1978. Applicant was advised by letter from the Casino Control Commission, dated March 12, 1979, that based upon the information received by letter from the Division of Gaming Enforcement, dated February 6, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 Pre-Hearing Conference was held on May 17, 1979, at which time the specific issues to be resolved at the hearing were identified. After an adjournment was granted from the original hearing date of June 27, 1979, the matter was set down for hearing on August 3, 1979.

On August 2, 1979, counsel for applicant advised the undersigned that he had received information indicating that his client was then in Las Vegas, Nevada, possibly for the purpose of gathering certain information necessary for going

forward at a hearing on his license application. Due to the applicant's inabili to proceed on the scheduled date for the hearing, an order was entered in the fc of an Initial Decision, dated August 17, 1979, dismissing the application withc prejudice, and further ordering that the applicant should not reapply for licensure as a gaming school instructor for a period of twelve months.

By order of the New Jersey Casino Control Commission, dated September 21, 1979, the Initial Decision of the Administrative Law Judge was rejected, the request for withdrawal of the application for licensure was denied, and the matter was remanded to the Office of Administrative Law for a determination as to whether the license application had been abandoned by the applicant, or whether the matter was an appropriate case to be rescheduled for a hearing on the merits.

On November 27, 1979, Assistant Counsel Denise A. Cobham wrote to the applicant to inform him that if the Casino Control Commission did not hear from the applicant within ten days of his receipt of Ms. Cobham's letter, the Commission would consider that he had abandoned his request for a hearing on his application. By copy of letter dated December 19, 1979, Senior Assistant Counsel David Arrajj advised the undersigned that the aforementioned letter from Ms. Cobham had been received at the applicant's last known address and no response had been received from the applicant. Mr. Arrajj further advised that it is the position of the Commission staff that as of December 10, 1979, applicant has abandoned his right to a hearing in this matter, and that having done so, there is no longer a contested case before the Office of Administrative Law.

I FIND:

1. The foregoing chronology of events is incorporated herein as if set forth at length.

2. On November 29, 1979, Assistant Counsel Denise Cobham of the Casino Control Commission wrote to applicant informing him that if the Commission did not hear from him within ten days of his receipt of that letter, the Commission would consider that he had abandoned his request for a hearing in this matter.

3. Applicant did not respond to the aforementioned letter from Assistant Counsel Cobham.

4. It is the position of the Commission staff, as set forth in the letter of Senior Assistant Counsel David Arrajj, dated December 10, 1979, that applicant has abandoned his right to a hearing and that there is no longer a contested case in this matter before the Office of Administrative Law, by reason of applicant's failure to respond to the aforementioned notice from Ms. Cobham which was received at his last known address.

I CONCLUDE:

The applicant has abandoned his request for a hearing.

For the foregoing reasons, it is ORDERED that the proceedings in this mat before the Office of Administrative Law are 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 with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

January 7, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

January 8, 1980
DATE

David Kinzer
AGENCY HEAD
Sr. Asst. Counsel

Mailed to Parties:

Jan 11, 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET #CCC 3177-79
CCC DOCKET NO. 79-EA-99

IN THE MATTER OF THE APPLICATION :
OF WALTER J. McDEVITT, JR. FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :
(DEALER). :

A hearing having been conducted on November 9, 1979 in the above-captioned matter before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and no exceptions or objections having been filed thereto by either the Applicant or the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of March 19, 1980 to adopt the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

It is on this 20th day of March 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Walter J. McDevitt, Jr., for licensure as a casino employee be and is hereby granted for the reasons stated in the said Initia Decision, which is incorporated hrein by reference and made a part thereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY _____
Joseph P. Lordi, Chairman

DATED: March 20, 1980

IN THE MATTER OF THE APPLICATION OF WALTER J. McDEVITT, JR. FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)	))))	INITIAL DECISION OAL DKT. NO. CCC 3177-79 Agency Dkt. No. 79-EA-99

APPEARANCES:

Jack E. Granzow, Esq.
American Civil Liberties Union
for the Applicant, Walter J. McDevitt, Jr.

John J. Degnan, Attorney General of New Jersey
By: Robert J. Melillo, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Walter J. McDevitt, Jr., to the Casino Control Commission for licensure to work in a casino as a dealer. His application, including a Personal History Disclosure Form, was filed with the Commission on January 17, 1979. Applicant was advised by letter from the Casino Control Commission, dated August 7, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated July 13, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on September 21, 1979, and the hearing was held on November 9, 1979 at the Atlantic City City Hall, Atlantic City, New Jersey.

At issue is whether Applicant should be disqualified from licensure as a casino dealer on the grounds that his conviction for, or alleged commission of, certain specified offenses indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations. If not so disqualified,

the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining issue of whether applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act relied upon by the Division of Gaming Enforcement in its opposition to Applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the applicant shall show by "clear and convincing evidence the Applicant's reputation for good character, honesty and integrity." Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86c provides, inter alia, that the Commission shall deny licensure to any applicant disqualified on the basis of a conviction for an offense which indicates that licensure would be inimical to the policy of the Act and to casino operations. N.J.S.A. 5:12-86g provides that the Commission shall deny licensure to any applicant disqualified on the basis of the commission of any act which would constitute any offense under subsection c of section 86, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

Before proceeding with testimony at the hearing, the parties stipulated to the elimination of an issue which had been identified at the pre-hearing conference. It was stipulated that the Applicant had voluntarily and on his own initiative, without any prompting or inquiry from the Division, realized that he had mistakenly not included his entire criminal arrest record on his Personal History Disclosure Form, and had subsequently supplied the necessary information. Therefore, any possible disqualification based on failure to reveal any fact material to qualification, pursuant to N.J.S.A. 5:12-86b, was eliminated as an issue.

It was also revealed prior to the taking of testimony at the hearing that the Division of Gaming Enforcement would call no witnesses and would rely upon documentary evidence concerning Applicant's arrest and conviction record. The Division offered its documents to prove the existence of the arrest and convictions, and not to prove the truth of the statements contained therein, and the documents were admitted into evidence (Exhibits R-1 through R-5) at the conclusion of the Applicant's case in chief. It is undisputed that Applicant was arrested on September 3, 1969, in Ocean City, New Jersey, for the disorderly person offense of possession of an alcoholic beverage by a minor in a motor vehicle (N.J.S.A. 2A:170-54.1). Applicant was fined $15 upon conviction of this offense, which fine was suspended by the court. Applicant was arrested on September 6, 1969, in Atlantic County, New Jersey, for allegedly making threats to kill, N.J.S.A. 2A:113-8, and for the alleged unlawful use of a firearm. On April 17, 1970, the charges were "no billed" by the Atlantic County grand jury. On September 4, 1970, Applicant was arrested in Pleasantville, New Jersey, on a charge of carnal abuse, N.J.S.A. 2A:138-1, arising from the complaint of a former girlfriend of Applicant that she had become pregnant after having sexual relations with the Applicant. On March 15, 1971, Applicant entered a plea of not guilty to the charge of carnal abuse. On June 8, 1971, Applicant entered a plea of guilty to the downgraded disorderly person offense of unlawfully molesting and interfering, contrary to N.J.S.A. 2A:170-29. Applicant was fined $25 and given a suspended thirty day jail sentence.

It is undisputed that Applicant successfully completed a blackjack dealer course offered by the Casino Career Institute, taught in compliance with N.J.A.C. 19:44-83. Applicant testified that he is presently a district agent (salesman)

for the Prudential Insurance Company, which involves the collection and depositing of over $2,600 a month for his company. He stated that he has never been accused of not turning in all funds which he has collected. Prior to his employment as an insurance salesman, Applicant was employed for approximately three and one half years by Rite-Aid Corporation, a chain of discount drug stores. For approximately two years, Applicant was the manager in charge of the Rite-Aid Drug Store at 1328 Atlantic Avenue in Atlantic City, New Jersey. Applicant's duties included responsibility for all receipts of the store, totalling between one million and one and a half million dollars per year. Testifying that he had access to the entire store, Applicant stated that there was never a shortage of controlled drugs in the pharmacy during his employment, and there was never a claim of shortage of funds.

Applicant testified at length on direct and cross examination concerning his arrest and conviction record. His testimony was sincere and credible. Concerning his conviction in 1969 for the disorderly person's offense of possession of an alcoholic beverage by a minor in a motor vehicle, Applicant acknowledged that he had approximately sixteen or seventeen bottles of beer in his car when he was arrested, but he denied that he had been drinking. Applicant testified that the judge suspended his $15 fine because the Applicant had just been discharged from the military service.

Explaining the circumstances surrounding his 1969 arrest for threats to kill, and the unlawful use of a firearm, Applicant testified that he was target shooting with a friend behind his mother's house while his mother and sister were nearby yelling and arguing. It was the Applicant's testimony that his mother told him his sister had called the police and said that he had been shooting at her. Stating that the charges had been "no billed" by the grand jury, Applicant denied that he had had any argument with his sister or that he had pointed his gun at her at any time. According to the Applicant, his sister did not get along with the rest of her family and had even had Applicant's mother and other sister arrested on other occasions. The affidavit of Allan T. Cooper, with whom the Applicant had been target shooting on or about September 6, 1969, was admitted into evidence as Exhibit P-2.

Applicant testified concerning his arrest for carnal abuse and his subsequent plea of guilty to the downgraded disorderly person's offense of unlawfully molesting and interfering, contrary to N.J.S.A. 2A:170-29. Applicant acknowledged that he had dated the fifteen year old girl who alleged that she became pregnant after having sexual relations with the Applicant, but he denied that he had ever had such relations with her. Although the Applicant was uncertain as to the precise time period during which he dated the young woman, his testimony denying having engaged in the alleged conduct was persuasive. It must be noted that the young woman had first claimed that another young man was responsible for her pregnancy, and she had given conflicting statements as to the date when the sexual relations had taken place. Applicant explained that he entered his guilty plea to the disorderly person's offense upon the advice of his public defender who explained that he would be pleading guilty to having the underage girl in his car after 12 o'clock at night. The complaint filed for the downgraded disorderly person's offense (Exhibit R-4) does not allege any sexual misconduct by the Applicant, and it must be noted that the disorderly person's offense of obstructing, molesting or interfering with any person, contrary to N.J.S.A. 2A:170-29, is not an offense of sexual misconduct.

George W. Dix, a polygraph examiner with Earl Caine Associates, and a retired State Police polygraph examiner, testified on behalf of Applicant. Mr. Dix stated that he has known Applicant for approximately seven years due to their joint involvement in a youth football program in Pleasantville, New Jersey, and he stated that he has complete confidence in the Applicant and his character. It was the testimony of Mr. Dix that everyone involved in the organization feels that Applicant is of a good character.

In the instant matter, Applicant has not been convicted of any of the enumerated disqualifying offenses under section 86c of the Act. The issue, therefore, is whether the Applicant has been convicted of or committed any acts which would indicate under sections 86c and 86g that licensure of the Applicant would be inimical to the policy of the Casino Control Act and to casino operations. To make this determination it is necessary to examine, inter alia, the nature of the offenses, the remoteness of the offenses in time and the offender's conduct since the offense to the present. Applicant's testimony has established that he did not commit the offenses of threats to kill and unlawful use of a firearm, which charges were "no billed" by the grand jury which considered them. Applicant's testimony has also established that he did not commit the offense of carnal abuse for which he was arrested in 1970. Applicant's plea of guilty to the downgraded offense of molesting and interfering, contrary to N.J.S.A. 2A:170-29, does not establish the commission by Applicant of an offense of sexual misconduct. The relatively minor nature of the offense is illustrated by the $25 fine and suspended thirty day jail term which Applicant received upon entry of his guilty plea. Applicant's conviction in 1969 of the disorderly person's offense of possession of an alcoholic beverage by a minor in a motor vehicle was also a conviction for a relatively minor offense, as illustrated by the suspended $15 fine imposed by the court.

Applicant has had no arrests or convictions since 1971. During the period from 1971 until the present, Applicant has held responsible positions for significant periods of time, involving the handling of large sums of money. Applicant has performed his employment duties with honesty and integrity, and he enjoys a reputation for good character.

The credible proofs in the whole record fail to indicate that licensure of Applicant either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming. Licensure of Applicant would not, therefore, be inimical to the policy of the Casino Control Act and to casino operations. Furthermore, the credible proofs in the whole record establish by clear and convincing evidence the Applicant's reputation for good character, honesty and integrity.

Having reviewed the testimony and other evidence offered in the matter (See inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

1. Applicant has applied for a license to permit him to work in a casino as a dealer.
2. Applicant successfully completed a course in blackjack dealing offered by the Casino Career Institute.

3. Applicant completed and supplemented his Personal History Disclosure Form in good faith.
4. Applicant was convicted in 1969 of the disorderly person's offense of possession of an alcoholic beverage by a minor in a motor vehicle, for which he received a suspended fine of $15.
5. Applicant was convicted in 1971 upon his plea of guilty to the disorderly person's offense of molesting and interfering, contrary to N.J.S.A. 2A:170-2 which offense did not involve sexual misconduct by Applicant, and which received a $25 fine and a suspended thirty-day jail term.
6. Applicant did not commit the offenses of threats to kill, unlawful use of a firearm and carnal abuse, for which he was arrested in 1969 and 1970.
7. Applicant has not had any arrests or convictions since 1971.
8. Since 1971, Applicant has held responsible positions and has performed his employment duties with honesty and integrity.
9. Applicant presently maintains a reputation for good character.
10. The nature and remoteness of Applicant's offenses, and his subsequent conduct, do not indicate that licensure of Applicant would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of the disqualification criteria of section 86c of the Casino Control Act.
11. It appears likely, if Petitioner is licensed, that he will make an honest and trustworthy casino employee.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant should not be disqualified from receiving a casino employee license to work as a dealer, and that Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure. It is therefore ORDERED that a casino employee license, permitting Applicant to work as a dealer, be granted to Applicant.

This recommended Decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

December 20, 1979
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

December 26, 1979
DATE

Receipt Acknowledged:
AGENCY HEAD
/s/ Benjamin Cohen

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

For the Applicant:

P-1 Personal History Disclosure Form of Walter J. McDevitt, Jr.

P-2 Affidavit of Allan T. Cooper

P-4 Letter of recommendation from Rev. Msgr. Michael J. Coyne

P-5 Affidavit of Sylvan Giltman

For the Division of Gaming Enforcement:

R-1 1969 Arrest Report for threats of kill and unlawful use of a firearm, with attachments

R-2 1969 Disorderly Person's Disposition Record

R-3 1970 Carnal Abuse Arrest Report, with attachments

R-4 1971 Downgraded Disorderly Person's Disposition Record

R-5 F.B.I. and S.B.I. 1969 and 1970 Arrest Records

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1636-79
CCC DOCKET NO. 79-EA-56

IN THE MATTER OF THE APPLICATION :
OF ALEXANDER MIRONOV FOR LICENSURE: FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Jack Berman of the Office of Administrative Law and the Commission having considered record of that hearing and the Initial Decision of the Administrat Law Judge and the Commission having resolved at its Public Meeting of January 9, 1980, to affirm and adopt the Initial Decision of the Administrative Law Judge and to deny licensure,

It is on this 14th day of January, 1980.

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted by the Commission and that licensure be denied on the grounds stated therein, namely, failure of the applicant to establish New Jersey residency pursuant to N.J.S.A.5:12-90(b), failure of the Applican to satisfy the durational residency requirements set forth in N.J.A.C. 19:41-4.3(a)(5), the supplying of misleading and untrue information concerning New Jersey residency, a material fact pertaining to qualification criteria under N.J.S.A. 5:12-86(b), and the failure of the Applicant to sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-98(b)(2); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
Joseph P. Lordi
Chairman

DATED: January 14, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In the Matter of the Application of Alexander V. Mirinov, for Licensure as a Casino Employee (Dealer)	)	INITIAL DECISION OAL DKT. NO. CCC 1636-79 AGENCY DKT. NO. EA-56

APPEARANCES:

Alexander V. Mirinov - Pro Se

Howard N. Barman, Esq. - Deputy Attorney General for the Division of Gaming Enforcement, Department of Law and Public Safety

Denise A. Cobham, Esq., for the Casino Control Commission

BEFORE THE HONORABLE JACK BERMAN, A.L.J.:

In December, 1978, Alexander V. Mirinov (applicant) filed an application, including a personal history disclosure form, with the Casino Control Commission (Commission) for licensure to work in a casino as a dealer. By letter dated April 28, 1979, the Division of Gaming Enforcement (Division) objected to the licensure of Mr. Mirinov based upon insufficient residency that "Mr. Mirinov has not met the six months durational residency requirement contained in N.J.A.C. 19:41-42" and to deceive the Division with respect to setting forth a false New Jersey residence which deception "impacts directly upon the applicant's good character and integrity". Applicant was advised by letter dated May 24, 1979, from the Casino Control Commission General Counsel, that based upon the information received from the Division, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

A pre-hearing conference was held on July 23, 1979 at which time the following were framed as the issues.

1. Is applicant for licensure as a casino employee (dealer) a New Jersey resident as required by Sec. 90 of the Casino Control Act., P.L. 1977, c. 110?

2. Has applicant been a resident of New Jersey, as defined by the Casino Control Act, for a period of six months prior to issuance as required by Casino Control Commission regulation adopted pursuant to Sec. 90c of the Casino Control Act, as amended by P.L. 1978, c.7, approved March 17, 1958?

3. Has the applicant proved by clear and convincing evidence that the applicant is qualified in accordance with the provisions of the Act as required by Sec. 86(a) of the Act?

4. Has the applicant supplied information to the Commission which is untrue or misleading as to a material fact pertaining to the applicant's qualifications as required by Sec. 86(b) of the Act?

5. Has applicant produced by clear and convincing evidence the applicant's reputation for good character, honesty and integrity as required by Sec. 89(b)(2) of the Act, specifically in connection with the applicant's arrest and conviction of 2A:151-62 for possession of a switchblade on January 23, 1979 and for alleged untruthfulness in preparing the application regarding applicant's residency?

Applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on August 27, 1979 and October 22, 1979, in Trenton, New Jersey.

During the course of the hearing, the following exhibits were marked:

FOR IDENTIFICATION:

D-1 Application of Alexander V. Mirinov including personal history disclosure.

D-2 Investigation report on Alexander V. Mirinov from the Atlantic City Police Dept.

D-3 January 23, 1979 arrest report re: Alexander V. Mirinov.

IN EVIDENCE:

D-1 Application of Alexander V. Mirinov including personal history disclosure.

The relevant section of the Casino Control Act relied upon by the Division of Gaming Enforcement in its opposition to applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89 of the Act, including the requirement that the applicant shall show by "clear and convincing evidence the applicant's reputation for good character, honesty and integrity". Section 90 of the Act also incorporates the disqualification criteria of section 86, which provides, inter alia, that the Commission shall deny licensure to any applicant disqualified for failure to provide information required by the Act or requested by the Commission, or for failure to reveal any fact material to qualification, or for supplying information which is untrue or misleading, as to a material fact pertaining to the qualification criteria.

Applicant testified that he has not lived in New Jersey since January 1979. Applicant states that at the time he applied for license (December 8, 1978) he was residing in Runnemeade, New Jersey at a friend's house whose name is Paul Clements. At the same time, applicant had an apartment in Newark, Delaware. He testified that he has lived in the United States since April, 1975 and it is his intention to become a citizen of the United States. He stated that he has had his Delaware apartment since the summer of 1978 and could be reached there since January, 1979. He confirmed that his last address listed in his Disclosure form, Q.16 was Runnemeade, New Jersey where he rents an apartment but has not paid any rent because of a "gentlemen's agreement" with his friend, Mr. Clements. He testified that he no longer lives there and when he did, he did not stay there every night although he stated that he stayed there most of the time. This was during the period from June 1978 to December 1978. Also, during that period, he stayed a month with his parents who were residing in Michigan as well as staying with various friends in Delaware.

He produced his driver's license which was a Delaware license.

He testified that on January 23, 1979, while at Resort's International Casino in Atlantic City, he was stopped for an identification check by Resort's security personnel. They subsequently discovered a switchblade knife in his back pocket and

had him arrested. He stated he was subsequently convicted for possessing a switchblade knife which is presently on appeal. He stated that at the time of his arrest, he did not know it was illegal to carry a switchblade knife in New Jersey. He denied on cross-examination that on January 23, 1979, he kicked anyone regarding his detention by Resort's security personnel.

Daniel Ballance, a detective with the New Jersey State Police assigned to the Division of Gaming Enforcement testified for the Division. He conducted a background investigation of the applicant. Prior to conducting this investigation, he met the applicant on January 23, 1979 at the casino of Resorts International where he was assisting a Detective Coblintz in arresting the applicant.

Subsequently, he conducted an investigation of the applicant's background. He investigated the residence history of the applicant. During the course of that investigation he spoke to Paul Clements whose address the applicant had stated he resided at from June 1978 to December 1978. Mr. Clements advised Det. Ballance that applicant had only stayed at his house on a couple of days during the period and that Mr. Clements did not consider applicant a permanent resident.

After consideration of the entire record, THE COURT FINDS:

1. Applicant for licensure has not been a New Jersey resident as required by Sec. 90 of the Casino Control Act, P.L. 1977, c.110.

2. Applicant for licensure has not been a resident of New Jersey as defined by the Casino Control Act for a period of six months prior to issuance as required by Casino Control Commission regulation adopted pursuant to Sec. 90c of the Casino Control Act, as amended by P.L. 1978, c.7 approved March 17, 1978.

3. The applicant for licensure has not proved by clear and convincing evidence that he is qualified in accordance with the provisions of the Act as required by Sec. 86(a) of the Act.

4. The applicant for licensure has supplied information to the commission which is untrue or misleading as to a material fact pertaining to the applicant's qualifications as required by Sec. 86(b) of the Act with respect to residency.

5. The applicant for licensure has not produced by clear and convincing evidence the applicant's reputation for good character, honesty and integrity as required by Sec. 89(b)(2) of the Act, specifically in connection with the applicant's arrest and conviction of 2A:151-62 for possession of a switchblade on January 23, 1979 and for untruthfulness in preparing the application regarding applicant's residency.

N.J.S.A. 5:12-90 states in relevant part:

> "b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b of section 89 of this Act and any additional residency requirement imposed under subsection c of this section..."
>
> c. The commission may, by regulation, require that all applicants for casino employee licenses be residents of this State for a period not to exceed six months immediately prior to the issuance of such license, but application may be made prior to the expiration of the required period of residency."

It is clear from applicant's own testimony that he hasn't lived in New Jersey since January 1979. It is clear from the applicant's own testimony that he was in possession of a switchblade knife on January 23, 1979. It is further clear from all the testimony that applicant was not a resident of New Jersey for the period disclosed in his personal Disclosure Form.

N.J.S.A. 5:12-86 states in relevant part:

> " The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this Act;
>
> b. Failure of the applicant to provide information, documentation and assurances required by the Act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria."

Section 5:12-89(b)(2) regarding an applicant's reputation reads in relevant part:

> " Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity."
>
> This the applicant has failed to do.

The legislature has seen fit to include in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:12-1(b)(6) provides

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

> confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided."

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, THE COURT CONCLUDES that applicant is disqualified from receiving a casino employee license to work as a dealer based upon his failure to establish the required residency and his failure to disclose material to his qualification for licensure and his failure to establish by clear and convincing evidence his reputation for good character, honesty and integrity, N.J.S.A. 5:12-86b, 5:12-90, 5:12-89b(2) respectively. It is therefore ORDERED that the application of Alexander V. Mirinov for licensure as a casino employee, dealer be denied.

This decision shall not become effective prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head seeks to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, Joseph P. Lordi, Chairman, my Initial Decision in this matter and the record in these proceedings.

November 13, 1979
DATE

Jack Berman
JACK BERMAN, A.L.J.

Receipt Acknowledged:

November 16 1979
DATE

Florence Flaherman for Casino Control Com.
AGENCY HEAD

Mailed to Parties:

Nov 20, 1979
DATE

Elizabeth J. Farmer Esq
FOR OFFICE OF ADMINISTRATIVE LAW

kam

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-47
OAL DOCKET NO. CCC 1376-79

IN THE MATTER OF THE APPLICATION :
OF JOHN WILLIAM MONAHAN FOR :
LICENSURE AS A CASINO EMPLOYEE : FINAL ORDER
(ALCOHOLIC BEVERAGE EMPLOYEE) :

A hearing having been conducted on October 3, 1979 in the above-captioned matter before Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions and objections filed by the Division of Gaming Enforcement, and the Commission having resolved at its public meeting of January 9, 1980 to adopt the Initial Decision of the Administrative Law Judge in part and reject it in part and to grant the application for licensure,

It is on this 14th day of January 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted in part by the Commission, and

It is further ORDERED that to the extent that the Initial Decision might be read to imply that the Division of Gaming Enforcement has the burden of disproving affirmative qualification criteria by a preponderance of the evidence, it is hereby rejected; and

It is further ORDERED that the application of John William Monahan for licensure as a casino employee be and hereby is granted based on the findings of fact and conclusions of law contained in said Initial Decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: January 14, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF JOHN WILLIAM MONAHAN AS A CASINO EMPLOYEE (Alcoholic Beverage Employee)	)	INITIAL DECISION O.A.L. DKT. NO. C.C.C.1376-79 AGENCY DKT. NO. 79-EA-47

APPEARANCES:

John William Monahan, Pro Se

Robert J. Melillo, Deputy Attorney General, for the Division of Gaming Enforcement

Denise A. Cobham, Assistant Counsel for the Casino Control Commission

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In October 1978, John William Monahan (applicant) filed an application for a license as a casino employee (Alcoholic Beverage Employee). On April 3, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of the applicant based upon "less than candid answers in response to questions regarding his financial stability and answer to Question No. 51 on his personal history disclosure form." It was asserted that the applicant failed to disclose the existence of a civil suit and judgment entered against him by Sears & Roebuck Company in the amount of $2,667.20 in February of 1977; and that the applicant failed to pay off a charge account at Wanamaker's Department Store in Philadelphia in the amount of $341.91; that he told an investigator that the amount had been paid in full, and that he further had his automobile repossessed and sold in 1976 by the Guarantee Bank and Trust Company of Atlantic City after he defaulted on an auto loan, and that a deficiency is still due to the bank.

The applicant was advised by letter dated April 25, 1979 from the Casino Control Commission's General Counsel, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing. By letter dated May 22, 1979 the applicant requested a hearing. 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 matter was initially set down for hearing on July 24, 1979. The applicant failed to appear on that date, and a rescheduled hearing was held on October 3, 1979. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on October 17, 1979, and a letter reply from the applicant on October 26, 1979. The hearing was officially closed on the latter date.

The applicant testified briefly. He asserted that two collection attorneys, Bennett Barfeld representing Sears & Roebuck, and Lois Finifter representing the Guarantee Bank and Trust Company of Atlantic City, spoke to him on the telephone and that he made an arrangement to make monthly payments to them. He initially thought that the matter was "settled out of court" and was unaware that he had been sued. He did appear in court at a later date to have his payments reduced on the Sears account from $25. to $15. a month. He thought that his wife had paid the Wanamaker's account and has not received a bill since 1972. The applicant stated that in 1976 his wife was hospitalized for a mental breakdown. He had to take care of his children, ages 7, 5, 2 and 1. He had to borrow money from his family and friends to meet existing financial obligations. His car loan was 10 days overdue when the bank repossessed it. He had no employee hospitalization plan. His judgment and car repossession occurred during the period of his wife's illness. He is presently paying off his creditors.

He offered into evidence certain exhibits, consisting of cancelled checks made payable to the two collection attorneys.

The other witness, Detective Ronald R. Foster, employed by the New Jersey Division of State Police, testified that a credit profile revealed that a judgment was obtained by Sears & Roebuck Corporation in 1976 and, at the time of the investigation, there was due a balance of $2,667.20. The applicant made a total of $70. in payments in 1978. A balance of $341.81 was owed to Wanamaker's Department Store. The store has received no payments since September of 1972. The applicant told him in

a telephone interview that he paid off that account two or three years prior thereto. His investigation revealed that there was a balance of $975. due to the Guarantee Bank and Trust Company of Atlantic City. The applicant is presently making payments of $25. a month to the bank; however, his payments were allegedly slow and two months behind. The applicant did not volunteer any information about his alleged familial difficulties. He was very cooperative. His investigation revealed that no one gave any derogatory information about him.

I FIND as follows:

1. Question 51 on the personal history disclosure form reads as follows: "Have you been a party in a civil suit?" The block designated "No" has a check next to it.

2. On February 24, 1976 a judgment was entered against the applicant by Sears & Roebuck. He was initially making a payment of $25. a month to a collection attorney on the account; however, the payments were reduced to $15 a month after he was taken to court in November of 1976.

3. A present balance of $341.81 is owed to John Wanamaker's Department Store in Philadelphia. No payments have been made on that account since September of 1972.

4. The applicant defaulted on a car loan made by the Guarantee Bank and Trust Company of Atlantic City, New Jersey in 1976. His car was repossessed and sold. He was assessed a deficiency and is presently paying off a balance of approximately $957.06 on that loan. He is now making payments of $25. a month to the bank.

5. The applicant's wife was institutionalized on two occasions for a mental breakdown in 1976. His present financial difficulties stemmed from that institutionalization.

6. The applicant did not knowingly intend to supply any information which was untrue or misleading when he gave a negative response to Question No. 51 on his personal history disclosure form.

7. The applicant did not knowingly intend to mislead Detective Ronald Foster when he told him that the John Wanamaker Department Store in Philadelphia had been paid in full, and indeed believed that his wife had paid off that account.

Three general issues are raised. The first is that the applicant failed to reveal a material fact to qualification or that he supplied information which was untrue or misleading as to a material fact pertaining to qualification criteria when he did not reveal a civil judgment obtained by Sears & Roebuck Company and his other indebtedness to the Guarantee Bank and Trust Company of Atlantic City and John Wanamaker's Department Store in Philadelphia. The second issue is that the applicant has not established by clear and convincing evidence, based upon the aforementioned indebtedness, his financial stability, integrity and responsibility. Finally, his failure to disclose the requisite information and alleged assertions to Detective Foster has also called into question his reputation for good character, integrity and honesty.

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

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

When the applicant failed to reveal that a judgment was obtained against him in 1976 by Sears & Roebuck, it cannot be denied that he failed to reveal a "fact material to qualification"; however, it does not strain credulity to believe his assertion that he was both misled and misconstrued Question No. 51 on his Personal History Disclosure Form. Collection attorneys frequently serve process on debtors and then work out an informal arrangement wherein the debtor agrees to pay off the indebtedness. A collection attorney will then take a default judgment against a creditor. The uninitiated layman, who has not appeared in court and heard a judgment entered against him assumes that the matter had been "worked out" on an informal arrangement.

Therefore, I CONCLUDE that the applicant did not violate N.J.S.A. 5:12-86(b) by knowingly supplying information which was untrue or misleading as to a material fact pertaining to his qualifications.

N.J.S.A. 5:12-90 (b) provides in pertinent part:

> "(b) Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria ... contained in sub-section b of Section 89 of this Act;"

N.J.S.A. 5:12-89 (b) (1) provides in pertinent part:

> "Each applicant ... shall produce information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant ..."

However, I FIND applicant's testimony credible that his wife was institutionalized in 1976 on two successive occasions. It was during this time frame that he was subjected to economic strains that constituted a temporary lapse of debt payments both to Sears & Roebuck and to the Guarantee Bank and Trust Company of Atlantic City. Our legal system has developed personal bankruptcy as a safety valve to relieve the pressure of economic stress with no stigma attached to a bankrupt. The applicant is presently trying to pay his debts as evidenced by checks to two collection attorneys. I do not have the impression that he is a debt-avoider. His present responsible approach to debt-lessening should not carry with it a scarlet patch that frustrates his economic prospects for future employment in the casino industry.

I CONCLUDE that the applicant has the requisite financial stability, integrity and responsibility under N.J.S.A. 5:12-89(b) (1), and good character, honesty and integrity under N.J.S.A. 5:12-89(b) (2).

Therefore, I am clearly convinced that the applicant should not be disqualified from licensure as an alcoholic beverage employee and that the reasons for denial advanced by the Division of Gaming Enforcement have not been established by a preponderance of the believable evidence.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1 et seq.

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

Nov. 30, 1979
DATE

R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

December 5, 1979
DATE

AGENCY HEAD

Mailed to Parties:

Dec. 10, 1979
DATE

Elizabeth J. Lazzara, Esq.
FOR OFFICE OF ADMINISTRATIVE LAW

ahk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3526-79
CCC DOCKET NO. 79-EA-100

IN THE MATTER OF THE APPLICATION :
OF JOHN A NEGRON FOR LICENSURE :
AS A CASINO EMPLOYEE (CASINO : FINAL ORDER
SECURITY OFFICER) :

An application for licensure as a casino employee having been filed with the Casino Control Commission by John A Negron on January 5, 1979; and the Division of Gaming Enforcement having objected to Mr. Negron's licensure based upon an arrest and indictment for possession of a controlled dangerous substance (amphetamine) with intent to distribute same contrary to N.J.S.A. 2A:21-19(a)(2), and the circumstances surrounding his dismissal from employment as a police officer with the Franklin Township Police Department; and Mr. Negron having requested a hearing on this matter through counsel; and a prehearing conference having been held on December 4, 1979 at which the Applicant did not appear, but which was held at the behest of the Applicant's counsel in absentia; and a hearing having been scheduled to be held on February 25, 1980; and the Applicant having failed to appear at the hearing thereby abandoning his right to a hearing by reason of said non-appearance; and the Commission having considered the Initial Decision of the Administrative Law Judge; and the Commission having resolved at its public meeting of April 9, 1980 to affirm and adopt the Initial Decision of the Adminis-

trative Law Judge and to deny the application for licensure,

It is on this 18th day of April 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is affirmed and adopted by the Casino Control Commission and;

It is further ORDERED that the license application of John A. Negron be and hereby is denied based upon the allegations advanced by the Division of Gaming Enforcement in its letter-report to the Chairman dated July 5, 1979, and, further, based upon Mr. Negron's failure to establish his individual qualifications pursuant to N.J.S.A. 5:12-80(a),89,90 due to his non-appearance at the scheduled hearing; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: April 18, 1980

IN RE: JOHN A. NEGRON : INITIAL DECISION
:
: OAL DKT. #CCC 3526-79
:
: AGENCY DKT. #79-EA-100

APPEARANCES:
Michael Grodjeski, Esq., Deputy Attorney General,
on behalf of the Division of Gaming Enforcement

BEFORE THE HONORABLE NORMAN D. SMITH, A.L.J.:

The Petitioner, John A. Negron, applied to the Casino Control Commission for a licensure as a casino employee (security officer) pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.. The Division of Gaming Enforcement filed an objection to the licensure application 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 December 4, 1979 and the Prehearing Order entered January 11, 1980.

On February 25, 1980, the date set down for hearing in the Prehearing Order, an appearance was made by Michael Grodjeski, Esq., Deputy Attorney General, on behalf of the Division of Gaming Enforcement. However, no one appeared on behalf of the Petitioner. Howard Guggenheim, Esq., Attorney for Petitioner, called the undersigned and advised that his client would not appear. Mr. Guggenheim related that he had experienced communications difficulties with his client and was unable to produce him for the hearing.

The Petitioner has the burden of going forward with evidence and the burden of establishing his qualifications for licensure by clear and convincing evidence. N.J.S.A. 5:12-89, N.J.S.A. 5:12-90. No evidence having been produced on behalf of the Petitioner, his application for licensure is HEREBY DENIED.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, who by law is empowered to make a final decision in this matter. However, if the Chairperson does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

I HEREBY FILE with Joseph P. Lordi, Chairperson, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

Feb 25 1980
DATE

NORMAN D. SMITH, A.L.J.

March 4, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-4

STATE OF NEW JERSEY		
DEPARTMENT OF LAW AND PUBLIC SAFETY	:	
DIVISION OF GAMING ENFORCEMENT,	:	FINAL ORDER
PLAINTIFF,	:	
v.	:	
KEVIN NOEL,	:	
Respondent	:	

A hearing having been conducted in the above-captioned matter before Commissioner Alice D. Corsey, acting as Hearing Examiner by designation of this Commission, on October 29, 1979, November 8 1979 and November 16, 1979, and the Commission having carefully considered the entire record in this proceeding, and the Report and Recommendation of the Hearing Examiner, and no written exceptions to the Report and Recommendation having been filed by the parties; and the Commission having resolved at its public meeting of May 1, 1980 to adopt the Report and Recommendation of the Hearing Examiner and to revoke the casino hotel employee license presently held by the Respondent herein;

It is on this 6th day of May, 1980, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and it is further ORDERED that the casino hotel employee license held by Respondent be and hereby is revoked; and it is further ORDERED that the Respondent herein surrender the revoked casino hotel employee license credential to the Offices

of the Casino Control Commission within five (5) days of the service of this Final Order upon him; and it is further ORDERED that copies of this Final Order be served upon the Respondent and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
Joseph P. Lordi,
Chairman

DATED: May 6, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-4

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	REPORT AND
Charging Party,	:	RECOMMENDATION
v.	:	
KEVIN NOEL,	:	
Respondent.	:	

Patricia Arons, Deputy Attorney General, appearing for the Division of Gaming Enforcement.

Kevin Noel, appearing pro se and, also represented by Stephen I. Kaplan, Esquire.

I. INTRODUCTION

On March 22, 1979, the Division of Gaming Enforcement [hereinafter: the Division] filed with the Casino Control Commission [hereinafter: the Commission] Complaint No. 79-4. In its Complaint, the Division alleged that on December 19, 1978, Mr. Kevin Noel [hereinafter: the Respondent], a duly licensed casino hotel employee, pleaded guilty to Accusation No. 323-78-S, which charged the Respondent with selling securities with

a license in violation of N.J.S.A. 49:3-56(a) and 70(a).[1] The Complaint further alleged that the Accusation, to which Respondent pleaded guilty, resulted from an undercover investigation conducted by Officer Frank Johnson of the Galloway Township Police Department. As a part of that investigation, the instant Complaint further alleged, Officer Johnson engaged in several stock transactions with the Respondent wherein the officer bought and resold 900 shares of stock in a company known as Investment Systems.

The Division further asserted that the Respondent's admitted commission of the above-described acts, as evidenced by his guilty plea to the Accusation, rendered his continued licensure inimical to the policies of the Casino Control Act and to casino operations. Therefore, the Division requested judgment revoking Respondent's casino hotel employee license.

The Commission served a copy of the instant Complaint upon Respondent by certified mail, covered by a letter wherein Respondent was advised that within 15 days after receipt thereof, he could file with the Commission a request for hearing and notice of defense. On April 6, 1979, the Respondent made a timely request for a hearing.

---

1. N.J.S.A. 49:3-56(a) provides that:
"It shall be unlawful for any person to act as a broker-dealer, agent or investment advisor in this State unless he is registered under this act;" (Uniform Securities Law (1967)).
N.J.S.A. 49:3-70(a) additionally provides that:
"Any person who willfully violates any provision of this act, (Uniform Securities Law (1967)) ... shall be guilty of a misdemeanor and fined not more than $5,000.00 or imprisoned not more than 3 years, or both; ..."

A prehearing conference in the instant matter was held on August 20, 1979 in the Offices of the Casino Control Commission at 379 West State Street, Trenton, New Jersey. As indicated in the Prehearing Conference Order entered on August 23, 1979, the Respondent was informed of additional bases for license revocation alleged by the Division. Those additional bases included the failure of the Respondent to clearly and convincingly establish his reputation for good character, honesty and integrity because of: (1) his admitted unlawful actions as a broker-dealer, agent or investment advisor; and (2) his allegedly false characterization of his departure from employment with Resorts International Hotel, Inc. as a resignation for personal reasons as opposed to an involuntary dismissal

Subsequently, the hearing date of October 2, 1979 was set, and the parties duly notified thereof. On October 2, 1979 neither the Respondent nor the Division entered an appearance before the undersigned Hearing Examiner. Therefore, the peremptory hearing date of October 29, 1979 was set and the parties were duly notified.

On October 24, 1979, the Division filed with the Commission and served on the Respondent an amendment to the Complaint in which it was alleged that on April 19 and 20, 1979, the Respondent was observed, by employees of the Atlantic County Road Department, illegally putting gas from County gas pumps into his personal 1978 Honda license number AKN10. The

---

2. The Prehearing Conference Order is appended hereto at A-1 to 4.

Division asserted that "such conduct is in violation of the Casino Control Act, Subsection 89b(2)," and furthermore that "such conduct is inimical to the policies of the Casino Control Act and casino operations, Casino Control Act subsection 86C"(sic).

On October 29, 1979, the hearing commenced at the belated hour of 11:07 a.m. due to Respondent's tardiness.[3] At the close of the day, it was continued to November 8, 1979 and concluded on November 15, 1979. At the outset, a review of some aspects of the fact-finding process engaged in by the undersigned is in order.

The burden of persuasion is placed and remains upon the party seeking Commission action to change the status quo. It never shifts. Moreover, the burden of production of evidence is initially placed upon the party requesting Commission action. However, once that party introduces evidence which satisfies the hearing examiner that the existence of facts on which the claim for relief is based is more probable than not, the burden of producing evidence then shifts to the responding party to offer evidence in rebuttal or explanation.

At the conclusion of the hearing, based on the record as a whole, the hearing examiner must make a recommendation to the Commission indicating whether the party seeking Commission action has proved facts which satisfy the relevant statutory criteria by a preponderance of the evidence.

---

3. The first day of hearing was conducted in the Commission offices at 379 W. State Street, Trenton, N.J. On the successive dates, the hearing was conducted in the Commission offices at the Arcade Building, Tennessee Avenue and Boardwalk, Atlantic City, N.J.

Put another way, the Division, in its written complaint, has indicated that it seeks revocation of Respondent's casino hotel license. Therefore, by virtue of the assertions put forward in its Complaint, the Division has the burden of persuasion as to existence of facts necessary to produce a firm belief in the mind of the hearing examiner that it is more probable than not that the Respondent has committed the acts alleged.

After the presentation of the Division's evidence, the burden of producing evidence to rebut or explain the proof adduced shifts to the Respondent. At the conlcusion of this process, the Hearing Examiner must review the evidence in the entire record and any permissible inferences that may be drawn therefrom, in order to determine whether the Division has proved the alleged acts by a preponderance of the evidence, and further, whether such acts, pursuant to the relevant statutory criteria, justify the sanction requested by the Division.

II. RESPONDENT'S CONVICTION FOR THE UNLAWFUL SALE OF STOCK

As related earlier, the Respondent pleaded guilty to the violation of a securities regulatory offense. In this context, the Division offered inter alia, the testimony of Officer Frank Johnson of the Galloway Township Police Department and documentary evidence

---

4. "T" refers to the transcript of October 29, 1979.
"2T" " " " " " November 8, 1979
"3T" " " " " " November 16, 1979.

Documents and other materials received into evidence at the hearing will be identified by either an "R" for Respondent, a "D" for Division of a "J" for jointly offered items.

Officer Johnson testified that he first met the Respondent in the course of his duties as a police officer (T23-1 to 6). He was dispatched to Respondent's home address, by radio, to advise him to contact the Pleasantville Court Clerk about an upcoming court appearance (T237-17). Officer Johnson delivered the message, and engaged in other casual conversation with the Respondent (T26-14 to 25). Officer Johnson testified that the Respondent indicated that he was the president of the firm of Executive Special Services, Inc., which dealt in insurance, stock, real estate and securities (T27-3 to 8). The Respondent also gave the officer a business card (D-2). The business card piqued Officer Johnson's curiosity because some of the information displayed thereon was printed, some was added by typewriter, and some was affixed by rubber stamp. The business card listed a Hackensack, New Jersey address and a Pleasantville, New Jersey telephone number (T28-8 to T29-4). Because of the facial peculiarities of the business card, Officer Johnson decided to investigate the validity of Respondent's company (T29-5 to 6). During the course of his investigation, Officer Johnson contacted the Records Clerk at the Hackensack Police Department. He inquired "whether or not this was a legitimate company licensed by a mercantile license for that city at the address listed and also whether she had any information on Kevin D. Noel, who was president of this firm." (T30-5 to 18). The Records Clerk advised the Officer that the address listed on the business card was located in a residential neighborhood, and that the Clerk's Office did not have a record of a mercantile license issued

either to the Respondent, or to the Executive Special Services, Inc. (T30-19 to 25).

Through contact with the Division of Consumer Affairs of the State of New Jersey, the investigation further revealed that neither Executive Special Services, Inc., nor the Respondent was licensed to sell stock in the State of New Jersey (T31-8 to 12).

Officer Johnson, now under the auspices of the Atlantic County Prosecutor's Office, contacted the Respondent on June 15, 1978, for the purpose of entering into a stock transaction (T31-16 to 32-1). The Respondent showed Officer Johnson into his basement office, which was outfitted with a desk, filing cabinet, framed diplomas and certificates, ledgers and card files (T32-7 to T33-11). Then Respondent offered the Officer a list of seven stocks (T33-12 to 18). Officer Johnson indicated that he had a certificate of deposit for $1,000 which would mature shortly, and that he would contact the Respondent at a later date concerning any investment (T33-22 to T34-5).

Officer Johnson, having been equipped with a transmitting device by the Atlantic County Prosecutor's Office, contacted the Respondent at his home, 108 Key Drive, Absecon Highlands, New Jersey, on June 20, 1978 (T34-6 to 17). Prior to this meeting, the Atlantic County Prosecutor's Office provided the officer with $1,000 in cash for the purpose of purchasing stock in Instrument Systems Corporation, which had been recommended by the Respondent (T35-4 to 8). The selling price of Instrument Systems Corporation stock was $1.00 a share (T36-16

to 19). The Respondent issued Officer Johnson a receipt for $1,000 (T35-9 to 14; D-3). Officer Johnson telephoned the Respondent on June 24 and 28, 1978 in order to follow up the transaction. On July 25, 1978, Officer Johnson telephoned the Respondent to ascertain whether the confirmation of stock purchase had been received. A meeting was arranged and he took possession of the confirmation of stock purchase and the Certificate of Stock ownership issued by Bache, Halsey, Stuart Co. of New Jersey (T38-20 to T39-9). The confirmation of purchase (D-4) indicated that 900 shares of Instrument Systems stock was purchased for $900, and that a commission fee of $96, and a miscellaneous tax fee of $2.00 were also charged (T39-21 to T40-4). Officer Johnson further testified that the amount of stock purchased as reflected on the customer confirmation certificate (D-4), differed from the understanding he had previously reached with the Respondent in that "[he] advised [Respondent] that [he] wished to purchase 1,000 shares or [he] had $1,000 to invest in this company, Instrument Systems." D-4 indicates that 900 shares were purchased (T40-12 to 21). On July 25, 1978, the Respondent indicated that an additonal fee of $98 was due. Officer Johnson stated that the Respondent explained that "... because he was an agent of Investors Associates and having not been listed on their books that they could not charge a commission for him and show it on the statement, so that this was something that had to be

collected another way." (T43-9 to 17). Officer Johnson paid the additional commission fee and was given a receipt therefor signed by the Respondent.

Officer Johnson met with the Respondent in his home on August 18, 1978 for the purpose of resale of the stock purchased on June 20, 1978 (T45-13 to T46-7). At this meeting, Officer Johnson was also equipped with a transmitting device. According to Officer Johnson's testimony, the Respondent gave additional investment advice indicating that Caesar's World would be the best investment he could make (T46-8 to 19).

On September 21, 1978, Officer Johnson met with the Respondent who turned over a check in the amount of $1,120.26 which represented the proceeds of the sale of 900 shares of Instrument Systems stock (T46-22 to T47-7).

Subsequently, the Respondent was charged with violating N.J.S.A. 49:3-56(a) and 70(a) and on December 19, 1978, Respondent waived indictment and trial by jury and entered a pled of guilty to Atlantic County Prosecutor's Accusation No. 323-78-S specifying the foregoing charges (D-11). On June 17, 1979, the Respondent received a nine month suspended sentence to the Atlantic County jail, a one year probationary term, and a fine of $250.00. Id.

Based on the foregoing evidence and testimony, I find that Kevin Noel, the Respondent, sold 900 shares of Instrument Systems Corporation stock to Officer Frank Johnson on June 20, 1978. I further find tht by rendering advice and accepting a sales commission, the Repsondent willfully violated N.J.S.A. 49:3-56(a) in that on June 20, 1978 the Respondent was not

registered as either a broker-dealer, agent or investment advisor in the State of New Jersey. The Respondent was, further, convicted of and sentenced for this criminal offense.

Accordingly, the primary issue to be determined is whether, as the Division asserts, the Respondent's conviction indicates that his continued licensure "would be inimical to the policy of this act and to casino operations". N.J.S.A. 5:12-86(c). If the foregoing issue is resolved against the Respondent, he is, of course, disqualified pursuant to N.J.S.A. 5:12-86(c). However, even if it is determined that a disqualifying offense does not exist here, the proofs with regard to it will be considered as to whether the Respondent here has, in rebuttal or explanation thereof, fulfilled his obligation to "establish by clear and convincing evidence" his continuing "reputation for good character, honesty and integrity". N.J.S.A. 5:12-89(b)(2); see N.J.S.A. 5:12-91(b).

The Commission has previously set forth the general standards by which to determine whether an offense renders a person's licensure inimical to the policy of the Casino Control Act as follows:

> 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, Docket No. 79-CL-1, at 12 (1979).

Measuring the proofs in the record regarding Respondent's offense against the foregoing standard, I find that this issue is a close one, and further, that it need not be resolved.

On the one hand, certain of the events surrounding Respondent's commission of this offense are disturbing at the least. Most important is the clear fact that Respondent knew specifically at the time that it was unlawful for him to deal in securities without the proper registration and yet went ahead and did so without hesitation. D-17 in evidence is a letter dated April 26, 1978 from the Chief of the Bureau of Securities to Respondent informing him that he must be registered in order to lawfully deal in securities (See T132-13 to 24). Respondent admitted receiving this letter and further admitted that, independently of D-17, he knew the law required him to be registered at the time he sold stock to Officer Johnson (3T31- 21 to 3T32 - 7). In spite of his knowledge of regulatory requirements, and of the specific advice of the agency involved, the Respondent nevertheless deliberately continued his securities dealing activities with Officer Johnson without making any attempt

to comply with such requirements.

In short, the Respondent brazenly flouted regulatory requirements of which he was aware, and this in the face of the specific advice of the State regulatory agency involved. Such conduct indicates, in my view, that the Respondent has little or nor respect for regulatory processes, the integrity of which is an important policy underlying the Casino Control Act. N.J.S.A. 5:12-1(b)(6) and (7). This conclusion is further buttressed by evidence regarding subsequent similar conduct on the part of the Respondent, in connection with his employment with Atlantic County, addressed later in this Report. Thus, the circumstances surrounding Respondent's conviction and his behavior thereafter certainly tend to demonstrate that his continued licensure may well justifiably undermine public confidence in the credibility and integrity of the regulatory process relating to casino gaming in this State. See Resorts, supra at 12.

However, I choose not to base my ultimate recommendation herein on this ground for several reasons. Preliminarily, I would note that the Respondent is the holder of a casino hotel employee license, not a casino or casino key employee license, for a position not directly related to gaming, the duties of which do not require or authorize access to a casino. See N.J.S.A. 5:12-8. Accordingly, the obvious danger to sound industry operations presented by the Respondent's cavalier attitude toward regulatory requirements is attenuated by his separation from gaming operations. I hasten to add that no implication is meant hereby that casino hotel employees, by virtue of their separation from gaming, are immune from the

strictures of the "inimical clause" of N.J.S.A. 5:12-86(c). This separation is, however, a relevant factor.

Most important here, though, is the fact that there is no evidence that Respondent's offense involved fraudulent activity. The offense of which the Respondent was convicted is not, generally, by nature a terribly serious one. It was denominated a misdemeanor by the Legislature, rather than a high misdemeanor. It is not an offense which is malum in se, that is, "inherently and essentially wrong and injurious", but instead, malum prohibitum, wrongful only because its commission is expressly forbidden by statute. State v. Taylor, 121 N.J. Super. 395, 397 (Cty. D. Ct. 1972). However, it is precisely the "regulatory" nature of this offense which is disturbing in light of Respondent's deliberate, knowing and purposeful commission of the same and his similar conduct thereafter. His suitability for continued licensure in a highly regulated industry is, in this regard, highly suspect to say the least.

Accordingly, I find the evidence regarding the circumstances surrounding Respondent's conviction to be strongly probative of the inference that he does not possess the requisite good character, honesty and integrity necessary to his continued licensure. See N.J.S.A. 5:12-89 (b)(2) and 91(b). For this reason coupled with the facts that Respondent's offense did not involve fraud and that his position is not gaming related, I decline to determine whether the Respondent's offense alone renders his licensure inimical to the policies of the Casino Control Act.

As set forth below, there are ample grounds in the record, independent of this issue, upon which to base revocation of Respondent's license.

III. RESPONDENT'S DEPARTURE FROM EMPLOYMENT WITH RESORTS INTERNATIONAL HOTEL, INC.

As noted earlier, during the prehearing conference in the instant matter, the Division asserted that the Respondent was terminated from employment at Resorts International Hotel, Inc. on July 24, 1978. See Prehearing Conference Order p.3 § C.2 ff. Respondent contended that he had resigned for personal reasons.

The issue now before the Commission is whether the Respondent was dishonest when he represented to the Division that he had resigned. Such dishonesty would appear to impinge on the Respondent's ability to clearly and convincingly establish his reputation for good character, honesty and integrity as required by the Casino Control Act. N.J.S.A. 5:12-91(b), 89(b)(2).

At the continuation of the hearing conducted on November 8, 1979, the Division introduced evidence(D-25(a) through D-30(d)) which tended to establish that the Respondent was terminated by Resorts International Hotel, Inc. on July 24, 1978. However, the Division also introduced evidence which established that the Respondent and Resorts International Hotel, Inc. had entered into a Resolution Agreement under the auspices of the State Division on Civil Rights on May 31, 1979. The Resolution Agreement (D-31) states, in part, that it was agreed by and between the Respondent and Resorts Internaitonal Hotel, Inc. that: (a) the Respondent

would submit a letter of resignation due to personal reasons, effective July 24, 1978, and (b) Resorts International Hotel, Inc. would withdraw all charges against the Respondent in reference to the July 24, 1978 termination and accept the Respondent's resignation as a resignation in good standing.

Based on the foregoing, I find that the Respondent was the subject of personnel action resulting in his termination from employment with Resorts International Hotel, Inc. on July 24, 1978. However, I further find that the Respondent and Resorts International Hotel, Inc. subsequently entered into a Resolution Agreement wherein it was agreed that Respondent's departure from employment would be characterized as a resignation for personal reasons. Therefore, I find that the Respondent reasonably relied on the Resolution Agreement and was not dishonest when he made the representation to the Division that he had resigned for personal reasons.

One further note, however, is necessary before leaving this subject. Paragraph 2(b) of D-31 provides that all records of "charges" and "specifications" of misconduct leading to Respondent's termination would be removed from his personnel file. Such records are in fact those introduced in evidence as D-25(a) through 30(d) at the hearing herein. In addition, and most significantly, nowhere in the record is it alleged that Respondent's conduct in this regard constitutes reason to find him disqualified.

For these reasons, and most importantly for the sake of fair notice to the Respondent, I decline to consider his conduct leading

to his termination in connection with the issue of his character, honesty and integrity. This is not to say that I or the Commiss may not do so and I do not here purport to resolve any issue of whether the Commission may be precluded from considering such evidence for reasons of comity and respect for Division on Civil Rights procedures.

IV. CIRCUMSTANCES SURROUNDING THE RESPONDENT'S TERMINATION FROM EMPLOYMENT WITH A CETA PROGRAM

It was uncontested at the hearing that on April 19 and 20, 1979, the Respondent put gas belonging to the Atlantic County Division of Roads and Bridges into his personal automobile, a blue Honda (T100-9 to T103-20; D-9; 3T28-5 to 3T29-8). However, the wrongful character of Respondent's actions is hotly contest by the parties.

The Division contends that the Respondent knowingly took gas belonging to Atlantic County on two occasions without authorization to do so, and put same to his own personal use (T120-2 to 9; T111-11 to T114-4). The Respondent maintains that he took the gas because he was using his personal automobile for official county business, and was unaware of the proper reimbursement procedures (3T27-20 to 3T29-4). Mr. John Seel, property resource coordinator for the Atlantic County CETA progra was the Respondent's immediate supervisor at the time of these incidents (3T4 to 8). Mr. Seel testified that the Respondent was on official County business at the times when he used the county gas pumps (3T4-13 to3T5-13). He further testified that the Respondent did not have the necessary special permission

obtain county gas, but that, to his knowledge, the Respondent was unaware of the necessity of obtaining special permission at the time of the incidents (3T6-16 to 3T8-4).

The Respondent himself testified that he was not told about the proper reimbursement procedures for obtaining county gas prior to these incidents, nor did he receive a copy of the motor pool regulations which outlined the proper procedure (3T 28-23 to 3T29-18). Unaware of the appropriate reimbursement procedure, he had previously used his automobile for county business, paying for the gas obtained privately (3T47-20 to 3T49-18). The Respondent testified that he did not ask his supervisors about the reimbursement rules prior to the incidents (3T27-25 to 3T29-18; 3T50-10 to 3T41-13).

The Respondent was fired as a result of these incidents (3T29-7 to 11).

In light of the foregoing, I make the following findings. On April 19 and 20, 1979 the Respondent put gas from a county gas pump into his personal automobile. Moreover, I find that on those aforementioned dates, the Respondent did use his personal automobile for offical county business required by his employment. The record is devoid of evidence demonstrating that the Respondent, who had been employed by the Atlantic County CETA program for a period of at least three but no more than eight weeks, actually knew that his actions were contrary to motor pool regulations prior to the occurrence of the gas-taking incidents. In addition, I cannot find that the Respondent was definitely aware of the proper

expense reimubrsement procedure at the time, or had received authorization to submit reimbursement vouchers.

However, I find that the Respondent failed to exercise reasonable judgment to resolve his dilemma. The Respondent failed to inquire of his supervisors what the proper expense reimbursement procedure was. He improvised for his own convenience Even though I believed the Respondent's explanations for his conduc they neither justify nor excuse his lack of due diligence in ascertaining what the proper procedures were. His failure to ascertain and follow correct procedures resulted in his termination from employment and worse, the appearance that he may have been converting County gasoline to his personal use unlawfully. Such conduct is powerful evidence indicating Respondent's lack of regard for regulatory processes and therefore of his lack of good character and integrity.

V. CONCLUSION

Within a short span of time, the Respondent was convicted of knowingly engaging in the business of being a broker-dealer or agent without being licensed or registered to so act (December 1978), and was terminated from employment with the Atlantic County CETA program because he took gasoline from County pumps without authorization to do so contrary to regulations and proper procedure (April 1979). This pattern of conduct, as extensively described abc

evinces a common denominator: The Respondent cannot be trusted to exercise reasonable judgment or discretion. In situations requiring use of those faculties, the Respondnet invariably overlook the obvious to give himself the benefit of the doubt. The Responden habitually interprets rules or instructions to suit himself rather than giving them their ordinary meaning. And worse than this, he has exhibited an all too eager willingness to deliberately disobey regulatory requirements when interpretation to suit his own purposes is not possible.

The Legislature has determined that the casino gaming industry must be strictly regulated. N.J.S.A. 5:12-1(b) (6), (7)(9). It has charged the Commission with promulgation and implementation of rules and regulations involving almost every facet of the casino gaming industry. Within the context of complex strict and omnipresent regulation and control, the Respondent's all too flexible attitude toward rules of conduct and his tendency to disregard them renders him unsuitable for licensure. The evidence in the record here demonstrates clearly that the Respondent does not possess the good character, honesty and integrity necessary to his continued licensure. N.J.S.A. 5:12-89 (b)(2) and 91(b).

For the foregoing reasons, I recommend that Respondent's casino hotel employee license be revoked.

Respectfully submitted,

Alice D. Corsey/N.F

Commissioner Alice D. Corsey,
Hearing Examiner

Dated: April 21, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 79-4

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	Civil Action
v.	:	Pre-Hearing Conference Order
KEVIN NOEL,	:	
Respondent.	:	

A pre-hearing conference having been held in this matter before the undersigned on August 20, 1979, at 10:30 a.m., in the offices of the New Jersey Casino Control Commission at 379 West State Street, Trenton, New Jersey, the Respondent appearing on his own behalf, and Patricia Arons, Deputy Attorney General, appearing for the Division of Gaming Enforcement, and in the presence of Denise A. Cobham, Assistant Counsel, the following matters were decided:

A. Discovery

1. The Division and the Respondent shall exchange all documentary evidence in their possession, relevant to the issues, exclusive of work product.

2. The Division and the Respondent shall exchange a list of witnesses which each party intends to call at the hearing. This list shall include the name and address of each

witness and a short summary of the subject matter as to which each witness will testify. Any written statements taken of these witnesses shall also be provided by way of discovery.

3. The parties shall provide each other with the discovery set forth above no later than September 17, 1979.

4. Any request for additional discovery after September 17, 1978, shall be made by motion to the Hearing Examiner stating in detail the reasons for such request.

B. Admissions

1. It is admitted by the respondent that he is a New Jersey resident residing at 108 Key Drive, Absecon Highlands, New Jersey.

2. It is admitted by respondent that he is the holder of casino hotel license number 00373-42 issued on July 20, 1978.

3. It is admitted by the respondent that from March 27, 1978 until July 24, 1978, the respondent was employed by Resorts International Hotel as a Food and Beverage Supervisor.

4. It is admitted that the respondent was arrested on December 19, 1978, and was charged with selling stock without a license in violation of N.J.S.A. 49:3-56A and 49:3-70A.

5. It is admitted by Respondent that he pleaded guilty to an accusation and was scheduled to be sentenced on January 5, 1979.

6. It is admitted by Respondent that on May 17, 1979, pursuant to the plea of guilty to the above-mentioned accusation, he received a nine-month sentence to the County Jail, which was suspended, probation for one year's duration, and that a $250.00 fine was imposed.

C. Issues

1. The factual issues to be decided by the Commission are those which concern the matters set forth in the Division's complaint, Docket No. 79-4, filed on March 22, 1979, i.e.:

(a) Whether the conduct of the Respondent as admitted by the plea of guilty to the accusation, to wit, the unlicensed selling of stock, constitutes an offense which would render Respondent's continued licensure inimical to the policies of the Casino Control Act, and casino practices, thereby forming a basis for disqualification pursuant to N.J.S.A. 5:12-86(c), 80(a) and 129(1);

(b) Whether, as raised at the pre-hearing conference, the above-mentioned conduct reflects adversely on the ability of Respondent to establish by clear and convincing evidence his continuing individual qualifications as set forth in N.J.S.A. 5:12-91(b), 89(b)(1)(2), such inability forming a basis for disqualification pursuant to N.J.S.A. 5:12-86(a), 129(1).

2. The factual issues to be decided by the Commission which arose during the pre-hearing conference concerning Respondent's termination of employment with Resorts International Hotel, Inc., i.e.:

(a) Whether the Respondent's characterization of that event as a resignation for personal reasons reflects adversely on his ability to establish his continuing individual qualifications by clear and convincing evidence as required by N.J.S.A. 5:12-80(a), such qualifications being set forth in N.J.S.A. 5:12-89(b)(2), 91(b), and such inability forming a basis for disqualification pursuant to N.J.S.A. 5:12-86(a), 129(1).

D. Order of Proofs

The Division shall present its case first at the hearing herein, and the Respondent's case shall follow.

E. Hearing Date

A date for hearing in this matter shall be set once all discovery issues, if any, have been determined by the hearing examiner.

It is, on this 23rd day of August, 1979,

ORDERED, that this Pre-hearing Conference Order be served upon the Respondent and the Division forthwith.

Commissioner Alice D. Corsey,
Hearing Examiner

By: Denise A. Cobham
Denise A. Cobham,
Assistant Counsel

DATED: August 23, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSIO
OAL DOCKET NO. CCC 683-79
CCC DOCKET NO. 79-EA-29

IN THE MATTER OF THE APPLICATION :
OF FRANK PASSIO FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted on September 6, 1979 in the above-captioned matter before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and no exceptions or objections having been filed thereto by either the Applicant or the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of January 9, 1980 to adopt the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

It is on this 16th day of January, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Frank Passio for licensure as a casino employee be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

By: _____
JOSEPH P. LORDI, Chairman

DATED: January 14, 1980

IN THE MATTER OF)
THE APPLICATION OF FRANK PASSIO)
FOR LICENSURE AS A CASINO)
EMPLOYEE (DEALER))

INITIAL DECISION

OAL DKT. NO. CCC 683-79

Agency Dkt. No. 79-EA-29

APPEARANCES:

Slater and Tenaglia, Esqs.
By: Scott H. Marcus, Esquire
for the Applicant, Frank Passio

John J. Degnan, Attorney General of New Jersey
By: Patricia J. Arons, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
By; Denise A. Cobham, Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

On November 20, 1978, Frank Passio (Applicant) filed an application, including a personal history disclosure form, with the Casino Control Commission for licensure to work in a casino as a dealer. Applicant was advised by letter from the Commission's General Counsel, dated March 12, 1979, that based upon information received by letter from the Division of Gaming Enforcement dated February 13, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

Applicant requested a hearing on his application and the matter was trasmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on September 6, 1979, at the Mercer County Court House, Trenton, New Jersey. The final brief of the parties was received on October 9, 1979, which is deemed to be the concluding date of the hearing.

As identified at the pre-hearing conference held in this matter on May 17, 1979, at issue is whether applicant for licensure is a New Jersey resident as required by section 90 of the Casino Control Act, N.J.S.A. 5:12-1, et seq, and whether applicant has been a resident of New Jersey, as defined at N.J.S.A. 5:12-42.1, for a period of six months immediately prior to the issuance of such license, pursuant to the requirements of N.J.A.C. 19:41-4.3(a)5. At the pre-hearing, applicant contended that he had resided at 216 North Rosborough Avenue, Ventnor, New Jersey, since October, 1978, but would not be able to offer any proof of his New Jersey residency for any period prior to January 16, 1979.

At the hearing, the Division of Gaming Enforcement contended that applicant actually had made no effort to establish his residency in New Jersey until the pre-hearing conference of May 17, 1979. The Division argued that the applicant should, therefore, also be denied licensure as a casino dealer pursuant to N.J.S.A. 5:12-86b, which provides that the Commission shall deny licensure to any applicant disqualified for failure to provide information required by the Act or requested by the Commission, or for failure to reveal any fact material to qualification, or for supplying information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

As a result of the pre-hearing conference, the parties entered into the following stipulations of fact:

1. Applicant is an employee of the Pennsylvania Department of Transportation, Philadelphia, Pennsylvania.

2. Applicant's wife and children reside at 2439 South Percy Street, Philadelphia, Pennsylvania.

3. Applicant visits his children in Philadelphia approximately twice a week.

4. Applicant must obey the terms of a 1976 Pennsylvania Judgment for support payments.

5. Applicant filed a 1978 Pennsylvania tax return.

6. Applicant has a checking account with Fidelity Bank in Philadelphia, Pennsylvania.

7. Applicant has a New Jersey driver license, issued February 7, 1979, showing applicant's address to be 216 North Rosborough Avenue, Ventnor, New Jersey.

8. Applicant has a New Jersey car registration issued February 5, 1979. His auto was inspected in New Jersey within 14 days after February 5, 1979.

9. Applicant's personal history disclosure form indicates applicant resides at the aforementioned Ventnor address.

The Commission's notice of possible denial dated March 12, 1979, was mailed by certified mail, return receipt requested, to the Ventnor address. The return receipt card shows the apparent signature of applicant, indicating receipt on March 15, 1979.

10. Applicant initiated postal changes of address after speaking with a Division of Gaming Enforcement Detective on January 16, 1979.

11. Applicant waives any claim of residence in New Jersey prior to January 16, 1979.

It is undisputed that applicant successfully completed a blackjack dealer course at the Casino Career Institute of the Atlantic County Community College on November 10, 1978. Applicant testified that he has resided at 216 North Rosborough Avenue, Ventnor, New Jersey, since October, 1978. Applicant stated that he possesses a New Jersey driver license and has New Jersey auto registration and auto insurance. It was the Applicant's testimony that he has been registered for voting purposes as residing at the aforementioned Ventnor address since May 22, 1979.

Applicant testified that he has relinquished all promotional rights concerning his employment with the Pennsylvania Department of Transportation because he is no longer a Pennsylvania resident. According to the Applicant, he advised his Department Personnel Officer in May, 1979, concerning his Ventnor, New Jersey residency. Applicant also testified that he maintains checking and savings accounts at Ventnor and Atlantic City bank branches. He explained that he maintains a checking account in Philadelphia for the convenience of his wife, from whom he is separated, so she will be able to cash the checks which he sends her. Applicant acknowledged that he filed a Pennsylvania State Income Tax Return for 1978, but not a New Jersey State Income Tax Return. He explained that he was unable to prove his residency in New Jersey for the months of October, November and December, and, therefore, decided to pay all of his taxes to the State of Pennsylvania. Applicant testified very candidly that at the time he submitted his application he had thought that having a place to live in New Jersey would be sufficient for licensure, and that he did not know that a standard of legal residency would have to be met.

Applicant testified that he began receiving mail at his Ventnor address in January, 1979, and began receiving most of his mail at the Ventnor address in March, 1979. He stated that he did not fill out a postal change of address in Philadelphia, since he worked in Philadelphia and was able to pick up his mail at his sister's home at 804 McClellan Street, Philadelphia, where he had lived until October, 1978.

Applicant submitted into evidence the sworn statements (Exhibit A-1) of six individuals occupying the four residences closest to his in Ventnor, New Jesey. These statements were dated and notarized on June 25, 26 and 27, 1979, and each indicates that the respective

affiant sees applicant on a regular basis. Applicant also submitted into evidence the sworn statement (Exhibit A-2) of fourteen residents of the 800 block of McClellan Street in Philadelpha, Pennsylvania, indicating that applicant does not live in any residence in the 800 block of McClellan Street. This notarized statement was dated July 10, 1979. Testifying that he is often confused with his brother, James Passio, who lives in the 800 block of McClullan Street, applicant submitted the sworn statement (A-3) of Salvatore Trungali, a McClellan grocer. Mr. Trungali's statement, dated June 23, 1979, indicates that he was approached by a division detective concerning his knowledge of applicant, and that he had mistaken applicant for his brother, who lives in the 800 block of McClellan Street, and who resembles applicant greatly.

Applicant submitted the sworn statement (Exhibit A-4) of one Joseph S. Borsellino, dated June 29, 1979, indicating that applicant has resided for six months or more at 216 North Rosborough Avenue, Ventnor, New Jersey. The final document submitted by applicant is the sworn statement (Exhibit A-5) of Antoinette Passio, applicant's aunt. This statement, dated April 23, 1979, indicates that applicant does not reside at the home which she shares with applicant's parents at 836 McClellan Street, Philadelphia, Pennsylvania.

Applicant's testimony on both direct and cross examination established that his church attendance, albeit infrequent, has been at St. James in Ventnor since Easter, 1979. Applicant's physicians are located in Philadelphia. Applicant commutes approximately 500 miles per week between Ventnor and his employment in Philadelphia. He spends his weekends in Philadelphia or in Ventnor, and he has had his children stay overnight with him in Ventnor.

Detectives Raymond Blasczak and Richard Procaccino of the Division of Gaming Enforcement testified concerning their investigations of applicant. According to Detective Blasczak, he was assigned the initial investigation of applicant. The detective stated that he spoke with applicant on the telephone on January 16, 1979, at which time he asked applicant where he lived. It was the detective's testimony that applicant stated he lived at 216 North Rosborough Avenue, Ventnor, New Jersey. The detective testified that applicant also told him at that time that he stayed at 804 McClellan Street in Philadelphia during the course of the week for convenience, and spent his weekends and days off in Ventnor. Detective Blasczak acknowledged that he did not go to either McClellan Street in Philadelphia or to Rosborough Avenue in Ventnor to verify applicant's address.

Detective Procaccino testified that this matter was assigned to him for further investigation in May, 1979. According to the detective, his investigation revealed that applicant received mail at both Percy Street and McClellan Street in Philadelphia, and at Rosborough Avenue in Ventnor. The detective stated that he was told by applicant's wife, from whom he is separated, that she sees him about once a week at her South Percy Street, Philadelphia address. It was detective Procaccin testimony that he showed Salvatore Trungali a picture of applicant and

Mr. Trungali told him that he sees applicant three or four times a week. The detective acknowledged on cross examination that he did not know that applicant had a brother, and he could not recall if he had identified applicant to Mr. Trungali by his first name. Detective Procaccino also testified on cross examination that he contacted applicant's employer on May 9, 1979, concerning applicant's residence, and was told that applicant lived in Ventnor, New Jersey. The detective testified that he did not contact the neigbors most proximate to applicant's home in Ventnor, nor did he contact applicant's parents or sister.

The final witness to testify on behalf of the Division of Gaming Enforcement was Lyleburn R. Bennet, a mail carrier in Ventnor, New Jersey. Mr. Bennet's testimony on direct and cross examination established that applicant had come to the Ventnor Post Office in January or early February of 1979 to advise that he was the resident of 216 North Rosborough Avenue, and to request that he receive mail delivery at that address. It was Mr. Bennet's testimony that applicant received three or four pieces of mail per month from January to May of 1979, and has received five or six pieces of mail per month since May, 1979. Testifying that his weekday mail deliveries on Rosborough Avenue were made at aprroximately 2:10 p.m., Mr. Bennet stated that he had observed applicant at his Rosborough Avenue address on just one occasion.

Applicant contends that he is a resident of New Jersey within the intent of section 90 of the Casino Control Act, and has been such a resident for at least the six month period last past, pursuant to the requirements of N.J.A.C. 19:41-4.3(a)5. The term "resident" is defined at N.J.S.A. 5:12-42.1, as follows:

> Any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature.

The Division of Gaming Enforcement contends that applicant has failed to meet his burden of showing that he is now a New Jersey resident, and further contends that, inasmuch as applicant was not a resident on January 16, 1979, he has, therefore, supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of the disqualification criteria of section 86b of the Casino Control Act. Applicant has waived any claim of residency prior to January 16, 1979. It does not follow, however, that any insufficiency of proof of residency for the period after January 16, 1979, necessarily compels the conclusion that applicant has supplied information to the Commission which is untrue or misleading as to a material fact pertaining to the qualification criterion of residency. Such a conclusion would require a finding that applicant intended or ought to have known that the information which he supplied would be false or misleading. I do not make such a finding.

The credible proofs in the whole record establish that applicant intended in good faith to be considered a New Jersey resident at the time he filed his application for licensure with the Casino Control Commission. In the absence of any intent to mislead, it should be o no moment that applicant was unaware until a later date that being a "resident", within the meaning of the Casino Control Act, would require more than "having a place to live in New Jersey."

As with other qualification criteria, an applicant for a casino employee license must establish his New Jersey residency by clear and convincing evidence. The credible evidence adduced at the hearing establishes clearly and convincingly that applicant occupies a dwelling within the State, and has a present intent to remain within the State for a period of time. By the same standard, the credible evidence establishes that applicant has accumulated sufficient indicia of an ongoing physical presence within New Jersey which is something other than merely transitory in nature. The date on which the indicia of ongoing physical presence had accumulated sufficiently to meet the applicant's burden of establishing his residency by clear and convincing evidence was June 21, 1979, which is the date on which applicant opened his bank account in Ventnor, New Jersey.

It must be noted that the Division of Gaming Enforcement contended at the conclusion of the hearing that applicant had failed to display the requisite degree of honesty, integrity and good character as required by the Casino Control Act. Although applicant must, prior to issuance of a license, produce sufficient information, documentation and assurances as may be required to establish by clear and convincing evidenc) that he maintains a reputation for good character, honesty and integr. y, this requirement clearly can and ought to be satisfied prior to, and without the necessity of, an evidentiary hearing. Therefore, there should be no necessity for applicant to duplicate such previously produced information, documentation and assurances at an evidentiary hearing wherein the applicant's reputation for good character, honesty and integrity is not in dispute. The hearing is held to resolve contested issues. The record produced at the hearing in the instant matter does not place the applicant's reputation for good character, honesty and integrity in doubt.

Having reviewed the testimony and other evidence offered in this matter (see inventory of exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their crediblity, I find:

1. The aforementioned stipulations of fact are incorporated herein as if set forth at length.

2. Applicant has applied for a license to permit him to work in a casino as a dealer.

3. Applicant has successfully completed a course in black jack dealing at the Casino Career Institute of the Atlantic County Community College.

4. Applicant completed his personal history disclosure form in good faith, without any intention of supplying information which was untrue or misleading.

5. Applicant occupies a dwelling located at 216 North Rosborough Avenue, Ventnor, New Jersey.

6. Applicant has received delivery of mail at the Ventnor address since January, 1979.

7. Applicant has advised his employer, the Pennsylvania Department of Transportation, that he is a resident of New Jersey, and thereby he has given up all rights to promotion.

8. Applicant has been registered for voting purposes as residing in Ventnor, New Jersey, since May 22, 1979.

9. Applicant opened a bank checking account in Ventnor, New Jersey on June 21, 1979.

10. Applicant is a resident of New Jersey within the meaning of the Casino Control Act.

11. Applicant has been a resident of the State of New Jersey within the meaning of the Casino Control Act since June 21, 1979.

12. It appears likely, if applicant is licensed, that he will make an honest and trustworthy casino employee.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that applicant has sustained his affirmative burden of establishing by clear and convincing evidence, his requisite qualifications for licensure. It is, therefore, ORDERED that a Casino employee license, permitting applicant to work as a dealer, be granted to applicant.

This Decision shall become final forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph P. Lordi, Chairman, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

November 19, 1979
DATE

Joseph F Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

esk

INVENTORY OF EXHIBITS

For the Applicant: A-1 Sworn statements from Ventnor neigbors.

A-2 Sworn statement from residents McClellan Street.

A-3 Sworn statement of Salvatore Trungali.

A-4 Sworn statement from Joseph Borsellino.

A-5 Sworn statement from Antionette Passio.

For the Division of Gaming Enforcement:

B-1 Application and personal history disclosure form of Frank Passio, received by the Casino Control Commission on November 20, 1978.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4173-79
CCC DOCKET NO. 79-EA-124

IN THE MATTER OF THE APPLICATION :
OF MICHAEL L. PRESTON FOR LICENSURE:
AS A CASINO EMPLOYEE (COUNT ROOM :
EMPLOYEE) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Commission having considered the entire record of that hearing and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of May 1, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 8th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Michael L. Preston for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: 9/8/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF MICHAEL L. PRESTON FOR LICENSURE AS A CASINO EMPLOYEE (COUNT ROOM EMPLOYEE)	:	INITIAL DECISION OAL DKT. NO. CCC 4173-79

APPEARANCES:

Michael L. Preston appeared pro se

John J. Degnan, Attorney General for the State of New Jersey by Joseph A. Mussomeli, Deputy Attorney General for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In January of 1979, Michael L. Preston (Applicant), filed an application, including a Personal History Disclosure form (PHD), with the Casino Control Commission (Commission) for licensure to work as a casino employee (Count Room Employee). By letter dated July 31, 1979, the Division of Gaming Enforcement (Division) objected to the licensure of the applicant based upon his negative answers to questions 33 and 46 of the Personal History Disclosure form (PHD). It was asserted by the Division that the applicant was arrested for simple assault and battery, and that he pled guilty to that offense. Furthermore, the Division asserted that he was terminated from a prior position due to excessive absenteeism rather than a lack of CETA funds.

The applicant was advised by letter dated August 30, 1979, from the Casino Control Commissions' general counsel, with a copy of the Division's report enclosed, that there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing.

By letter received September 19, 1979, the applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The applicant testified that he neglected to list his conviction for assault and battery on his Personal History Disclosure Form (PHD) because the offense occurred while he was a juvenile. He thought that his record had been expunged. He did not include a termination from a position as a messenger with a CETA funded program in Atlantic County because he felt that it might adversely effect his opportunity to obtain a casino license.

Deputy Attorney General Mussomeli placed into evidence the applicant's termination notice from the CETA program (R-1), and pointed out that the date of that notice of termination was February 18, 1979 while the PHD form (R-2) was filled out in January of 1979. The applicant then stated that he was not certain when he was terminated from the CETA program, and conceded that it was possible that the termination occurred after he filled out his PHD form.

Investigator Irwin Schecter, employed by the New Jersey Division of Gaming Enforcement, testified that he obtained copies of the applicant's termination from the CETA program, and also spoke to the applicant's immediate supervisor, Glen English. English related that, prior to recommending the applicant's termination, he warned him, on several occasions, about his tardiness and absenteeism.

Trooper Joseph Sarnecky, presently assigned to the New Jersey Division of Gaming Enforcement, testified that he conducted a background investigation of the applicant, and also twice interviewed him regarding the information contained on his PHD form. When he asked why he failed to disclose an arrest and conviction for assault and battery, the applicant advised him that he was never arrested by the Atlantic City Police Department. Trooper Sarnecky presented the applicant with a copy of the complaint and he still denied that he had been arrested. The applicant never mentioned anything, during the interview, about the fact that he was under eighteen years of age when he committed the offense. He also told Trooper Sarnecky that he was terminated from the CETA program because of the lack of available funds. Trooper Sarnecky continued the background investigation and found out that the applicant was terminated for cause. Trooper Sarnecky contacted the applicant on the telephone and asked him about the termination. The applicant reiterated that he was terminated because of the lack of available funds.

FINDINGS OF FACT

Having reviewed the testimony and the exhibits presented into evidence together with having observed the demeanor and credibility of the witnesses, I FIND:

1. Question number 33 on the PHD form reads as follows: "Were you ever discharged or asked to resign from employment?". The block designated "no" has a check mark next to it.

2. The applicant filled out his PHD form in January of 1979. The applicant was terminated from a CETA funded program for excessive tardiness and absenteeism on February 18, 1979.

3. The applicant thought at the hearing that his termination from the CETA funded program occurred prior to the time that he filled out his PHD form, and decided not to list that termination because he felt it would adversely effect his opportunity to obtain a casino employee license.

4. Question number 46 on the PHD form reads in full as follows: "Have you or has any member of your immediate family, as defined on page IV of this application, ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction?". There is a check mark after the block designated "no".

5. The applicant was convicted of simple assault and battery in 1976.

6. The applicant asserted that he did not list that conviction because he was under eighteen years of age at the time and felt that his record had been expunged.

7. The applicant denied when interviewed by Trooper Sarnecky that he was arrested and/or convicted of a criminal and/or disorderly persons offense.

8. The applicant denied when interviewed by Trooper Sarnecky that he was terminated from a CETA program for cause, but he stated that the termination resulted from the lack of available funds.

CONCLUSIONS OF LAW

N.J.S.A. 5:12-86(b) provides in pertinent part:

> "the Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the criteria:
>
> (A) . . .
>
> (B) . . . failure of the applicant to reveal any fact material to qualification or misleading as to material fact pertaining to qualification criteria . . .".

While it appears from the exhibits that the applicant was terminated from employment after he filled out his PHD form, he was under a continuing affirmative duty to give Trooper Sarnecky complete and accurate information. He told the Trooper during two interviews that he was terminated from a CETA program because of the absence of available funds. He failed to disclose on his PHD form the fact that he was arrested for assault and battery, and denied when interviewed by Trooper Sarnecky that he was ever arrested by the Atlantic City police. The applicant's testimony that he failed to disclose his arrest because he thought that it was expunged, strains credulity. Otherwise, he would have mentioned that fact to Trooper Sarnecky and, at least, informed him of the surrounding circumstances of the matter.

I CONCLUDE that the applicant violated the statute by supplying misleading and incomplete information regarding material facts pertaining to his licensure.

I FURTHER CONCLUDE, substantially for the aforementioned reasons, that the applicant's failure to disclose his termination from a CETA program, when interviewed twice by Trooper Sarnecky, and his failure to list his assault and battery arrest/and conviction on his PHD form, and to reveal the same when interviewed by Trooper Sarnecky, also adversely reflects upon his good character, honesty and integrity to compel denial of his license under N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90(b).

It is my recommended decision that licensure be DENIED.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lordi, who by law is empowered to make a final decision in this matter. However, it the Chairperson of the Casino Control Commission does not so act in forty-five (45) days and unless such time is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1.

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

DATE R. JACKSON DWYER, A.L.J.

March 26, 1980 Receipt Acknowledged

DATE AGENCY HEAD

Mailed to Parties

DATE OFFICE OF ADMINISTRATIVE LAW

jrp
3/24/80

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

March 31, 1980

David Arrajj, Sr. Assistant Counsel
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

Dear David:

The Division has reviewed the Initial Decision in the Matter of the Application of Michael L. Preston for Licensure as a Casino Employee (CCC #4173-79) and will file no exceptions to it.

Sincerely yours,

ROBERT PL MARTINEZ
DIRECTOR

By _____
Joseph A. Mussomeli
Deputy Attorney General

JAM:mf

RECEIVED
APR 01 1980
NEW JERSEY
CASINO CONTROL COMMISSION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-5211-79
CCC DOCKET NO. 79-EA-162

IN THE MATTER OF THE APPLICATION :
OF FRANK C. RUIZ FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE :

This matter, having been opened to the Casino Control Commission at its public meeting on May 21, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Frank C. Ruiz' application for licensure,

It is on this 29th day of May, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Frank C. Ruiz be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated October 10, 1979, which is incorporated hereby by reference and made a part hereof;

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 29, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FRANK C. RUIZ, Petitioner	:	INITIAL DECISION
v.	:	OAL DKT. #CCC 5211-79
DIVISION OF GAMING ENFORCEMENT, Respondent	:	AGENCY DKT. #79-EA-162

APPEARANCES:

Howard Barman, Esq., Deputy Attorney General on behalf of the Division of Gaming Enforcement

BEFORE THE HONORABLE NORMAN D. SMITH, A.L.J.:

On February 7, 1979 the Petitioner, Frank C. Ruiz, applied to the Casino Control Commission for a licensure as a casino employee (dealer). Objections to his application for licensure were filed by the Division of Gaming Enforcement on October 10, 1979. On October 26, 1979 the Casino Control Commission advised the Petitioner of the objections and of the Petitioner's right to a hearing. The Petitioner requested a hearing on November 8, 1979 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 pre-hearing conference was scheduled to take place on January 17, 1980 at the Office of Administrative Law, 88 East State Street, and all parties were notified. At that time and place Howard Barman, Esq., Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement. The Petitioner neither appeared nor notified the undersigned of his intent not to appear.

On February 21, 1980 a letter was sent to Mr. Ruiz by the Director of Judicial Management of the Office of Administrative Law requesting an explanation within ten days for his failure to appear. No response was made to that letter.

Based upon the foregoing information, I FIND that the Petitioner has abandoned his right to a hearing in this matter.

It is therefore ORDERED that this matter be forwarded to the Casino Control Commission for appropriate action on the Petitioner's application for licensure in accordance with the provisions of the Casino Control Act and the rules and regulations promulgated 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-1, et seq.

I HEREBY FILE with Joseph P. Lordi, Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

DATE

NORMAN D. SMITH, A.L.J.

Receipt Acknowledged:

April 18 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. 79-EA-70
CCC DOCKET NO. CCC 2252-79

IN THE MATTER OF THE APPLICATION :
OF GILBERT L. SMITH FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge James Ospenson of the Office of Administrative Law, and the Commission having considered the entire record of proceedings, the Initial Decision of the Administrative Law Judge and the exceptions to the Initial Decision filed by the parties, and the Commission having resolved at its public meeting of March 19, 1980 to affirm in part and reject in part the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

It is on this 20th day of March 1980, ORDERED that the Initial Decision of the Administrative Law Judge be affirmed insofar as it concludes that the Applicant established by clear and convincing evidence his reputation for good character, honesty and integrity under Section 89(b)(2); and

It is further ORDERED that the remainder of the Initial Decision o Administrative Law Judge is hereby rejected and the application of Gilbert L. Smith for licensure as a casino employee is hereby granted upon the finding that the Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his financial stability, integrity and responsibility pursuant to Section 89(b)(1) and further that the record does not support the finding that the Applicant failed to provide information, documentation and assurances required by the Act or requested by the Commission by a preponderance of the evidence in violation of Section 86(b), as supported by the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: March 20, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 2252-79
CCC DOCKET NO. 79-EA-10

IN THE MATTER OF THE APPLICATION OF GILBERT L. SMITH FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)	FINAL COMMISSION DECISION

JOSEPH SAYEGH, Esq., appeared for the Applicant.

ROBERT J. MELILLO, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On November 21, 1978, Gilbert L. Smith [hereinafter "Applicant"] filed an application for licensure as a casino employee in the position of dealer with the Casino Control Commission [hereinafter "Commission"]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter "Division"] which shortly thereafter conducted an investigation into the background of the Applicant.

As a result of this investigation, the Division submitted a letter-report dated May 16, 1979, to the Chairman of the Commission interposing an objection to the licensure of the Applicant. By letter dated June 25, 1979, the Applicant was advised by the Commission's legal staff that there was a substantial

possibility that the Commission would deny his application for licensure. The Applicant thereupon requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq.

A prehearing conference was held on August 28, 1979, with the following issues being framed for administrative review:

A. Whether the Applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2).

B. Whether the Applicant is disqualified from licensure for having failed to provide information, documentation and assurances required by the Act or requested by the Commission or for having failed to reveal any fact material to qualification pursuant to N.J.S.A. 5:12-86(b).

C. Whether the Applicant has established by clear and convincing evidence his financial stability, integrity and responsibility pursuant to N.J.S.A. 5:12-89(b)(1).

The matter proceeded to formal hearing on October 9, 1979.

Administrative Law Judge James Ospenson filed his Initial Decision in this matter on November 15, 1979, a copy of which is appended hereto at A-1 through A-8. Judge Ospenson recommended that the Applicant be denied licensure. The Initial Decision was served upon the parties on November 16, 1979. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded ten (10) days from their receipt of the Initial Decision to file a statement of exceptions or objections to the findings and conclusions of the Administrative Law Judge.

On November 27, 1979, an affidavit was submitted by the Applicant, taking exception to Judge Ospenson's Initial Decision. The Division of Gaming Enforcement filed exceptions on December 10, 1979. Pertinent issues raised in those exceptions will be addressed below.

In his Initial Decision, the Administrative Law Judge concluded that the Applicant possessed the requisite reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2). This conclusion was based upon favorable inference drawn from evidence concerning the Applicant's work record, discharge of family, civic and religious obligations and reputation for good character in the community. The Commission is satisfied that the foregoing findings of fact and conclusions of law, stated in detail in the Administrative Law Judge's Initial Decision, are amply supported by the record herein. Those findings and conclusions are therefore adopted as the Commission's own. However, there are other findings and conclusions expressed in the Initial Decision, which, in the view of the Commission, require further discussion.

An Applicant seeking licensure as a casino employee is subject to disqualification on the basis of any of the criteria set forth in N.J.S.A. 5:12-86. The Division has asserted that disqualification of the Applicant from licensure is mandated by N.J.S.A. 5:12-86(b) which provides that an Applicant is disqualified for:

***

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

This issue arises from the Applicant's failure to disclose, on his Personal History Disclosure Form [hereinafter: "PHDF"] his status as a party to civil suits as a debtor with regard to 13 judgments, unsatisfied and of record.[1]

In his Initial Decision the Administrative Law Judge concluded that:

> Applicant's amendatory testimony and submissions at hearing concerning his financial affairs cured any otherwise objectionable non-disclosures concerning question #51 (civil suit involvement) in the Personal History Disclosure Form 2, (emphasis added). (A-7)

This conclusion is apparently based upon the Applicant's testimony at the hearing and an amendatory letter submitted by him to the Commission on or about October 2, 1979, setting forth the existence of the judgments which were, at that time, purportedly fully satisfied (A-4).[2]

---

1. Question 51 on the PHDF states: "Have you ever been a party in a Civil Suit? If yes [state the] date, name and address of Court, Docket Number, Other Parties to Suit, Name of Suit, Disposition." Applicant responded to this question in the negative.

2. The amendatory letter of October 2, 1979, was further amended by stipulation of counsel at the hearing to reflect that six (6) of the judgments remained unsatisfied.

It is now settled that the failure to provide information, documentation and assurances required by the Act or requested by the Commission, which is willful or evinces a conscious disregard for the regulatory system must result in disqualification from licensure. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 13 (1979). The Division had advised the Applicant by its letter-report dated May 5, 1979, that it had discovered the existence of 11 civil judgments and was objecting to his licensure based upon his nondisclosure of them. The belated furnishing by an Applicant of this information after it has been unearthed by the Division's investigation and has become the basis of an objection to licensure under N.J.S.A. 5:12-86(b) cannot serve to cure an otherwise objectionable nondisclosure. Nor can an Applicant's candor or contrition at a later hearing serve to circumvent the clear meaning of N.J.S.A. 5:12-86(b). In the Matter of the Application of Angelo J. Ruggiero for Licensure as a Casino Key Employee, Docket No. 79-EA-69 (1979). Based upon the foregoing the Commission is compelled to reject the Administrative Law Judge's construction of N.J.S.A. 5:12-86(b) as expressed in the above-quoted finding.

In order to properly assess the issue of the Applicant's disqualification under N.J.S.A. 5:12-86(b), the Commission must review de novo the entire record since the Administrative Law Judge failed to make any findings as to whether the Applicant's aforedescribed nondisclosures were willful or evinced a conscious disregard for the regulatory system. For the reasons which follow, the Commission concludes that the Applicant's nondisclosur

do not warrant disqualification.

At the hearing the Applicant testified at length concerning the manner in which he completed his PHDF. The Applicant testified that upon reviewing the PHDF he did not understand many of the questions and, as a result, sought out the assistance of his then attorney, who had handled the Applicant's affairs for 18 years (T76-1 to T77-16).[3] After conversing with his attorney, the Applicant was assisted in the completion of his PHDF by a secretary employed in his attorney's office (T76-13 to 16). The Applicant testified that the secretary, with the blank PHDF in her possession, asked the Applicant questions and wrote the answers down on paper which was not part of the form (T77-20 to T78-6). This process took approximately 15 minutes (T78-10 to 16) Thereafter the Applicant was advised to return to the office three days to pick up the typed PHDF (T78-17 to 20). Upon returning to his attorney's office, the Applicant initialed all the pages the secretary told him to, signed his name and paid a $50 fee (T78-21 to 25; T75-8 to 21; T76-17 to 22).

On cross-examination the Applicant testified as follows:

> Now, earlier on direct examination you testified that your signature appeared on two places on [page 24 of the PHDF]...correct?
>
> A. Yes.

---

3. "T" refers to the transcript of the hearing herein held on October 9, 1979.

Q. Okay. Did you read this page before you signed your name to it, Mr. Smith?

A. No. The secretary answered the questions. I gave her the answers. Then I signed the paper.

Q. You signed the paper without reading it?

A. Yes, I did.

Q. And you paid the lawyer $50 --

A. Yes, sir.

Q. (Continuing) -- without reviewing the contents of this application to see if they were correct and in accordance with the answers which you gave to the secretary?

A. Correct me. Would you explain that again? Did I pay the lawyer?

Q. Before you paid the lawyer, did you review the contents of the application?

A. No sir, I did not.

(T115-4 to 24)

Clearly, the Applicant at the hearing sought to justify his nondisclosures by relying upon his attorney for the accuracy of the information set forth in, and the completion of, his

PHDF.[4] Such reliance cannot and will not be countenanced by th

---

4. The PHDF contains an affidavit which sets forth the following:

1. I am the applicant identified in question number one (1) of this application form.

2. I personally typed the responses to this application form or personally supplied the information to be typed to the typist.

3. I understand and read the English language or I have had an interpreter read, explain and record the answer to each and every question on this application form.

4. I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. Applicants and interpreters are required to execute this affidavit.

In addition if an applicant is assisted by an attorney, the following certification must be executed by said attorney:

I hereby certify that I have read this completed application and that, to the best of my knowledge, information and belief the contents hereof are true.

Commission as an excuse for nondisclosure insofar as it may serve as a means to evade the directive of N.J.S.A. 5:12-86(b). Nevertheless, the Commission is satisfied, based upon a careful review of the entire record, that the Applicant's nondisclosures here were not intentional, in conscious disregard of the regulatory process or for the purpose of avoiding the requirement of full and complete disclosure.

It is important to note that the Division does not contend that there was any lack of good faith on the part of the Applicant in the submission of his PHDF. Moreover, it is most significant that the Applicant did disclose his criminal arrest record and dishonorable discharge from the United States Army in 1952.[5] We believe these disclosed events would appear to a layman, and rightly so, to be more severe impediments to licensure than the existence of 13 civil judgments. The disclosure of this

---

5. In 1961 and 1964 the Applicant was arrested on the charge of assault and battery. In 1965, the Applicant was arrested for atrocious assault and battery, which was downgraded to assault and battery and in 1974, for obtaining money under false pretenses. All of the foregoing charges resulted in findings of either not guilty or dismissal.

   Military records annexed to the Applicant's PHDF and testimony at the hearing established that the Applicant was court-martialed for cowardly conduct for refusing a direct order to go on hazardous patrol duty. The Applicant testified that while serving as an infantryman in Korea he became ill wh le on duty in the front lines. After going to a first aid station and being informed he had malaria, the Applicant was given medication and told to return to his bunk. During an ensuing enemy attack the Applicant was ordered back on patrol and refused. After trail by a general court-martial, the Applicant was found guilty and sentenced to 20 years in federal prison. This term was subsequently reduced to six years. The Applicant was paroled after serving approximately two years (T154-20 to T163-13).

information is therefore strongly probative of the Applicant's intent to in good faith comply with the Commission's full disclosure requirement. In addition, the fact that the Applicant sought professional assistance in an effort to remedy his lack of understanding of questions on his PHDF tends further to indicate a good faith attempt to complete the form correctly.

Finally, our review of the Applicant's testimony concerning his civil litigation involvement, and of the entire record of this matter, indicates to us a basic lack of understanding by the Applicant of the concept of being a party to a civil suit. A correct understanding of that concept would be necessary to a finding that the Applicant is disqualified from licensure under N.J.S.A. 5:12-86(b).

Nevertheless, we reiterate that we will not permi applicants to rely upon a third party for the accuracy and completeness of personal history disclosure forms, as a means of avoiding the requirement of full and complete disclosure. In such cases, the Commission will not hesitate to strictly apply N.J.S.A. 5:12-86(b) to deny applications for licensure. Applicants may of course seek assistance from third parties in the compilation of information requested by, the comprehension of questions posed in and the actual completion of their personal history disclosure forms. However, regardless of whether or not Applicants seek such assistance, in order to maintain the integrity and efficacy of the regulatory process, they alone shall be held answerable for inaccuracies and incompleteness therein

The final major issue framed for administrative review was whether the Applicant has established, by clear and convincing evidence, his reputation for financial stability, integrity and responsibility. N.J.S.A. 5:12-89(b)(1). Resolution of this question entails differentiating between these distinct, albeit related concepts. In the Initial Decision the Administrative Law Judge concluded that the Applicant had failed to establish his reputation for financial stability and responsibility by clear and convincing evidence. N.J.S.A. 5:12-89(b)(1). The Commission disagrees.

A review of the entire record reveals that the Applicant is a 46 year old Atlantic City resident and the father of four children by his deceased wife whose ages range from 18 to 8 years. Born in Lebanon, Kentucky, the Applicant completed his sophomore year in high school before enlisting in the United States Army in order to assist his mother financially (T26-2 to T29-19). After basic training, the Applicant was shipped to Korea where he served as an infantryman, engaging in front line combat for approximately six months before being court-martialed (T29-22 to T32-13). As a result of his court-martial, the Applicant was dishonorably discharged and sentenced to 20 years in a federal prison at hard labor (T161-12 to T161-16). This sentence was later reduced to ten and then six years (T36-37-3 to T38-14). After serving approximately two years, the Applicant was granted parole in 1954 (T39-10 to 15).

The Applicant was employed at various jobs before coming to Atlantic City approximately 19 years ago. During the

last 18 years, the Applicant has been employed as a waiter and has worked seasonally on the New Jersey racetrack circuit (T120-20 to T124-22). The Applicant married Della Louise Smith in 1955. She had three children by a prior marriage, whom he helped support. (T47-3 to T48-25).

In 1968 the Applicant was hospitalized as a result of a serious vehicular accident (T55-12 to 18). Further medical problems were experienced in 1972 when the Applicant was twice hospitalized after suffering from dizzy spells (T56-20 to T58-13). In 1976 the Applicant sustained an injury to his leg as a result of a fall during the course of his employment. This injury resulted in the Applicant being unemployed during the 1976 and 1977 calendar years (T58-14 to T59-7).

In March, 1977 the Applicant and his wife filed petitions in bankruptcy under 11 U.S.C. §1301 et seq. This petition did not seek the discharge of their debts but rather sought to attempt, through a wage earner's plan, to effect a composition and/or extension because of the petitioners' inability to pay debts as they became due. These petitions were dismissed in September, 1978 for failure to make payments in accordance with the wage earner's plan.

Documentary evidence introduced at the hearing revealed that as of October 5, 1979, records of the Atlantic County District Court named the Applicant as a defendant in 13 civil judgments. Four of these judgments, totaling $1,302.52 as of October 5, 1979, remained unpaid and unsatisfied. It appe that these judgments represented debts incurred for the most part from 1975 through 1978 for a variety of consumer goods, most of

which, in our view, loosely fit into the category commonly referred to as necessaries. See Caruso v. Caruso, 102 N.J.Eq. 393, 141 A.16, 19 (1928). On this point, we disagree with the Administrative Law Judge (see A-6 to 7). We simply cannot say that such items as automobiles, auto insurance, furniture and home improvements should not be considered necessaries in this day and age.

The bulk of the aforementioned judgments were satisfied in June, 1979, when the Applicant sold his home in Atlantic City to pay his debts and start over again (T71-15 to 21). A review of the RESPA form used in conjunction with the transfer of title to the Applicant's premises, which was introduced as an exhibit at the hearing, shows that the Applicant received no funds from the proceeds of said sale after the satisfaction of outstanding liens and encumbrances on the premises. At the hearing the Applicant testified that he was led to believe that all of his debts had been paid from the proceeds of this sale (T72-4 to 11).

Subsequent to the hearing in this matter and pursuant to the express permission of the Administrative Law Judge, Applicant's attorney submitted a detailed affidavit concerning his efforts to set up payment schedules with the Applicant's remaining creditors. The Applicant, in his exceptions to the Administrative Law Judge's Initial Decision, also expressed his intent to satisfy the aforementioned judgments which remained of record.

Although evidence of financial stability may also be probative of financial integrity, these concepts are not identical

Central to the question of financial stability is the Applican' solvency or soundness. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra at 7. Of primary importance to the Commission is the Applicant's present financial stability. Proofs adduced at the hearing establish that the Applicant was, at the time of the hearing, indebted to four judgment creditors in the sum of approximately $1,300. The Commission may certainly take notice of the fact that residents of this State are and have been for some time enduring double digit inflation in general, high unemployment and soaring consumer prices. Atlantic City in particular, where the Applicant has resided for the past 19 years, has in the past several decades suffered from blight and economic decay. See N.J.S.A. 5:12-1(b). Against this backdrop, the indebtedness of the Applicant in the approximate sum of $1,300 cannot be viewed as uncommon. Furthermore, the Commission is satisfied that the record on this issue permits the inference that the judgments against the Applicant which were outstanding as of October, 1979 have been, or will be, satisified within a reasonable period of time. We believe we may properly anticipate that employment in the casino industry will enable the Applicant to make substantial progress in this regard in the foreseeable future. In light of all of the foregoing, the Commission finds that the Applicant presently possesses the financial stability required by N.J.S.A. 5:12-89(b)(1).

In order to secure licensure, an Applicant must demonstrate, inter alia, financial integrity and responsibility

by clear and convincing evidence. Important considerations in assessing these criteria include honesty and forthrightness in business dealings, as well as the exercise of care and prudence in managing, preserving and enhancing the assets entrusted to such individual. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 7 (1979). The Administrative Law Judge concluded that the Applicant failed to demonstrate his financial responsibility by clear and convincing evidence. Upon a careful review of the entire record, the Commission disagrees.

Without again detailing the proofs adduced at the hearing, the Commission notes that the following factors weigh heavily in its determination concerning financial responsibility. Initially, we disagree with the finding of the Administrative Law Judge that the Applicant's actions "demonstrate an economic life-style that precluded reasonable chance of seasonable repayment" (A-7). On the contrary, the Applicant's efforts in supporting his family of eight, including three children by his wife's prior marriage, appear to us on the basis of the record as a whole to have been quite industrious in light of his lack of education or qualification for skilled employment.

Although the existence of unsatisfied judgments impacts negatively upon the Applicant's financial integrity and responsibility, there are other factors here which serve to mitigate their effect. First, the Applicant's financial difficulties leading to these judgments stemmed from circumstances largely beyond his control. It appears from the record that the

Applicant's economic situation was essentially stable until he became disabled from full-time employment because of illnesses and injury simultaneously with his wife's illness and death. We do not believe any family of modest means confronted with a sudden and long-term interruption of usual income coupled with attendant medical expenses may reasonably be expected to emerge economically unscathed. Nor can we ignore the fact that, in light of his lack of education and marketable skills, the Applicant's burden of supporting a wife and seven children was extraordinary in the first place.

Based upon these factors, and upon the record as a whole, we cannot say that the Applicant has not demonstrated his financial integrity and responsibility. It appears to us, rather, that he could not adequately and quickly adjust his family's established spending habits in the face of unexpected economic catastrophe.

Moreover, the Applicant's undisputed efforts to cure his economic problems are further probative of his financial integrity and responsibility. On two separate occasions the Applicant attempted to extricate himself from the financial difficulties he faced. In March of 1977, as noted above, the Applicant and his wife filed petitions in bankruptcy to satisfy and not discharge, their debts, in recognition of the fact that they were then unable to satisfy their creditors' demands at once. Notwithstanding the fact that their petitions were ultimately dismissed for failure to make payments in accordance with their wage earner plan, this unsuccessful attempt is indicative of the

Applicant's effort to regain financial stability, which in turn reflects positively upon the Applicant's financial integrity and responsibility. After the Applicant became a widower, he sold his home in an effort to satisfy the judgments which were then of record against him. A man of lesser stature might have allowed those judgments to remain of record, placing the burden on his judgment creditors to enforce them. As noted above, the Applicant has, by the sale of his home, in fact succeeded in satisfying the vast bulk of his indebtedness. The Commission therefore rejects the conclusion of the Administrative Law Judge that the Applicant failed to sustain his burden of establishing by clear and convincing evidence his financial integrity and responsibility pursuant to N.J.S.A. 5:12-86(b)(1).

For the foregoing reasons, we are satisfied that the Applicant did not willfully, in bad faith or with conscious disregard of the regulatory process fail to disclose his civil suit involvements, and that he is therefore not disqualified pursuant to N.J.S.A. 5:12-86(b). We are further satisfied that the Applicant has sustained his burden of establishing by clear and convincing evidence his financial stability, integrity and responsibility. N.J.S.A. 5:12-89(b)(1). The application of Gilbert L. Smith for licensure as a casino employee is therefore granted.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI, CHAIRMAN

DATED: March 20, 1980

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

In the matter of the Application of Gilbert L. Smith as a Casino Employee

INITIAL DECISION

O.A.L. DKT. NO. CCC 2252-79
AGENCY DKT. NO. 79-EA-70

APPEARANCES:

Goldenberg, Mackler & Feinberg, Esqs.
by Joseph Sayegh, Esq. attorney for Petitioner

John J. Degnan, Attorney General of New Jersey
by Robert J. Melillo, Deputy Attorney General
attorney for Division of Gaming Enforcement

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

On November 21, 1978, Gilbert L. Smith (applicant) filed application with the Casino Control Commission for license as a casino employee (dealer) under N.J.S.A. 5:12-89(b) and 90 of the Casino Control Act. By letter of June 25, 1979 he was informed by the Commission that based on information contained in the report of the Division of Gaming Enforcement on May 16, 1979 there was a "substantial possibility that the Commission will deny your application." On July 9, 1979 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42-2. The matter was then transmitted to the Office of Administrative Law for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-10.

A pre-hearing conference was held on August 28, 1979 and order entered. The matter proceeded to formal hearing on October 9, 1979. The hearing was concluded seven (7) days thereafter, when the time for filing post-hearing submissions expired, as permitted at hearing.

Both the Commission and the Division of Gaming Enforcement are parties to the proceeding (although the Commission did not appear by its attorney at the hearing on October 9, 1979, it voiced no objection to the hearing going forward in its absence). The Division, by N.J.S.A. 5:12-76,

New Jersey Is An Equal Opportunity Employer

is charged with investigation of licensure applications and prosecuting defense thereto in hearings according to the results of its investigations. Here the Division objects to licensure based on the matters contained in its letter to the Commission dated May 16, 1979, as more precisely framed at pre-hearing; at issue, therefore, are the following:

A. Whether applicant has proven by clear and convincing evidence that he is qualified for licensure under N.J.S.A. 5:12-89(b) by good character, honesty and integrity.

B. Whether applicant has the requisite financial stability/integrity/responsibility for licensure under N.J.S.A. 5:12-89(b)(1) in view of 11 credit matters as outlined in the Division letter of May 16, 1979. (This is not an issue under N.J.S.A. 5:12-89(b)(2)).

C. Whether by applicant's answer "no" to question #51 (civil suit involvement) of the Personal History Disclosure Form 2, there was a disqualifying material non-disclosure, contrary to N.J.S.A. 5:12-86(b); and/or a character impairment under N.J.S.A. 5:12-89(b)(2) with reference to the 11 credit matters.

D. Whether applicant's dishonorable military discharge from the U.S. Army in 1953 constitutes a character impairment under N.J.S.A. 5:12-89(b)(2).

E. Whether applicant's four arrests without convictions, his dishonorable military discharge, and involvement in 11 credit matters together constitute character impairment under N.J.S.A. 5:12-89(b)(2). (No contention is made by the Division of Gaming Enforcement that the four arrests without convictions were not sufficiently disclosed or are independently disqualifying under N.J.S.A. 5:12-86(c) or 86(g)).

EVIDENCE AT HEARING

Applicant is a 46 year old Atlantic City resident, widowed and father of four children by his deceased wife, the eldest being 18 and the youngest 8 years old. His occupation is waiter. He has completed a 160 hour course in dealing blackjack at the Casino Career Institute taught in accordance with

N.J.A.C. 19:44-8.3. Born September 13, 1933 in Lebanon, Kentucky, he attended school to the level of high school sophomore and in 1950, at age 17, joined the Army. As an infantryman, he was shipped to Korea, where he served in a combat division, ultimately as a corporal. In July 1952, for refusing a direct order to go on hazardous patrol duty, he was so charged and was tried by general court martial, found guilty, and sentenced to dishonorable discharge and 20 years in federal prison. Later reduced to 6 years, the sentence was served at the U.S. prison in Terre Haute, Indiana. He was paroled on October 30, 1954. He testified that he had become ill while on duty in the front lines. Sent to the first aid station, he was told he had malaria, given pills and a needle, and told to return to his bunk. When an enemy attack came, his captain ordered him back to his unit for patrol. He refused. At the court martial, he was represented by counsel. His medical records were presented. There was no appeal of conviction or sentence. He said he never had malaria before or since. The terms of his dishonorable discharge (R-5 in evidence) were never changed by post-discharge petition.

Applicant admitted an arrest in Atlantic City on a charge of assault and battery on September 14, 1961 (N.J.S.A. 2A: 170-26, a disorderly persons offense). He was found not guilty.

He admitted arrests on the same charge on March 5, 1964 and January 1, 1965. The cases were dismissed.

He admitted an arrest in 1974 on a charge of uttering an insufficient check (less than $200) with intent to defraud (disorderly persons offense, N.J.S.A. 2A:170-50.4). He and his wife, he said, had mistakenly each written checks on their account. The monies were repaid. The case was dismissed.

Upon his release from Federal prision in 1954, he testified he worked, variously, in Kentucky in a hospital laundry and a foundry, in Indiana and Michigan as a waiter, and finally came to Atlantic City when he was 27 years old. For the past 18 years he has worked seasonally along the New Jersey race track circuit as a waiter for the Harry J. Stevens organization. He was married in 1955 to Della Louise Smith, who had four children by a prior marriage, whom he helped support. He suffered injuries in a serious accident in 1968 and was twice hospitalized. From 1975 to 1977, he said, he was unable to work because of illness. Exhibits P-1 (a through h), medical reports, were offered in substantiation of his disabilities. During this time

he was faced with support of his wife and their seven children. After she died in 1977, he put his house up for sale because he was forced to sell it to pay creditors. At closing in July, 1979 he was advised by his then attorney that all his debts were paid. A title report (P-2 in evidence) and a RESPA form (P-3 in evidence) substantiate the repayment of numerous judgment debts and liens from the proceeds of sale. Previously, however, at the time of filing his Personal History Disclosure Form No. 2, on November 21, 1978 (J-1 in evidence), he answered "no" to question #51 inquiring about civil suit involvement. He said he was made aware of this mistake by the Division letter of May 16, 1979, which revealed some 11 instances of civil judgment debts against him from 1973 to 1977. He admitted he signed the Disclosure Form but insisted his attorney's secretary had prepared it for his signature and the answer "no" to question #51 was hers, therefore, not his.

In reviewing the 11 judgments on his direct examination applicant conceded that some were still unrepaid. Some were invalid, he said, and some he didn't recall. (A review of the judgments indicates the underlying debts were, variously, for retail consumer goods or services like furniture, a television set, car repairs, charge accounts, a car, a refrigerator, and jewelry. The debts totalled $5,306.18). In one instance in 1975, he said he bought a 1971 Mercury when his aunt died and left him some money. That judgment debt resulted from car repairs he felt should have been under warranty. One of his car purchases was a 1976 Ford Torino.

P-4 in evidence, applicant's amendatory letter to the Commission of October 2, 1979, asserts that the judgments in all 11 instances have been satisfied fully. His testimony at hearing was that his statement is based on what his closing attorney told him in July, 1979. A stipulation of counsel later in the hearing was that P-4, applicant's amendatory letter, itself was "amended" to show that only 6 of the judgments were open of record, i.e. open on the dockets of the court clerk, and that applicant "does not know" whether the open judgments are paid or unpaid in fact.

Through Harry J. Simonetti, an investigator for the Division of Gaming Enforcement, who searched records of the Atlantic County District Court against applicant's name on October 5, 1979, a list of some 13 civil judgments was introduced into evidence by consent (as R-1). In contacting the

judgment creditors on that date, he learned the following judgment debts were still open of record and unrepaid:

W.T. Grant Company	$477.73
Gelula Jewelers	174.30
N.J. Mfrs. Insurance Co.	288.76
Jersey Sales Company	361.73
Total	$1,302.52

Applicant was granted one week after hearing within which to verify or refute the testimony. By letter of his counsel filed October 15, 1979 (P-7 in evidence) the judgment debts were conceded to be still open of record and unrepaid; they are not presently repayable without resort to payment schedules or, perhaps, composition.

Division evidence also showed (R-1, R-6) that on March 16, 1977 applicant and his wife Della filed a petition in bankruptcy under Chapter XIII (Proceedings for a Wage Earner's Plan) in U.S. District Court in Camden, Docket Nos. B-77-00751 and B-77-00752. By order of the bankruptcy judge on September 11, 1978, the proceedings were dismissed (see 11 U.S.C.A. Sec. 1066) for failure of the debtors to make payments to the trustee in accordance with the plan. The sum of $112.01 on hand with the trustee was ordered distributed to four (4) creditors, notice of dismissal was ordered sent to all creditors (23 in number), and the trustee was discharged. Debtors remained liable, therefore, for all remaining debts, secured and unsecured. (A petition filed under the chapter must state the debtor is insolvent or unable to pay his debts as they mature and that he desires to effect a composition or an extension, or both, out of his future earnings or wages. 11 U.S.C.A. Sec. 1023).

Five letters of personal recommendation for applicant were introduced in evidence: P-5, P-6, P-8, P-9, P-10. The manager of the Egg Harbor City Branch of Beneficial Finance Company of New Jersey wrote (P-6) that he has known applicant for the past five years as a hard working, concerned family man. The others are from a pastor, a lawyer, a blackjack class instructor, and a union business agent.

DISCUSSION

The Division argues that applicant's four arrests without convictions, his dishonorable military discharge, and his various credit involvements constitute character impairment under N.J.S.A. 5:12-89(b)(2) of the Act. But, said the

Court in Costanzo v. N.J. Racing Comm., 126 N.J. Super. 187,194 (App. Div. 1973):

> " It has long been settled that arrest and indictment of a person, without conviction, is not an acceptable index of character. This, on the theory that an accusation of misconduct is quite consistent with innocence and is merely someone's hearsay assertion as to the guilt of the person accused. A fortiorari, where the accusation has been dismissed. Consequently, we conclude that the arrest record of the appellant could not properly be considered by the Racing Commission as a factor in its assessment of the moral character of the appellant as it affected "the best interest of racing in the State."

Is applicant's dishonorable military discharge evidence of impaired character? Or, to put the question negatively, can licensure denial rest solely on that basis? The Division suggests it can, citing Higgins v. Bureau of Securities, 100 N.J. Super. 266 (App. Div. 1968). In that case, a securities agent license revocation proceeding, the reviewing court deemed the agent's dishonorable military discharge for a savage assault on a fellow soldier was ample reason to question his character and thus, for the Bureau to revoke his license. But the court in so doing was reviewing the administrative revocation record before it and deferred to the agency determination. See p. 275 of 100 N.J. Super. and compare Costanzo, supra, at p. 195 of N.J. Super. In this case, applicant's military dereliction was that of a 19 year old committed some 27 years ago. It is difficult in 1979 to assess his character based alone on the act of a callow youth that long ago. His life in the intervening years is perhaps more illuminating. Cf. N.J.S.A. 2A:168A-1,2.

Far more central to the case is the question of whether applicant has proven by clear and convincing evidence that he has the requisite financial stability and responsibility for licensure under N.J.S.A. 5:12-89(b)(1). Evidence of the existence of indebtedness is not entirely the point. His debts seem to have been steadily incurred over long periods of time. They seem to have been for consumer goods and services that the evidence fails to suggest should be considered necessaries. They seem to have involved overlapping extensions of consumer credit

during periods when upon his own evidence applicant was disabled. They seem to demonstrate an economic life-style that precluded reasonable chance of seasonable repayment. They suggest irresponsibility and credit unworthiness. They suggest applicant is a consumer credit risk. And they suggest, therefore, that applicant is not presently financially stable within the standard of the Act.

Having reviewed the testimony and exhibits, and having heard and observed the witnesses, and having in particular observed the demeanor of the applicant, I FIND as follows:

1. To the extent of any mediate conclusions of law or fact, the foregoing is incorporated herein by reference.

2. Gilbert L. Smith has applied for casino employee licensing as a dealer.

3. Applicant was arrested four (4) times for disorderly persons offenses but the charges were dismissed.

4. The arrests without convictions do not impugn his character.

5. Applicant's dishonorable military discharge for cowardice in Korea in 1952 (and his incarceration therefor in federal prison until 1954) is insufficient of itself to justify the inference in 1979 that his character is presently impaired within the meaning of the Act.

6. On the contrary, applicant's work record since then, his discharge of family, civic and religious obligations, and the reputation for good character made evident by those whose letters are part of this record require the inference that applicant is presently of good character.

7. Applicant has failed to meet and presently satisfy, however, the burden of establishing his reputation for financial stability and responsibility requisite for licensure under the Act.

8. Applicant's amendatory testimony and submissions at hearing concerning his financial affairs cured any otherwise objectionable non-disclosures concerning question #51 (civil suit involvement) in the Personal History Disclosure Form 2).

O.A.L. DKT. NO. CCC 2252-79
AGENCY DKT. NO. 79-EA-70

Based upon the evidence adduced and the findings made therefore, I CONCLUDE that applicant is disqualified from casino employee licensure as dealer. I ORDER that his application be DENIED.

This Initial Decision does not become final until forty-five (45) days from agency receipt hereof unless the agency head acts to affirm, modify or reverse it during the forty-five (45) day period, pursuant to N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, Joseph P. Lordi, Chairman, my Initial Decision in this matter and the record in these proceedings.

November 8, 1979
DATE

James A. Ospenson
JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

November 15, 1979
DATE

AGENCY HEAD

Mailed to Parties:

Nov. 16, 1979
DATE

Elizabeth J. Lazzara, Esq.
OFFICE OF ADMINISTRATIVE LAW

kam

LIST OF EXHIBITS MARKED IN EVIDENCE

J-1	Personal History Disclosure Form No. 2	
J-2	Personal History Disclosure Form No. 2	
P-1	Report of V.J. Di Nicolantonio, M.D.	3/13/72
P-1(a)	" " " " " "	3/17/72
P-1(b)	" " " " " "	9/21/72
P-1(c)	" " " " " "	9/28/72
P-1(d)	Report of Roger A. Snyder, M.D.	11/13/73
P-1(e)	Report of Roger A. Snyder, M.D.	1/11/74
P-1(f)	Report Atlantic City Medical Center	8/20/79
P-1(g)	Report Shore Surgical Prof. Assn.	
P-1(h)	Report D.J. Travagline, M.D.	8/24/79
P-2	Title Report	7/30/79
P-3	RESPA Form	7/30/79
P-4	Letter to Chairman Lordi	10/2/79
P-5	Letter Frank Gerace, Local 54	10/9/79
P-6	Letter Beneficial Finance Company	10/8/79
P-7	Letter Joseph Sayegh, Esq. and affidavit	10/12/79
P-8	Letter Rev. Lawrence P. Boyle	
P-9	Letter David A. Spitalvick, Esq.	10/10/79
P-10	Letter John Torcasio	
R-1	List of judgments Atlantic City Dist. Ct.	10/1/79
R-2	Rap Sheet N.J. State Bureau of Identification	
R-3	FBI rap sheet	
R-4	Atlantic City P.O. arrest card	
R-5	U.S. Army discharge record	
R-6	US District Court, Order Dismissing Chap. XIII proceedings	

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 756-79
CCC DOCKET NO. 79-EA-38

IN THE MATTER OF THE APPLICATION :
OF LORETTA FRANCES STOUTE FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :
(DEALER) :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Eugene D. Ginley of the Office of Administrative Law, and the Commission having considered the record of that hearing and the Initial Decision of the Administrative Law Judge, and no objections or exceptions to the Initial Decision having been filed with the Commission by the Division of Gaming Enforcement or the Applicant, and the Commission having resolved at its public meeting of January 9, 1980, to reject the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 28th day of March 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected by the Commission; and it is further

ORDERED that the application of Loretta Frances Stoute for a casino employee license be and hereby is denied on the ground that the Applicant has failed to sustain her affirmative

obligation of establishing by clear and convincing evidence her reputation for good character, honesty and integrity under N.J.S.A. 5:12-90(b) and N.J.S.A. 5:12-89(b)(2) as supported by the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission and which is incorporated herein by reference and made a part hereof; and it is further

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: JOSEPH P. LORDI, CHAIRMAN

DATED: March 28, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 756-79
CCC DOCKET NO. 79-EA-38

IN THE MATTER OF THE APPLICATION :
OF LORETTA FRANCES STOUTE FOR : FINAL
LICENSURE AS A CASINO EMPLOYEE, : COMMISSION DECISION
DEALER :

Loretta Frances Stoute, pro se

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

David R. Arrajj, Senior Assistant Counsel, appeared for the Casino Control Commission.

In October of 1978, Loretta Frances Stoute [hereinafter "Applicant"] filed an application with the Casino Control Commission [hereinafter "Commission"] for licensure as a casino employee in the position of dealer. In accordance with the provisions of the Casino Control Act [hereinafter "Act"], the application was forwarded to the Division of Gaming Enforcement [hereinafter "Division"], which shortly thereafter conducted an investigation into the background of the Applicant.

As a result of this investigation, the Division submitted a letter-report dated March 9, 1979, to the Commission in which the Division indicated that it interposed no objection to the licensure of the Applicant as a dealer. However, the

Division noted an arrest which had been disclosed by the Applicant in response to question 41 of her Personal History Disclosure Form (P.H.D.F.).

The Division reported that the Applicant had been arrested in Maryland in August, 1977, and charged with possession of, and possession with intent to distribute one pound, five ounces of Phencyclidene (PCP),[1] one PCP cigarette, one quarter pound of marijuana, two amphetamine capsules, and one quaalude capsule. The Applicant was prosecuted under the conditional discharge provisions of the Maryland drug statutes. See Ann. Code of Md., Art. 27, section 292(b). After pleading guilty,[2] the Applicant was ordered on January 3, 1978, to serve three years supervised probation as an incident of her participation in the conditional discharge program. The Applicant is currently serving this probationary term, which expires on January 3, 1981.

---

1 Phencyclidene (PCP) is commonly known as "angel dust".

2 The record is not clear as to which statutory offenses under Maryland law the Applicant pleaded guilty as part of her section 292 conditional discharge proceeding. As will be shown below, this uncertainty is not material to the resolution of this licensing matter.

On the basis of this information, the Applicant was advised by letter from the Commission's General Counsel dated March 23, 1979, that there was a substantial possibility that the Commission would deny her application for licensure. The Applicant thereupon 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. A public hearing was held in this matter before Administrative Law Judge Eugene D. Ginley in Atlantic City, New Jersey on July 27, 1979. Subsequent to the hearing, briefs were submitted by the Division and the Commission's staff.

Administrative Law Judge Ginley issued his Initial Decision in this matter on October 30, 1979. Judge Ginley recommended that the Applicant be licensed. This decision was filed with the Commission on October 31, 1979. Pursuant to the provisions of the Administrative Procedure Act, the parties had ten (10) days from the receipt of the Administrative Law Judge's Initial Decision to file with the Commission a statement of exceptions or objections to the findings and conclusions of the Administrative Law Judge. N.J.S.A. 52:14B-10(c). This period having expired, no such exceptions or objections were received from either the Applicant or the Division.

Two primary issues are presented in this matter. One issue is whether the Applicant, as a result of her conviction for, or commission of, certain drug related offenses in Maryland

in 1977, should be automatically disqualified for licensure as a casino dealer under the provisions of section 86 of the Act. N.J.S.A. 5:12-86. The second issue is whether the circumstances of this conduct, along with any additional proofs contained in the record, reveal that the Applicant has failed to sustain her affirmative burden of establishing by clear and convincing evidence, as a precondition to licensure, her good character, honesty and integrity. See N.J.S.A. 5:12-89(b)(2) as incorporated by N.J.S.A. 5:12-90(b). For the reasons to be stated, the first issue need not be resolved by this Commission. The second issue must be resolved against the Applicant.

Section 86 of the Act lists various criteria which mandate automatic disqualification for licensure when established by a preponderance of the evidence in the record as a whole. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1, pp. 12-13. An applicant is disqualified for licensure under the provisions of subsection (c) of section 86 when it is determined that the Applicant has been convicted of any offense which would be at the time of application one of the various offenses identified therein. N.J.S.A. 5:12-86(c).[3]

---

[3] Subsection (c) of Section 86 of the Act has recently been amended to include an expanded and comprehensive list of offenses which result in per se disqualification if an Applicant has been convicted of any offense which would be at the time of application one of the offenses identified therein.

Subsection (g) of section 86 provides that the Commission shall deny licensure to any applicant who has committed any act or acts which would constitute any offense under subsection (c) of section 86, regardless of whether such conduct has been or will be prosecuted under the criminal laws of this State. N.J.S.A. 5:12-86(g). Thus, the first issue presented in this matter is whether or not the Applicant's conduct in Maryland in 1977 was such that her licensure is now proscribed under the provisions of either subsection (c) or subsection (g) of section 86.

The basic facts are undisputed. The Applicant was arrested on August 5, 1977, in Bethesda, Maryland, and charged with violations of Sections 286 and 287 of Article 27 of the Annotated Code of Maryland (Ann. Code of Md., Art. 27, sections 286, 287) relating to possession of, distribution of, and possession with intent to distribute a controlled dangerous substance, to wit, phencyclidene (PCP). As noted above, the record is not clear as to which offenses the Applicant actually pleaded guilty as part of her conditional discharge proceeding in Maryland. However, the proofs adduced in the record clearly establish the Applicant's commission of acts which constitute offenses under the New Jersey Controlled Dangerous Substances Act, N.J.S.A. 24:21-1, et seq. The Applicant freely admitted at the hearing that she had knowingly used (see T52;57)[4], distributed (see T50 to T59) and possessed

---

[4] References to the transcript of the July 27, 1979 hearing will be signified by a "T" followed by the relevant page number.

with intent to distribute (T53 to T56) phencyclidene (PCP), a controlled dangerous substance identified in Schedule III of the Controlled Dangerous Substances Act. N.J.S.A. 24:21-7. This testimony was supported in the record by documentation of the Applicant's arrest and prosecution in Maryland, including an inventory of items seized during the search of her residence at the time of her arrest (see exhibit DG-1 in evidence).

It is thus clear that the conduct of the Applicant would constitute the commission of a high misdemeanor under either N.J.S.A. 24:21-19 or N.J.S.A. 24:21-20, neither of which statutes were specifically cited in the list of enumerated offenses contained in subsection 86(c) of the Act prior to its recent amendment. Subsection 86(c) as amended, eliminates the issue of whether all high misdemeanors are disqualifying offenses under subsection 86(c). Clearly, conviction for commission of any offense specifically enumerated in subsection 86(c) as amended, regardless of its classification as a capital offense, high misdemeanor or misdemeanor will result in per se disqualification. Thus, resolution of the issue of whether all high misdemeanors were disqualifying offenses, or only those which appeared in the list of statutes in subsection 86(c) prior to its amendment, has been rendered moot. This obviates the need to address this question.

Subsection 86(c)(3) as amended, now includes any high misdemeanor under section 19 of P.L. 1970, c.226 (N.J.S.A. 24:21-19), which includes the offenses of possession with intent to distribute and distribution of phencyclidene. As

noted earlier, the Applicant freely admitted at the hearing that she had in fact distributed and possessed with intent to distribute phencyclidene. Although no judgment of conviction has been ordered to date against the Applicant, her conduct clearly falls within the disqualification criteria set forth in subsection 86(c)(3) and 86(g), as amended.

On the date of the hearing, July 27, 1979, the recent amendments to the Act were not law. In addition to expressly including the drug offenses committed by the Applicant, the amendments provided a possible avoidance of disqualification for casino employee license applicants if they clearly and convincingly demonstrate rehabilitation under section 90(h). N.J.S.A. 5:12-90(h). While it may well be that the Applicant could offer no additional proof of rehabilitation if given the opportunity, it is unnecessary to decide that question since the Commission does not rely upon subsection 86(c)(3) and 86(g) as amended, in denying licensure. Nevertheless, the drug related conduct detailed earlier, which raised the issue of the Applicant's disqualification under subsections 86(c) and 86(g) is highly relevant in assessing whether the Applicant has established by clear and convincing evidence her reputation for good character, honesty and integrity under sections 89(b)(2) and 90(b) of the Act.

As to the issue of the Applicant's reputation for good character, honesty and integrity, the Administrative Law Judge reviewed the record to determine whether the Applicant had met her affirmative obligation to establish same by clear and convincing evidence under section 89(b)(2) and 90(b) of the

Act. The judge found, in view of the surrounding circumstances of the Applicant's conduct, the efforts made by the Applicant to rehabilitate herself, and the testimony of the character witnesses and the Applicant herself, that the Applicant had met this burden. The Commission finds that the record does not support this conclusion and that the Applicant has failed to establish this affirmative criterion for licensure.

The Applicant, while testifying on her own behalf and on cross-examination, explained the surrounding circumstances of her conduct in an attempt to mitigate its adverse impact upon her qualification for licensure. The Applicant testified that, when she separated from her husband in 1973, she retained custody of their child. Her husband paid child support of $25.00 a week for the first nine months after their separation. Thereafter, she received no support whatsoever from her husband (T38).

The Applicant thus attempted to establish economic need as an extenuating circumstance which led to her involvement in the illegal sale of drugs. She further testified that this state of economic despair was aggravated when her husband subsequently "kidnapped" their child, thus forcing the Applicant to expend what savings she had accumulated to enable her to relocate and reobtain custody of the child (T38 to T39). Thus, the opportunity to make "a little extra money" (T52) "when things would get tough" (T58), was the Applicant's primary explanation for her conduct.

The Applicant also traced her involvement in the use and sale of drugs to her association with a "bad circle of people"

(T39), with whom she worked during that period of time. She characterized her sale of drugs as "casual", (T61) and represented that she did not really consider herself to be a "dealer" of drugs since she only sold to a limited group of people such as friends and individuals with whom she worked (T58 to T62).

The Applicant's contention that she now possesses the requisite good character and integrity for licensure was also based upon her present attitude toward her past involvement with drugs, and her law-abiding conduct since the time of her arrest in August, 1977. The Applicant testified that she is "very disgusted with myself" when she looks back at her conduct (T40), and that she has had absolutely no involvement with drugs, or associations with individuals who use drugs, since her arrest (T39; T55).

Several character witnesses also testified on behalf of the Applicant. Her probation officer, who has been supervising the Applicant's probation since March, 1979, indicated that the Applicant has been progressing well. The officer also testified that the Applicant has not had any involvement with drugs or violations of the law since the time of her arrest (T21 to T23). A friend of the Applicant's family, who had known her for nine years, testified that he believed the Applicant to be a person of honesty and integrity (T25). The Applicant's fiance, who has known the Applicant since 1978, testified to her good character during that period (T27 to T33). Finally, the Applicant's father testified that she has always been a "good daughter", and a person of good character and

integrity with the exception of the one incident in Maryland (T33 to T36). These last three witnesses also testified as to the Applicant's lack of involvement with drugs or violations of law since August, 1977.

As indicated above, the Administrative Law Judge found that this evidence of the Applicant's rehabilitation, her genuine remorse regarding her past conduct, and her current reputation for good character, honesty and integrity, was sufficient to establish her qualification for licensure under sections 89(b)(2) and 90(b) of the Act. We disagree and hold that the evidence in the record when considered as a whole does not support a finding of the good character, honesty and integrity required of a casino employee.

As discussed, the Applicant seeks to mitigate her involvement in the sale of illegal drugs on the basis of economic need. Obviously, we cannot find that such an explanation excuses the serious criminal conduct engaged in by the Applicant in this matter. The nature and circumstances of the Applicant's conduct, however, are relevant in determining the extent of the negative impact of that conduct upon the Applicant's character, and consequently, in assessing the proof which the Applicant must adduce to overcome the implications of that conduct.

Concededly, we are not dealing with a course of criminal conduct which occurred over a very protracted period. However, we are not dealing with a single incident. Moreover, the extremely serious nature of the Applicant's violations of the law and the fact that this conduct occurred in the very recent past militates against the Applicant. The admitted conduct of

the Applicant involved not only the use of a controlled dangerous substance, phencyclidene, but also the distribution for profit of that substance. This conduct occurred from April, 1977 until August, 1977 (T50 to T59), a period of time which ended just 31 months prior to the date of this decision. It is significant to note that the Applicant's use and sale of illegal drugs was terminated not by voluntary action, but as a result of her arrest and prosecution therefor.

The Applicant was arrested, inter alia, for possession of one pound, five ounces of PCP, which had been obtained by the Applicant at the request of an unknown officer to whom she had previously sold one ounce of PCP on two separate occasions. There was no indication in the record that the Applicant was under any special economic duress at this time; she procured this large amount of this very dangerous drug simply because a potential buyer requested it (T50 to T57). Furthermore, the record shows that the Applicant was living at the time with relatives in a rented house (T50). The record is void of any substantial evidence of economic duress acting upon the Applicant when the conduct at issue herein occurred.[5]

The severity of the Applicant's criminal conduct is also not mitigated by her characterization of her illicit drug distribution as "casual" in nature. Even assuming that this would be a relevant factor in evaluating the Applicant's conduct,

---

5 There is conflicting evidence in the record as to the Applicant's employment status at the time of her arrest. She testified that she was employed, and earning $200 a week at the time of her arrest (T67). The Applicant's P.H.D.F. (exhibit C-1 in evidence) indicates this job terminated in March, 1977.

the record does not support this characterization. The Applicant asserted that she was not a "dealer" since she "never sold to just anybody" (T61). The very incident which led to her arrest would strongly contradict this testimony. The Applicant obviously did not know very much about the undercover officer to whom she was going to sell almost a pound and a half of PCP. In fact, she characterized her association with the purported buyer to be that of a friend of a friend (T50 to T51). The Applicant also admitted on the record that she had several sources from whom she could obtain PCP to sell (T54). Again, this testimony would hardly seem supportive of a claim that one only had a casual interest in the illegal distribution of drugs.

The testimony of the Applicant's character witnesses does little more than establish that the Applicant has conducted herself in a law-abiding manner since the time of her arrest. Due to the extremely serious nature of the criminal conduct at issue here, we do not believe this period of time (31 months) is sufficient to make the determination that the Applicant's prior criminal conduct was aberrational. It should be noted that the Applicant is currently serving a probationary term under the Maryland conditional discharge statute and thus has a very strong motivation for conforming her present conduct to the law. Violation of a term of her probation could possibly lead to the entry of a judgment of conviction against her by the Maryland courts, and the implementation of a much more severe sentence, including possible imprisonment.

Therefore, although the Applicant's conduct over the past months is certainly relevant to whether she has met her burden under section 89(b)(2) and 90(b) of the Act, such evidence must be tempered by the circumstances under which this conduct has been exhibited.

In addition, the fact that the Applicant still has over one year remaining in the term of her probation, although not conclusive, is certainly relevant in evaluating whether sufficient time has passed in order for us to conclude that this Applicant now has the requisite good character, honesty and integrity for licensure. It is reasonable to presume that the Maryland court, in setting the Applicant's term of probation at three years, felt that supervision of the Applicant for this period of time was minimally required to determine whether the Applicant had sufficiently modified her conduct to justify dismissal of the criminal proceedings against her.

Finally, this Commission cannot make a rational determination of whether an applicant has established his or her good character based upon a contemporary expression of contrition regarding that applicant's past behavior. Rather, we must primarily rely upon an objective record of that applicant's behavior.[6]

---

6 An issue was raised during the course of the hearing as to whether or not the Applicant had the right to defer the consideration of her application by the Commission under the provisions of subsection 86(d) of the Act. Subsection 86(d) provides that licensure may be denied based upon a determination that the Applicant is subject to current prosecution or pending charges relating to any of the offenses enumerated in subsection 86(c) of the Act. Subsection 86(d)

(continued next page)

For the reasons stated herein, we find that the record in this particular matter is insufficient to establish that the Applicant has the requisite good character, honesty and integrity for licensure in light of her serious and very recent criminal conduct. We therefore find that the Applicant in this matter, Loretta Frances Stoute, has failed to satisfy the affirmative licensing criteria of sections 89(b)(2) and 90(b) of the Act. The licensure of Loretta Frances Stoute as a casino employee is therefore denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
Joseph P. Lordi, Chairman

DATED: March 28, 1980

---

6 (con't.)
also provides, however, that "at the request of the applicant or the person charged, the Commission shall defer decision upon such application during the pendency of such charge." N.J.S.A. 5:12-86(d).

The licensure of the Applicant was not objected to on the basis of a subsection 86(d) current prosecution. Rather, the objection to licensure was based upon the acknowledged conduct of the Applicant as it relates to subsection 86(g) of the Act, and as it relates to the Applicant's affirmative obligation to prove her good character. Thus, the deferral clause of subsection 86(d) is not applicable since the existence of a current prosecution is not a basis for the present determination. Moreover, the apparent purpose of the deferral clause, to prevent requiring an applicant to testify at a licensing proceeding about matters which are the subject of a pending criminal prosecution, would not be implicated here since the Applicant freely testified regarding such matters and since the Applicant is not faced with further trial proceedings in Maryland.

IN THE MATTER OF THE APPLICATION) INITIAL DECISION AND ORDER
OF LORETTA F. STOUTE FOR LICENSURE)
AS A CASINO EMPLOYEE - DEALER) O.A.L. DKT. NO. C.C.C. 756-79

APPEARANCES:

Loretta F. Stoute, Petitioner, pro se

Frederic E. Gushin, Esq., Deputy Attorney General, for the Division of Gaming Enforcement, Department of Law and Public Safety

David R. Arrajj, Esq., Senior Assistant Counsel, for the Casino Control Commission

BEFORE THE HONORABLE EUGENE D. GINLEY, A.L.J.:

The petitioner, Ms. Loretta Stoute, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a dealer. Petitioner received a letter dated March 23, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, "there is a substantial possibility that the Commission will deny your application." Based upon that letter, the petitioner exercised her right to request a hearing on her application. The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14:F-1 et seq. A public hearing was held in Atlantic City, New Jersey on July 26, 1979. Subsequent to the hearing, briefs were submitted by both the Division and the Commission's staff. The latter brief was received on September 17, 1979, at which time the record in this matter was closed.

The first issue to be decided is whether petitioner is automatically disqualified from licensure under Section 86(c) of the Casino Act. This Section disqualifies applicants who have been convicted of certain specified offenses. It reads, in part, as follows:

> "...any offense in any jurisdiction which would be under New Jersey law at the time of application a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the statutory law:"

A list of ninety-three (93) offenses follows, including sixty-eight misdemeanors (68) and twenty-five (25) high misdemeanors.

The applicant was arrested and convicted in Maryland in 1977 for possession and distribution of illegal drugs. It appears that such conduct, which was admitted by the applicant at the hearing and disclosed in her Disclosure Form, (Exhibit C-1), would be a high misdemeanor under New Jersey law, N.J.S.A. 24:21-19, however, that offense is not one of the specifically listed offenses contained in Section 86(c) of the Act.

The Commission's staff is of the opinion that Section 86(c) automatically disqualifies any applicant who has committed any high misdemeanor under New Jersey law. Thus, this applicant would be disqualified despite the fact that her offense, although a high misdemeanor, is not one of those specifically listed in Section 86(c). Conversely, the Division takes the position that this applicant is not disqualified because only those high misdemeanors specifically listed in Section 86(c) act to automatically disqualify. In fact, the Division does not object to the licensure of this applicant.

The Division and the applicant in this matter take the position that the lack of punctuation preceding the list of enumerated offenses in Section 86(c) requires that the list of offenses modify all that which preceeds it. Thus, they contend that only those offenses specifically enumerated result in per se disqualification. The Commission's staff contends that there is an ambiguity in Section 86(c) and interperts it such that either conviction of or commission of (See Section 86g) any high misdemeanor results in automatic disqualification, while conviction of, or commission of, a misdemeanor results in per se disqualification only if it is one of the 68 misdemeanors enumerated. The arguments over interpretation of Section 86(c) arise on account of the use of the word "or" as used in the phrase "high misdemeanor or a misdemeanor", and because of any lack of punctuation immediately preceding the word "or". The question then is whether "or" is used in a disjunctive or conjunctive manner. The Division suggests that the meaning is clear: that is, that any high misdemeanor or misdemeanor enumerated is an automatic disqualifier. The Commission's staff contends that what the statute really means is that any high misdemeanor, and any misdemeanor enumerated acts to disqualify.

The Commission's staff suggests that its interpretation is consistent with the legislative intent. It suggests, for example, that if the Division's position is correct, then one could be disqualified for detaining a homing pigeon (N.J.S.A. 2A:119-6 repealed effective September 1, 1979) an enumerated misdemeanor, while not being automatically disqualified for having committed burglary (N.J.S.A. 2A:94-1 repealed effective September 1, 1979), a non-enumerated high misdemeanor. Nevertheless, to adopt the Commission's staff position would require an interpretation which would have to entirely ignore the 25 enumerated high misdemeanors, because that position requires

disqualification for any high misdemeanor, enumerated or not. The unanswered question then remains as to why would some high misdemeanors be listed if it was the intent of the legislature to include all high misdemeanors. The Division's citation of the statutory construction rule of "maxim expressio unius est exclusio alterius" appears appropriate (expression in a statute of one or more things in a particular class implies exclusion of all not expressed). How all of this will be affected by the enactment of the "New Jersey Code of Criminal Justice" N.J.S.A. 2C:1-1 et seq., is a question which need not be addressed here.

Despite the inconsistency of some of the results, it appears clear to me that the intent of the drafter of the legislation in question was that only those offenses specifically listed in Section 86(c) would act to disqualify an applicant. To conclude otherwise would require a reading of words or punctuation into the Act which, at present, do not exist. Also, since there could be inequitable results under either interpretation, it appears to me to be the better choice not to act to automatically disqualify applicants regardless of whether possession of a license is construed to be a right or a privilege. For example, automatic disqualification prevents the Commission from exercising any discretion as to an applicant's rehabilitation and present character. On the other hand, if the Commission deems an applicant undesirable, there are many ways other than automatic disqualification for it to effectively deny an application. Accordingly, in this case, since the offense in question is not listed in Section 86(c), I conclude that the applicant is not automatically disqualified. Accordingly, it is necessary to examine her reputation for character, honesty and integrity.

The applicant was arrested on August 5, 1977 in the State of Maryland and charged with the possession and intent to distribute one pound, five ounces of PCP (Phencyclidine), one-quarter pound of marijuana and some miscellaneous pills. The applicant pled guilty to these charges as a first offender and received three years probation. She testified that at that time she had a small child and had been deserted by her husband who had left her without any means of support. She was 26 years of age at that time. Applicant explained that she began working for Custom Trim Products, at which time, she became acquainted with a crowd of people who suggested that she try various drugs. They suggested that she could make some extra money by selling them to others She testified that her involvement with PCP lasted for about four (4) months until she was arrested. She added that she did not consider herself a dealer, but rather was involved in casual distribution to friends and acquaintances who were interested.

The applicant also explained that her financial difficulty was compounded by the fact that her husband kidnapped the child and took him to Oregon. Only after great difficulty and substantial expense was the applicant able to retrieve her child. She testified that in January 1978, she moved back to the Atlantic City area with her parents

and that she had no involvement with any drugs since the incident in 1977. Presently, she is living with her fiance, William Moore, Jr., and expects to marry him when her divorce is finalized. She added that, when she looks back on that point in her life (1977) she is very disgusted with herself.

Four other witnesses testified on behalf of the applicant. Ms. Rose Marie Pisano testified that she has been applicant's probation officer since March of 1979. She stated that the applicant has been progressing fine and does not cause any problems.

Mr. Leo Caramma testified that he is a friend of applicant's parents and that he has known the applicant for about nine (9) years. He stated that as long as he has known her, she had always been a good mother and wife. He believed her to be a person of honesty and integrity. He was not aware of her involvement with any drugs.

Mr. William Moore, Jr. explained that he is the applicant's fiance. He has known her for a year and seven months, which time did not include the incident with the drugs. He testified that she is of good character, honesty and integrity, and that there has been no involvement with anything criminal or with use of drugs.

Mr. Thomas Vineer, the applicant's father, also testified as to her character and integrity. Mr. Vineer, a retired policeman from Washington, D.C., testified that she had always been a good girl, except for the one incident with the drugs. He added that he has seen many people get breaks and thinks that she really deserves to get as good a break as she can. Further, he added that she has always been a very good daughter.

No other witnesses testified. The Division did not interpose an objection to the licensure of the applicant. She has met the requirement of graduating from an accredited casino school.

The burden of proof is clearly upon the applicant in this type of proceeding. However, the Commission must weigh all of the surrounding circumstances, including the type of licensure sought. I am satisfied that the applicant has rehabilitated herself from the serious transgressions of the law in which she was involved in 1977. Also, her present attitude indicates a genuine desire not to repeat past mistakes.

Accordingly, based upon the entire record, I FIND that:

1. Applicant has applied for a license permitting her to work as a dealer in a casino.

2. She was arrested and convicted in 1977 for possession and with intent to distribute illegal controlled dangerous susbtances.

3. Since the incident in 1977, applicant has not been involved in any further misconduct.

4. Applicant appears to have rehabilitated herself and has a desire to remain a good citizen.

5. Applicant presently maintains a reputation of good character, honesty and integrity.

6. The Division of Gaming Enforcement does not object to licensure of the applicant.

7. It appears likely, if applicant is licensed, that she will make an honest and trustworthy casino employee.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE that applicant should not be disqualified from receiving a casino employee license to work as a dealer based upon the issues which were litigated during this proceeding.

I, THEREFORE ORDER that the casino employee license (dealer), be granted to applicant.

This action cannot be effected prior to the effective date of this order which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

10/30/79
DATE

Eugene D. Ginley
EUGENE D. GINLEY, A.L.J.

Receipt Acknowledged:

10/31/79
DATE

David Rimmer
FOR CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

dhh

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-107
OAL DOCKET NO. CCC 4044-79

IN THE MATTER OF THE APPLICATION :
OF JOHN J. TAYLOR FOR LICENSURE :
AS A CASINO KEY EMPLOYEE :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Norman D. Smith of the Office of Administrative Law on January 24, 1980, and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge filed on March 4, 1980, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of May 1, 1980, to adopt the Initial Decision of the Administrative Law Judge and to grant the application of licensure,

It is on this 8th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

IT IS FURTHER ORDERED that the application of John J. Taylor for a casino key employee license be and is hereby granted on the basis of the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: May 8, 1980

IN RE: JOHN J. TAYLOR, PETITIONER	:	INITIAL DECISION
V.	:	
DIVISION OF GAMING ENFORCEMENT,	:	OAL DKT. #CCC 4044-79
RESPONDENT	:	
	:	AGENCY DKT. #79-EA-109

APPEARANCES:

Daniel Louis Grossman, Esq., on behalf of the Petitioner

Howard Barman, Esq., Deputy Attorney General on behalf of the Respondent

WITNESSES:

John J. Taylor

Detective Sergeant George Siebert

Verchel Hogan

EXHIBITS:

See attached Schedule of Exhibits

BEFORE THE HONORABLE NORMAN D. SMITH, A.L.J.:

The Petitioner, John Junior Taylor, applied to the Casino Control Commission for a licensure as a casino key employee (pit boss) and as a gaming school employee (instructor) pursuant to the provisions of N.J.S.A. 5:12-89 and N.J.S.A. 5:12-92, respectively. The Division of Gaming Enforcement did not object to Mr. Taylor's licensure. However, it did express certain reservations concerning Mr. Taylor's financial history and recommended that a hearing be held in order to ascertain an explanation of that history (P-2 in evidence). As a result, the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on January 24, 1980 before the undersigned.

Mr. Taylor has been discharged in bankruptcy twice. The first bankruptcy was not revealed by him in his Personal History Disclosure form. The bankruptcies themselves and the failure to disclose the first bankruptcy in the Disclosure form raise the two issues in this case:

1. Whether, in light of the bankruptcies, the Petitioner can establish by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of N.J.S.A. 5:12-89b(1)?

2. Did the Petitioner fail to reveal any fact material to qualification as set forty in N.J.S.A. 5:12-86b?

The basic facts of this case are not in dispute and were established by the testimony of Mr. Taylor, Detective Sergeant George Siebert, Verchel Hogan and the documents in evidence. I find those facts to be as follows:

On August 13, 1963 Mr. Taylor filed a petition for bankruptcy in the United States District Court for the Southern District of California, Central Division. He was discharged in bankruptcy on November 14, 1963 (P-4). His wife, Geraldine Marie Taylor, filed a companion proceeding (P-5). On May 22, 1968, Mr. Taylor filed a petition for a Wage Earner's Plan under Chapter 13 of the Bankruptcy Act in the United States District Court for the District of Nevada (P-6). On June 24, 1971 the Wage Earner proceedings were dismissed and the Petitioner was adjudicated a bankrupt (P-6). He was discharged in bankruptcy on March 17, 1972 (P-6). The Wage Earner's Plan was converted into a straight bankruptcy proceeding on the advice of Mr. Taylor's attorney, Keith C. Hayes, who subsequently became a District Judge in Nevada (P-10).

Question number 86 of the Petitioner's Personal History Disclosure form (P-1) reads, in pertinent part, as follows: "Have you . . . ever been adjudicated a bankrupt or filed a petition for any type of bankruptcy or insolvency, under any bankruptcy or insolvency law?" Petitioner answered this question in the affirmative. The question then continues: "If yes, complete the following table." The table requires certain information regarding each bankruptcy. Mr. Taylor accurately filled in the data requested concerning his bankruptcy in 1971 but failed to make any mention of the 1968 Wage Earner's Plan or the earlier bankruptcy which resulted in the discharge in 1963.

The earlier bankruptcy came to the attention of the Division of Gaming Enforcement through the investigation of Detective Sergeant Siebert. Detective Sergeant Siebert then asked Mr. Taylor about the bankruptcy which he had omitted from his Personal History Disclosure form (T73-8 to 13). Mr. Taylor acknowledged the existence of the earlier bankruptcy (T73-14 to 18). Detective Sergeant Siebert further asked Mr. Taylor why he had failed to record the earlier bankruptcy in the Personal History Disclosure form (T73-19 to 21). However, the detective sergeant could not recall Mr. Taylor's response (T73-22, 23). His written notes similarly failed to reveal the explanation given by Mr. Taylor (T75-24, 25; T76-1). This inability to recall Mr. Taylor's explanation existed even though it was the normal procedure to require an explanation when it would appear that information had been omitted from the Personal History Disclosure

form (T73-24, 25; T74-1). An inference may be drawn from this testimony that the explanation of Mr. Taylor seemed innocent and not worthy of memorialization by Detective Sergeant Siebert.

Mr. Taylor was not certain why he failed to record the first bankruptcy but guesses that he just didn't remember it (T45-12 to 15). He was aware at the time that he filled out the Disclosure form that withholding of material information would disqualify him for licensure (T45-16 to 19). He spoke to Detective Sergeant Siebert about the first bankruptcy but does not recollect whether the subject was broached in the first instance by him or the detective sergeant (T45-20 to T46-5).

I have observed the demeanor of Mr. Taylor as he testified on the foregoing point. He seemed to me to be testifying candidly and his testimony is consistent with that of Detective Sergeant Siebert. I FIND as a fact that the failure to include the first bankruptcy in the Personal History Disclosure form was nothing more than an inadvertence on the part of Mr. Taylor.

In The Matter of the Application of Resorts International Hotel, Inc. for a Casino License, the Casino Control Commission took the position that not every failure to provide material information should be deemed a disqualifying event. "In evaluating such a failure, the Commissioner should consider whether the failure was willful or whether it evinced a conscious disregard for the regulatory system. Merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification." Id. at p. 13.

I CONCLUDE that the inadvertent omission by Mr. Taylor of the first bankruptcy in the Personal History Disclosure form, when viewed in light of the discussion of that bankruptcy that he had with Detective Sergeant Siebert and the fact that the second bankruptcy was revealed in the Disclosure form, does not warrant the severe response of disqualification.

The remaining issue in this case is whether or not the Petitioner has established by clear and convincing evidence his financial stability, integrity and responsibility within the meaning of N.J.S.A. 5:12-89b(1). As Deputy Attorney General Barman correctly stressed, each of the three words used in the statute are independently significant. One can be responsible and yet unstable, financially. I FIND as a FACT that the first bankruptcy arose because Mr. Taylor was attempting to support his wife and four children as an audiologist, i.e., by selling hearing aids on a commission basis. His income from this occupation was simply insufficient to support his family. The Wage Earner's Plan, which was filed approximately five years after his discharge of bankruptcy, was caused by the inability of Mr. Taylor to get back on his feet after the first bankruptcy. He was forced into converting the Wage Earner's Plan into a bankruptcy by a secured creditor who was not content with the financial arrangements for repayment made with the trustee in bankruptcy. It seems clear that Mr. Taylor was financially unstable and, perhaps, financially irresponsible when he incurred debts during the 1960s which he could not meet from his reasonably anticipated income. Nevertheless, the appropriate question is whether Mr. Taylor is financially unstable or irresponsible now, and not during a period of time between ten and twenty years ago. During the last ten years the four children of Mr. Taylor have all left home and married.

They are no longer his financial responsibility. He now lives in a home in New Jersey with his wife and is currently meeting all of his financial obligations. There is no question that his anticipated income as a pit boss, if his license is approved, will be in excess of fifty thousand dollars ($50,000) per year and more than enough to render him completely stable financially. There is no evidence of any financial irresponsibility on his part during the last ten years. Although he has made some purchases on credit which a conservative person might not make, he has nevertheless demonstrated that he can maintain a good credit standing and meet those credit obligations when due. Credit purchases have become a way of life in our nation and should not, in and of themselves, render a person financially irresponsible, provided that he can meet his obligations. I FIND that Mr. Taylor can meet his obligations and has been meeting them. I FURTHER FIND that he will be in a vastly superior financial position should he be granted his license.

The question of financial integrity has been satisfactorily resolved in my opinion. I do not find any evidence of a lack of financial integrity. I cannot find that the exercise of his statutory right to avail himself of the bankruptcy procedure is any evidence at all of a lack of financial integrity. To the contrary, it shows that when he was set back by financial reverses, he approached his obligations according to law and did not simply ignore them as so many debtors do. The public policy espoused in the Bankruptcy Act is to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes. Local Loan Co. v. Hunt, 292 U.S. 234 (1933). While the bankruptcies reflect financial instability at the time that he filed for them, they do not reflect a lack of financial integrity.

The Division of Gaming Enforcement asserts that during the second bankruptcy, the Petitioner failed to set forth real estate which he owned on his list of assets. However, the Petitioner has adequately explained that by testifying that he was not the owner of the real estate at the time but merely a lessee with an option to purchase. I FIND his testimony believable and uncontroverted.

In summary I FIND that the Petitioner has demonstrated by clear and convincing evidence that he is and has been a man of financial integrity. I FURTHER FIND that he is now financially responsible and stable.

I THEREFORE CONCLUDE that Mr. Taylor has satisfied the requirements for licensure under the Casino Control Act. IT IS THEREFORE HEREBY ORDERED that Mr. Taylor be licensed as a casino key employee (pit boss) and a gaming school instructor.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, who by law is empowered to make a final decision in this matter. However, if the Chairperson does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

John Taylor

I HEREBY FILE with Joseph P. Lordi, Chairperson, Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

February 29 1980
DATE

Norman D. Smith A.L.J.
NORMAN D. SMITH, A.L.J.

Receipt Acknowledged:

March 4, 1980
DATE

AGENCY HEAD
BY: ROBERT MINCOWER
GENERAL COUNSEL

Mailed to Parties:

March 5, 1980
DATE

Elizabeth J. Lazzara, Cy.
OFFICE OF ADMINISTRATIVE LAW

IJ

SCHEDULE OF EXHIBITS

P-1	Personal History Disclosure Form of Applicant.
P-2	Letter from Frederic Gushin to Hon. J. Lordi.
P-3	Letter from D. Arrajj, Esq., to Applicant.
P-4	Referee's Certified Record of Proceedings U.S.D. Court, S.D. Cal, No. 159,634-TL, filed 2/26/64.
P-5	Referee's Certified Record of Proceedings, U.S.D. Ct., S.D. Cal., No. 159,635-TL, filed 2/26/64.
P-6	Referee's Certified Record of Proceedings, U.S.D. Ct., D. Nev. No. 4016, filed 3/17/72.
P-7A	Mortgage for $16,500.
P-7B	Note.
P-8A	Mortgage for $61,700.
P-8B	Note.
P-9	Bank of New Jersey, Installment Loan Note.
P-10	Letter from Hon. Keith Hayes, 11/9/79.
P-11	Letter from George Cichoski, dated 11/20/79.
P-12A to P-12H	Cumoral Federal Credit Union Notes.
P-13A	V.A. Certificate of Eligibility.
P-13B	V.A. Record of Loan.
P-14A	Letter from Ban Seideman.
P-14B	Envelope to P-14A.
R-1	Seven xeroxed pages, minutes of meeting of creditors in the matter of the discharge of bankruptcy of John J. Taylor.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1481-79
CCC DOCKET NO. 79-EA-50

IN THE MATTER OF THE APPLICATION :
OF BRADFORD WOODARD, JR. FOR :
LICENSURE AS A CASINO HOTEL : ORDER
EMPLOYEE (KITCHEN HELPER) :

A hearing having been conducted in the above-captioned matter on August 28, 1979 before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Chairman having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, and the written exceptions thereto filed by the parties; and the Chairman having determined to adopt the Initial Decision of the Administrative Law Judge and deny the application for licensure,

It is on this 18th day of April 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Chairman, and

It is further ORDERED that the application of Bradford Woodard, Jr. for licensure as a casino hotel employee be and is hereby denied based on the findings of fact and conclusions of law stated in the Initial Decision, which is incorporated herein by reference and made a part hereof;

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

JOSEPH P. LORDI, CHAIRMAN
CASINO CONTROL COMMISSION

DATED: April 18, 1980

IN THE MATTER OF)
THE APPLICATION OF BRADFORD WOODARD) INITIAL DECISION
FOR LICENSURE AS A CASINO)
HOTEL EMPLOYEE) OAL DKT. NO. CCC 1481-79
Agency Dkt. No. 79-EA-50

APPEARANCES:

Jack E. Granzow, Esq.
American Civil Liberties Union
for the Applicant, Bradford Woodard

John J. Degnan, Attorney General of New Jersey
By: Howard M. Barman, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
By: Denise A. Cobham, Asst. Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Bradford Woodard to the Casino Control Commission for licensure to work as a casino hotel employee. His application, including his initial Personal History Disclosure Form, was filed with the Commission on August 10, 1978. Applicant was advised by letter from the Casino Control Commission, dated May 4, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated March 9, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on July 18, 1979, and the hearing was held on August 28, 1979, at the Mercer County Court House, Trenton, New Jersey. Supplemental documentation was offered subsequent to the hearing in this matter and the final briefs of the parties were received on December 13, 1979, which is deemed to be the concluding date of the hearing.

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

1. Whether applicant for licensure as a casino hotel employee has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89 b(2) as incorporated in N.J.S.A. 5:12-91b.

2. Whether applicant has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria in his response to Question No. 8 of the Personal History Disclosure Form within the meaning of N.J.S.A. 5:12-86b.

3. Whether applicant has been convicted of any offense which is an enumerated statutory disqualifier within the meaning of N.J.S.A. 5:12-86c, as incorporated in N.J.S.A.5:12-91b.

4. Whether applicant has been convicted of a pattern of offenses not enumerated in subsection 86c which would indicate under subsection 86c, as incorporated in subsection 91b, that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations.

5. Whether, notwithstanding a conviction of any offense enumerated in the act as disqualification criteria, applicant has demonstrated under subsection 91d his rehabilitation, or that the offense for which the applicant has been convicted is not reasonably related to the duties for which the applicant will be employed in the casino hotel.

6. Whether any disqualification criterion affecting applicant may be waived under subsection 91e consistent with the public policy of the Casino Control Act and upon a finding that the interests of justice so require.

At the commencement of the hearing, a stipulation was entered into by and between counsel for the Applicant and the Division of Gaming Enforcement as to the totality of the Applicant's criminal conviction record. That stipulation was as follows:

DATE	OFFENSE	DISPOSITION
3/24/62	Assault & Battery	Bordentown Reformatory
6/8/62	Breaking & Entering & Larceny	Bordentown Reformatory
5/13/65	Assault & Battery	$100 fine
6/10/67	(Miami Fla.) Vagrancy	30 days
4/18/68	Shoplifting	$200 fine
10/22/69	Poss. of Narcotics	State Prison, 1-5 yrs.
4/11/70	Breaking & Entering & Larceny	State Prison, 2-5 yr (to run concurrent with the narcotics conviction above
7/31/72	Unlawful taking of Auto.	$200 fine

Applicant filed two Personal History Disclosure Forms with the Casino Control Commission. The first disclosure form was received by the Commission on August 10, 1978. The second disclosure form was prepared by the Applicant in November 1978, and was received by the Commission on March 16, 1979. Applicant testified concerning his answers to question #6 on the second disclosure form, which requires disclosure of the circumstances of an applicant's last three places of employment. According to the Applicant, he has been an employee of the Boardwalk Regency Hotel and its predecessor, Howard Johnsons, since 1972. Applicant stated that he is a banquet worker at the Boardwalk Regency Hotel, assigned the tasks of care, setup and inventory of silverware, glasses, table cloths and linen. The Applicant's disclosure form also revealed employment at Resorts International Hotel and the Madison House. For both places of employment, the disclosure form revealed the Applicant's reason for leaving to be a layoff. However, at the hearing, Applicant testified that his answers on the disclosure form concerning his reasons for leaving were not true. According to the Applicant's testimony, he actually had been fired from Resorts International Hotel for having gone home to sleep during his shift, and had been fired from the Madison House because his supervisor had objected to the way the Applicant dressed.

N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying information which is false or misleading as to a material fact pertaining to the qualification criteria. The aforementioned untrue responses of Applicant to the request of the Commission for disclosure of his employment history gives rise to the possibility of the Applicant's disqualification pursuant to section 86b.

The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b also arises from the Applicant's responses to question #8 on his two disclosure forms, which requires disclosure of an applicant's criminal and disorderly persons conviction record. Applicant acknowledged that the aforementioned stipulation concerning his record of convictions was a true and complete accounting. Applicant disclosed none of his convictions on his first disclosure form and disclosed only his conviction for possession of narcotics on his second disclosure form. Applicant explained that his cousin Francine Rose assisted him in the preparation of the first disclosure form by reading the questions to him and writing his answers. Applicant stated that he did not think he told his cousin to write the answer "No" in response to the question of whether Applicant had ever been convicted of a crime or disorderly persons offense. Applicant acknowledged that he initialed the bottom of the page after it was prepared by his cousin. Referring to his second disclosure form, Applicant stated that his cousin Robert Rose assisted him in its preparation. According to the Applicant, he told his cousin to list the Applicant's 1969 narcotics conviction in response to the request for disclosure of his conviction record.

N.J.S.A. 5:12-86c, as amended by P.L. 1979, c. 282, provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. The Applicant herein has twice been convicted of larceny, in violation of N.J.S.A. 2A:119-2. Pursuant to section 86c(2), a conviction for larceny

under N.J.S.A. 2A:119-2 is an automatic disqualifier for licensure, unless, pursuant to section 86c(4), the conviction did not occur within the ten year period immediately preceding application for licensure, and the Applicant can demonstrate by clear and convincing evidence that automatic disqualification is not justified. Applicant's two convictions for larceny were entered in 1962 and 1970.

Purusant to section 91d of the Act, as amended, Applicant shall not be denied a casino license on the basis of his larceny convictions, provided that he has affirmatively demonstrated his rehabilitation. In determining whether the Applicant has affirmatively deomonstrated his rehabilitation, the following factors should be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the Applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, 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.

Applicant is an educationally disadvantaged 35 year old minority resident of Atlantic City who has held employment as a banquet worker for the greater part of the last eight years. It has been nearly eight years since the Applicant's last conviction, which was for unlawful taking of an auto. Applicant's first conviction, for assault and battery, occurred in 1962. His last conviction for a specifically enumerated disqualifier, larceny, occurred nearly ten years ago. Applicant testified that he became a narcotics addict in 1964, but was able to end his addiction in 1970, while he was in prison.

Applicant's employment record is not unblemished, as established both by the Applicant's testimony concerning his firings from various positions, and the records of Applicant's employment at the Madison House, Resorts International Hotel and the Boardwalk Regency Hotel which were submitted by the Division of Gaming Enforcement (Exhibits D-3 through D-5). However, Applicant did submit a letter from his former parole officer, which stated that the officer had no knowledge indicating that the Applicant's employment would be "incompatible with the welfare of society."

The candor and credibility of the Applicant within the context of his application for licensure and the hearing process must also be examined in order to determine whether he has sustained his burden of demonstrating his rehabilitation. The Applicant admitted at the hearing that he had not disclosed the true reasons for his termination from the Madison House and from Resorts International Hotel. In addition, the Applicant admitted that when he was fired from the Madison House, he falsely stated that he had been laid off so that he would be eligible for unemployment compensation benefits. The Applicant's explanation that it was his relatives who first failed to reveal that Applicant had any convictions, and then revealed only one of his convictions, while assisting him in the preparation of his two personal history disclosure forms, is improbable and an explanation which strains credulity. Applicant's full disclosure at the hearing of his conviction record and of his employment history, after objection has been raised to the Applicant's licensure based, inter alia, on his non-disclosure of such information, cannot cure his intentional omission from his disclosure form of facts material to his qualifications for licensure. In addition to reflecting adversely upon the Applicant's demonstration of his rehabilitation, his failure to reveal facts material to his qualification is itself a cause for disqualification from licensure, pursuant to section 86b of the Act.

Having reviewed the testimony and other evidence offered in this matter (See Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

1. Applicant has applied for a license to permit him to work as a casino hotel employee.

2. Applicant has been employed as a banquet worker, or other related position, at the Boardwalk Regency Hotel and its predecessor, Howard Johnsons, for the greater part of the last eight years.

3. Applicant failed to disclose on his personal history disclosure form received by the Casino Control Commission on August 10, 1978, any information concerning his record of convictions of crimes and disorderly persons offenses.

4. Applicant failed to disclose on his personal history disclosure form received by the Commission on March 16, 1979, any information concerning his record of convictions for crimes and disorderly persons offenses, except for his conviction in 1969 of possession of narcotics.

5. Applicant failed to disclose on both of his personal history disclosure forms the true reasons for his terminations from various employments.

6. The conviction information and the employment information which Applicant failed to disclose on his personal history disclosure forms was information material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

7. Applicant's failure to adequately disclose the material information concerning his conviction record and his employment history was intentional, rather than inadvertent, and it reflects adversely upon the Applicant's good character, honesty and integrity.

8. Applicant was convicted in 1962 and 1970 of larceny, in violation of N.J.S.A. 2A:119-2.

9. N.J.S.A. 2A:119-2 is a specifically enumerated automatic disqualifier for licensure under section 86c(2) of the Casino Control Act.

10. Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

11. Applicant has failed to overcome his disqualification from licensure on the basis of his convictions of an offense enumerated under section 86c(2) of the Act by demonstrating his rehabilitation pursuant to section 91d of the Act by clear and convincing evidence.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has failed to demonstrate by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino hotel employee license based upon his conviction of an offense which is an enumerated disqualifier for licensure pursuant to N.J.S.A. 5:12-86c(2). It is, therefore, ORDERED that the application of Bradford Woodard for licensure as a casino hotel employee be denied.

This recommended Decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

January 25, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

January 29, 1980
DATE

AGENCY HEAD
BY: DEPUTY ATTY GEN'L COUNSEL

Mailed to Parties:

Feb 6 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

esk

INVENTORY OF EXHIBITS

For the Applicant:

A-1	Personal History Disclosure Form received by the Commission on August 10, 1978.
A-2	Personal History Disclosure Form received by the Commission on March 16, 1979.
A-3	Letter of Patrol Officer Yancy, dated September 20, 1979.

For the Division of Gaming Enforcement:

D-1	Not in Evidence
D-2	Not in Evidence
D-3	Madison House Employment Records
D-4	Resorts International Hotel Employment Records
D-5	Boardwalk Regency Hotel Employment Records

esk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 78-28

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

Charging Party,

v.

SEG CASINO SALES CO.; AMIEL INDUSTRIES OF NORTH AMERICA, INC.; ABBOTT COIN COUNTER CO., INC.; PRICE ATLANTIC CITY ENTERPRISES, INC.,

Respondents.

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

Charging Party,

v.

ECONOMICS LABORATORY, INC., HOBART CORPORATION; MRS. SMITH'S PIE CO.; INTERNATIONAL BUSINESS MACHINES CORPORATION; JOHN SEXTON & CO.; KAMMSON INDUSTRIES INC.; MEDIA ENGINEERING; JAMES J. SHEA, individually and trading as RICK O'SHEA SIGN AND DISPLAY STUDIO; STEEL'S FUDGE; HOFFMAN IMPORT AND DISTRIBUTING CO.; RONALD MOSSMAN and NATALIE MOSSMAN, individually and as partners trading under the name ATLANTIC TYPEWRITER CO.,

Respondents.

DOCKET NUMBER 78-29

FINAL

ORDER DISMISSING

COMPLAINTS

These matters having been opened to the New Jersey Casino Control Commission by way of Complaint, Docket Numbers 78-28 and 78-29, filed by the Division of Gaming Enforcement; and it appearing that subsequent filings made by Resorts International Hotel, Inc., a casino licensee, and the Respondent companies, subsequent approvals to transact business granted by the Commission, and subsequent amendments to Commission Regulations have rendered these Complaints substantially moot as to these companies; and the Division of Gaming Enforcement having indicated its approval of and consent to the entry of an Order dismissing the instant Complaints against the above-named service industry Respondents; and the Commission having carefully considered the January 4, 1980 Report and Recommendation of Commissioner Kenneth N. MacDonald, designated Hearing Examiner at its public meeting of January 23, 1980; and good cause appearing,

It is on this 17th day of March, 1980,

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

It is further ORDERED that the Complaints in these matters as to the above-named service industry Respondents be and hereby are dismissed; and

It is further ORDERED that a copy of this Final Order served upon the Respondents and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
Joseph P. Lordi, Chairman

DATED: MARCH 17, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-28

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Charging Party,	:
V.	:
SEG CASINO SALES CO.; AMIEL INDUSTRIES OF NORTH AMERICA, INC.; ABBOTT COIN COUNTER CO., INC.; PRICE ATLANTIC CITY ENTERPRISES, INC.,	:
Respondents.	:

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	: Docket Number 78-29
Charging Party,	:
V.	:
ECONOMICS LABORATORY, INC., HOBART CORPORATION; MRS.SMITH'S PIE CO.; INTERNATIONAL BUSINESS MACHINES CORPORATION; JOHN SEXTON & CO.; KAMMSON INDUSTRIES, INC.; MEDIA ENGINEERING; JAMES J. SHEA, individually and trading as RICK O'SHEA SIGN AND DISPLAY STUDIO; STEEL'S FUDGE; HOFFMAN IMPORT AND DISTRIBUTING CO.; RONALD MOSSMAN and NATALIE MOSSMAN, individually and a partners trading under the name ATLANTIC TYPEWRITER CO.,	: HEARING EXAMINER'S REPORT AND RECOMMENDATION
Respondents.	:

These matters involve two civil complaints filed by the Division of Gaming Enforcement [hereinafter the "Division"] charging that the respondents transacted business with Resorts International Hotel, Inc., a temporary casino permittee, contrary to the provisions of the New Jersey Casino Control Act, N.J.S.A. 5:12-1, et seq., and various Regulations adopted by the New Jersey Casino Control Commission [hereinafter the "Commission"], N.J.A.C. 19:41-11. Specifically, Complaint No. 78-28, which is in four counts, charges in substance that Resorts transacted business directly related to casino or gaming activity with each of the four named respondent companies, at times when those companies were not licensed as casino service industries, contrary to N.J.S.A. 5:12-92(a), N.J.S.A. 5:12-104(b) and N.J.A.C. 19:41-11. Complaint No. 78-29, which is in eleven counts, charges that Resorts transacted business with each of the eleven named respondent companies, at times when those companies were not licensed as casino service industries and prior to the filing of appropriate applications for approval of agreements ("contract approval forms") and, where appropriate, applications for casino service industry licenses.

All of the respondent companies named in No.'s 78-28 and 78-29 were severed from the consideration of these complaints with regard to respondent Resorts International Hotel, Inc. On December 29, 1978, as Hearing Examiner, I rendered my report and recommendation as to these complaints with regard to Resorts. On No. 78-28, I found that Resorts did transact business with each of the four companies named in that Complaint in violation of

Commission Regulation N.J.A.C. 19:41-11.3(g) which provides as follows:

> "The Commission may in its discretion, permit an unlicensed casino service industry enterprise to provide goods or services to or conduct business with a casino, a casino licensee, its employees or agents:
>
> 1. only if an application for the approval of a casino licensee agreement has been properly filed by the casino licensee or applicant for a casino license with and is pending before the Commission; and,
>
> 2. only if any required casino service industry license application has been properly filed by the casino service industry enterprise with and is pending before the Commission, provided, however, that any such enterprise directed to file a casino service industry license application may in the discretion of the Commission be permitted a reasonable time to prepare and file same." (Emphasis Added).

Accordingly, I recommended that the Commission impose a civil penalty of $4,000 against Resorts. On No. 78-29, I found that Resorts did transact business with each of the eleven companies named in that Complaint in violation of this same Commission Regulation and in violation of N.J.S.A. 5:12-104(b) of the Casino Control Act. Accordingly, I recommended that the Commission impose a civil penalty of $11,000 against Resorts. By its Final Order of January 3, 1979, the Commission adopted my findings and recommendations. Respondent Resorts subsequently paid the fines.

I now consider Complaints No. 78-28 and 78-29 with regard to the four companies and the eleven companies respectively named as respondents. As to these companies, I recommend that these complaints be dismissed.

The only relief initially sought by the Division against these companies was a judgment restraining them from transacting

business with Resorts until the appropriate forms had been fi and the appropriate approvals had been granted by the Commission. Subsequent filings made by Resorts and by these companies, subsequent approvals to transact business granted by the Commission, and subsequent amendments to Commission Regulations have rendered these complaints substantially moot as to these companies. With regard to No. 78-29, the appropriate "contract approval forms" were filed by Resorts for all eleven companies by December 14, 1978, and the Commission granted Resorts permission to transact business with all eleven companies by December 20, 1978. With regard to No. 78-28, Price Atlantic City Enterprises, Inc. was licensed as a casino service industry on October 3, 1978; Amiel Industries of North America, Inc. and Abbott Coin Counter Co., Inc. were granted permission by the Commission to transact busines with Resorts on February 7, 1979 and January 24, 1979 respectively and SEG Casino Sales Co., filed its application for a casino service industry license on April 24, 1978, which application is still pending. Moreover, on June 27, 1979, the Commission adopted Regulation N.J.A.C. 19:43-1.2 to clarify which enterprises were providing goods or services "directly related to casino or gaming activity." In sum, the relief requested (preventing business transactions until the appropriate filings had been made and approvals granted) is no longer necessary.

By letter dated November 2, 1979, the Division of Gaming Enforcement has indicated that it considers the entry of an order of dismissal with regard to the service industry respondents i these matters to be appropriate.

In light of all of these considerations, I recommend that Complaints No. 78-28 and 78-29 be dismissed as to all of the above-captioned respondents.

Respectfully submitted,

K. MacDonald

Kenneth N. MacDonald
Hearing Examiner

Dated: Jan 4, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
1.	In the Matter of the Application of Gandolph Ascuitto For Licensure as a Casino Employee and Gaming School Instructor	OAL Docket No. CCC 107-79 Agency #79-EA-9	October 1, 1980
2.	In the Matter of the Application of Helen M. Bakis For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 3993-79 Agency #79-EA-110	September 5, 1980
3.	In the Matter of the Application of Bally's Park Place, Inc. For a Casino License and the Application of Bally Manufacturing Corporation For a Casino Service Industry License	Agency #80-Cl-2 80-CSI-13	January 13, 1980
4.	In the Matter of the Application of Gwen M. Bednar For Licensure as a Casino Employee (alcoholic beverage employee)	OAL Docket No. CCC 5106-79 Agency #79-EA-156	June 23, 1980
5.	In the Matter of the Application of Warren M. Biddle For Renewal of License as a Casino Employee	OAL Docket No. CCC 3528-79 Agency #79-EA-96	August 15, 1980
6.	In the Matter of Boardwalk Regency Corp. and Jemm Co. for Casino Licenses	Agency #80-CL-1	October 25, 1980
7.	State of New Jersey v. Boardwalk Regency Corp., et al.	OAL Docket No. CCC 3916-80 Agency #80-10	September 22, 1980
8.	In the Matter of the Application of Gerald O. Brown For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 5729-79 Agency #79-EA-176	September 23, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
9.	In the Matter of the Application of Joseph Carlacci For Licensure as a Casino Key Employee (pit boss)	OAL Docket No. CCC 3600-79 Agency #79-EA-88	December 8, 1980
10.	In the Matter of the Application of Deborah L. Cohn For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 37-79 Agnecy #79-EA-2	August 1, 1980
11.	State of New Jersey v. Comdata Network, Inc.	Agency #80-CSI-1 80-CSI-2	November 12, 1980
12.	In the Matter of the Application of Charles A. Cometa For Licensure as a Casino Employee (slot attendant)	OAL Docket No. CCC 4059-79 Agency #79-EA-114	December 5, 1980
13.	In the Matter of the Application of Barbara D'Ascenzo For Licensure as a Casino Employee	OAL Docket No. CCC 1438-79 Agency #79-EA-41	November 17, 1980
14.	In the Matter of the Application of Robert A. Ferrin For Licensure as a Casino Employee	OAL Docket No. CCC 0331-80 Agency #79-EA-207	September 5, 1980
15.	In the Matter of the Application of Carl Florkowski For Licensure as a Casino Employee	OAL Docket No. CCC 0064-80 Agency #79-EA-190	June 23, 1980
16.	In the Matter of the Application of Patricio Garces For Licensure as a Casino Employee (slot mechanic)	OAL Docket No. CCC 2392-80 Agency #80-EA-59	December 22, 1980
17.	In the Matter of the Application of George W. Garret For Licensure as a Casino Employee	Agency #79-EA-1	September 24, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
18.	In the Matter of the Application of John J. Glennon For Licensure as a Casino Hotel Employee	OAL Docket No. CCC 864-79 Agency #79-EA-22	February 4, 1980
19.	In the Matter of the Application of Augustine E. Gomez For Licensure as a Casino and Gaming School Emp.	OAL Docket No. CCC 230-79 Agency #79-EA-15	August 9, 1979
20.	In the Matter of the Application of William Gonzales For Licensure as a Casino Employee (slot attendant)	OAL Docket No. CCC 684-80 Agency #80-EA-4	September 5, 1980
21.	State of New Jersey v. Charles C. Gowdy	Agency #79-5	June 16, 1980
22.	In the Matter of the Application of George I. Hayes For Licensure as a Casino Employee (security officer)	OAL Docket No. CCC 598-79 Agency #79-EA-32	August 13, 1980
23.	In the Matter of the Application of Joseph J. Heckman For Licensure as a Casino Employee (slot attendant)	OAL Docket No. CCC 1257-80 Agency #80-EA-21	November 17, 1980
24.	In the Matter of the Application of Robert Hoke For Licensure as a Casino Key Employee	Oal Docket No. CCC 335-80 Agency #79-EA-191	September 24, 1980
25.	State of New Jersey v. John L. Itri	Agency #80-6	June 20, 1980
26.	In the Matter of the Application of James A. Jones For Licensure as a Casino Employee (floorperson)	OAL Docket No. CCC 5730-79 Agency #79-EA-185	December 16, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
27.	In the Matter of the Application of Carol Ann King For Licensure as a Casino Employee	OAL Docket No. CCC4170-80 Agency #79-EA-118	November 25, 1980
28.	In the Matter of the Application of Jack J. Kessler For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 4045-79 Agency #79-EA-117	September 5, 1980
29.	In the Matter of the Application of Stuart M. Kraft For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 1482-79 Agency #79-EA-57	August 5, 1980
30.	State of New Jersey v. David Lando and Resorts International Hotel, Inc.	OAL Docket No. CCC 4066-80 Agency #79-3	December 11, 1980
31.	In the Matter of the Application of Louis Larvo For Licensure as a Casino Employee (floorperson)	OAL Docket No. CCC 3715-79 Agency #79-EA-79	November 25, 1980
32.	In the Matter of the Application of Robert A. Lyons For Licensure as a Casino Hotel Employee	OAL Docket No. CCC 930-80 Agency #79-EA-136	August 5, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
33.	In the Matter of the Application of Patsy Marino For Licensure as a Casino Employee	OAL Docket No. CCC 2653-79 Agency #79-EA-81	June 30, 1980
34.	In the Matter of Martin, Stretton, et al. for relief	Agency #78-EA-21	August 14, 1980
35.	In the Matter of the Application of Raymond Molenaar For Licensure as a Casino Employee (slot attendant)	OAL Docket No. CCC 2343-79 Agency #79-EA-68	July 2, 1980
36.	In the Matter of the Applicaiton of Rita Montagna For Licensure as a Casino Employee	OAL Docket No. CCC 1051-80 Agency #80-EA-6	August 5, 1980
37.	In the Matter of the Application of Karen Nixon For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 1939-80 Agency #80-EA-47	December 10, 1980
38.	In the Matter of the Application of Denise Perry For Licensure as a Casino Employee	OAL Docket No. CCC 0022-80 Agency #79-EA-195	June 20, 1980
39.	In the Matter of the Application of Anthony Rampolla For Licensure as a Casino Employee	OAL Docket No. CCC 4048-79 Agency #79-EA-125	September 5, 1980
40.	In the Matter of the Application of Harris E. Ramsey For Licensure as a Casino Employee	OAL Docket No. CCC 5105-79 Agency #79-EA-161	June 23, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
41.	In the matter of the Application of Anthony Ranieri For Licensure as a Casino Hotel Employee	OAL Docket No. CCC 1258-80 Agency #80-EA-24	December 2, 1980
42.	In the Matter of the Application of Resorts International Hotel, Inc. to Renew its Plenary Casino License	unnumbered	August 13, 1980
43.	State of New Jersey v. Resorts International Hotel, Inc. et al.	Agency #79-21	August 11, 1980
44.	In the Matter of the Application of Joseph Richards For Licensure as Assistant to the Director of a Gaming School	OAL Docket No. CCC 404-79 Agency #79-EA-16	September 4, 1980
45.	In the Matter of the Application of John J. Ruiz For Licensure as a Casino Employee (dealer)	OAL Docket No. CCC 4662-79 Agency #79-EA-147	September 5, 1980
46.	State of New Jersey v. Stephen Sklar	Agency #79-11	December 4, 1980
47.	In the Matter of the Application of Linda Smith For Licensure Renewal as a Casino Employee	OAL Docket No. CCC 1333-80 Agency #80-EA-28	October 24, 1980
48.	In the Matter of the Application of D.L. Stanley For Licensure as a Casino Employee	OAL Docket No. CCC 0021-80 Agency #79-EA-197	July 21, 1980
49.	In the Matter of the Application of Jerome Taliaferro For Licensure as a Casino Employee	OAL Docket No. CCC 4661-79 Agency #79-EA-126	November 25, 1980

	NAME OF CASE	DOCKET NO.	DATE OF DECISION
50.	In the Matter of the Application of Raymond Tenpenny For Licensure as a Casino Employee	OAL Docket No. CCC 2638-80 Agency #80-EA-58	December 30, 1980
51.	In the Matter of the Application of Catherine Thompson For Licensure as a Casino Employee (floorperson) and Gaming School Instructor	OAL Docket No. CCC 1053-80 Agency #80-EA-9	November 17, 1980
52.	In the Matter of the Application of Antonio Tufi For Licensure as a Casino Key Employee	OAL Docket No. CCC 4660-79 Agency #79-EA-149	November 25, 1980
53.	In the Matter of the Application of Irvin VanHouten For Licensure as a Casino Employee	OAL Docket No. CCC 0063-80 Agency #79-EA-199	September 5, 1980
54.	In the Matter of the Exclusion of Nicholas Virgilio from Casino Hotel Facilities	OAL Docket No. CCC 2387-80 Agency #80-EL-7	September 10, 1980
55.	In the Matter of the Application of Richard Wagner For Licensure as a Casino Employee	OAL Docket No. CCC 1054-80 Agency #80-EA-26	September 5, 1980
56.	In the Matter of the Application of Kenneth Yerike For Licensure as a Casino Employee	OAL Docket No. CCC 4071-79 Agency #79-EA-122	October 15, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 107-79
CCC DOCKET NO. 79-EA-9

IN THE MATTER OF THE APPLICATION :
OF GANDOLPH V. ASCIUTTO FOR :
LICENSURE AS A CASINO EMPLOYEE :
and GAMING SCHOOL INSTRUCTOR :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Eugene D. Ginley, of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of October 1, 1980, to affirm and adopt in part and reject in part the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 1st day of October 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted in part and rejected in part as specified below; and

IT IS FURTHER ORDERED that the application of Gandolph V. Asciutto for a casino employee license be and hereby is denied on the basis of the Applicant's failure to establish by clear and convincing evidence his reputation for good

character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(1) and 90(b); and

IT IS FURTHER ORDERED that that part of the Administrative Law Judge's Initial Decision which concludes that licensure of the Applicant would be inimical to the policies of the Casino Control Act, be and hereby is rejected as supported by the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: October 1, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF GANDOLPH V. ASCIUTTO FOR LICENSURE AS A CASINO EMPLOYEE (FLOORMAN) AND AS A GAMING SCHOOL EMPLOYEE (INSTRUCTOR)	INITIAL DECISION OAL Docket No. CCC 107-79

F. Frederick Perone, Esq., Atlantic City, New Jersey, for petitioner

Frederic E. Gushin, Esq., Deputy Attorney General, for the Division of Gaming Enforcement, Department of Law and Public Safety

David R. Arrajj, Esq., for the Casino Control Commission

BEFORE THE HONORABLE EUGENE D. GINLEY, A.L.J.:

The petitioner, Mr. Gandolph V. Asciutto, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a floorman and in a gaming school as an instructor. The petitioner received a letter dated January 30, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, dated January 23, 1979, "there is a substantial possibility that the Commission will deny your application". Based upon that letter, the petitioner exercised his right to request a hearing on his application.

The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1,

et seq. Public hearings were held in the Atlantic City area on August 9, 30 and 31, 1979. The record remained open upon request of petitioner's counsel while he sought to obtain information from the Federal Bureau of Investigation under the Freedom of Information Act. It was his stated intention to present rebuttal testimony upon receipt of such information. However, after allowing counsel ample time, no rebuttal testimony was presented and the record was closed on May 21, 1980.

The standards to be employed by the Commission in the licensing of applicants are set forth in the "Casino Control Act", N.J.S.A. 5:12-1, et seq. The Division of Gaming Enforcement suggests that licensure of Mr. Asciutto is inimical to the policy of the Act. Specifically, it objects based on the following allegations:

1. that during the period 1974-76, petitioner was involved with illegal gaming activities in Buffalo, New York;

2. that during this time he was involved with the selling of stolen property and fraudulent use of credit cards; and

3. that he suggested that criminal violent action be taken against a law enforcement informant.

In 1976, the petitioner was named as an unindicted co-conspirator by a Grand Jury impaneled in the Western District of New York in The United States of America vs. Salvatore J. Pieri, et al. The indictment (Exhibit DG-2) stemmed from the operation of an illegal gambling business at Nairy's Social Club in Buffalo, New York.

Petitioner testified that he moved from Las Vegas to Atlantic City in April 1978, and after several months of unemployment, he began working for Penthouse's Personnel Department in October 1978. He states that he is still employed at Penthouse, but that there is a position as an instructor waiting for him, upon his licensure, at East Coast Gaming and Electronics. Prior to coming to Atlantic City, he was employed by the Tropicana Hotel and Country Club in Las Vegas as a floorman in the dice pit for approximately two (2) years. The Division of Gaming Enforcement (Division) does not contest the fact that petitioner has the requisite experience to qualify for the licenses applied for.

Two character witnesses testified on petitioner's behalf. Mr. Charles Matuella, Executive Vice President of the Guaranty Bank in Atlantic City, stated he has known the applicant for approximately fifteen (15) months, both socially and professionally. His testimony was to the effect that applicant has a reputation as an honorable and reputable person in the community. He also explained that his bank has made several loans to the applicant. Mr. Arthur Ginsburg, Vice President of a retail furniture store, testified that the applicant is an honest and outstanding gentleman. His knowledge is based on applicant having purchased furniture in his store, having made payments on the purchase, and having referred other customers to his store.

In addition to the character witnesses' testimony, several letters were submitted on petitioner's behalf as exhibits, which reference petitioner's character. A letter from Anthony Torcasio, Vice President-Director of Gaming of Penthouse, attests to petitioner's integrity and

states "when our casino opens, Mr. Asciutto will be employed by me in an executive position", (Exhibit P-1). Exhibits P-2, P-3, P-4, P-5 and P-6 are letters written by representatives of various businesses attesting to satisfactory business relationships with the applicant. Exhibits P-17, P-18, P-19, P-20, P-21, P-22, P-23 and P-24, letters written by people who knew the applicant through his employment in the casino industry in Nevada, generally attest to his good character and integrity.

The petitioner testified that after his discharge from the Army in World War II, he returned to his home in Buffalo, New York. He then worked primarily as a truck driver for over twenty (20) years, until about 1970, at which time he claims that he was unable to find continued employment. Petitioner was then unemployed for approximately five (5) years, until such time as he moved to Las Vegas and became employed there. The issues raised by the Division concerning petitioner's fitness for licensure center primarily around his activities during the five (5) years of unemployment in Buffalo during the early 1970's.

The allegations of the Division are that during this period of unemployment, Mr. Asciutto worked in illegal gambling clubs located in Buffalo, particularly the Nairy Social Club. These "social clubs" were allegedly fronts for illegal gambling controlled by members of organized crime. The Division contends that other illicit activities took place in these clubs, including the applicant's participation in the sale of stolen property, attempted fraudulent use of credit cards, and the

threatening of physical violence as to a law enforcement officer engaged in an investigation of the aforementioned illegal activities. These allegations have all been denied by the applicant.

Richard A. Genova, Special Agent of the Federal Bureau of Investigation, testified for the Division. He explained that in 1974 he was assigned to Buffalo on an undercover assignment to investigate a power struggle among organized crime there. His investigation led him to spend a substantial amount of time at the Nairy Social Club. For nine (9) months he frequented the place on an almost daily basis. His information included the fact that a Sam Pieri, who ran the Nairy Club, was in line to become the organized crime boss of the area. He indicated that Pieri and five (5) others, all of whom were subsequently indicted, frequented the Nairy Club. The applicant was cited as an unindicted co-conspirator in the indictment (Exhibit DG-2).

Agent Genova testified that the main purpose of these "social clubs" was to conduct illegal gambling, mainly the game called "Ziganette". He explained that when the game was being played, security was tight, the doors would be locked and a doorman would check before any of the doors were opened. Genova stated that the applicant was a daily visitor at the Nairy Club and acted both in the capacity of dealer and doorman. He explained that house dealers were compensated by tips and that such was a lucrative position.

Genova explained that the smallest bet at the Nairy Club was $5.00 and that sometimes, hundreds and even a thousand dollars would be bet on a single card. He added that sometimes the applicant would play

in these games and that some of such games were rather expensive. He added that in order to act as a dealer, one had to have Pieri's approval. Also, the applicant owed money to the Nairy Club on several occasions.

Agent Genova testified that on two (2) different occasions the applicant tried to sell him items which were alleged to be "hot". The first incident concerned a ring, at which time the applicant allegedly told Genova to make sure that he went with it to a "trusted" jeweler. The second incident concerned an offer to sell a tape deck for $40. Another time, the witness explained that the applicant approached him with a ring that he claimed was worth $2,000, and said that he was desperate for money as he owed the house $600 and would sell the ring for $900. Genova testified that the applicant also offered the use of "hot credit cards" that could be used at gas stations if the witness had a contact at such a station. He also explained that the applicant was desperate for money and had stated that he had lost $25,000 gambling within the past year.

After receiving information from the witness, law enforcement authorities raided the Club and subpoenaed all of the patrons to appear before a Grand Jury, including the applicant. The witness was still under cover at this time, and he testified that the applicant told him that he knew there is an informant, that we are all going to jail, that we should all take the Fifth Amendment, and that if worse came to worse, that he was going to take off. Agent Genova added that on a subsequent occasion, the applicant stated that the informant should be found, tortured and murdered.

Lastly, Agent Genova explained that when it came time for the patrons who had been subpoenaed to testify before the Grand Jury, a number of them put themselves into hospitals for different ailments, including the applicant. He stated that although some may have been legitimate, others told him that it was done to avoid testifying -- "it's a technique of getting out of going to Grand Jury". He did not know if the applicant did it for that purpose.

Detective Gregory Wallack, of the New Jersey State Police, also testified on behalf of the Division. He explained that he is assigned to the Division of Gaming to do background investigations, and that he did such an investigation on the applicant beginning in August 1978. This investigation included his personally going to Buffalo, where he discussed the applicant's past with local law enforcement authorities.

Detective Wallack explained that based upon his conversations in Buffalo with federal and local law enforcement authorities, several social clubs in the Buffalo area, including the Nairy, were in effect fronts for organized crime's illegal gaming operations. However, he added that he could not substantiate the fact that the applicant was actually an employee of any of these clubs.

In response to Question No. 46 of the Disclosure Form, the applicant listed an arrest for loitering in Cheektowaga, New York, in 1973, with an indication that such charge had been dismissed. Detective Wallack explained that he learned from the authorities in Buffalo that

the loitering arrest was a result of a raid on a social club in Cheektowaga, which was also known as an illegal gambling operation. The applicant was on the premises at the time of such raid, and accordingly, was issued a summons for the charge of loitering. Some $31,000 was confiscated by the authorities on the premises at the time of this raid. The Detective submitted Exhibit DG-1, a New York State Police Report, which contains the details of the investigation and results of the raid. It indicates that no evidence was seized from the applicant during this raid.

Detective Wallack stated that while in Buffalo, he also learned from the local police that the applicant had been arrested for gambling in 1964. Those authorities were, however, unable to locate the record for such arrest. The witness explained that he subsequently questioned the applicant about the arrest and the applicant's failure to disclose it on the Disclosure Form. The Detective stated that the applicant told him that he had forgotten about it, and also that it was a case where when the people were arrested for gambling, their names were taken but no formal charges were ever lodged. Additionally, Detective Wallack testified that the applicant told him he never owed the Nairy Club $25,000, but he may have been in debt to them as much as $1,000.

The petitioner's testimony addressed the allegations concerning his activities during his five (5) years of unemployment, 1970-75. Mr. Asciutto stated that he was a member of the Nairy Social Club, where he went on an average of four or five times per week. He remembers playing cards there, including the game of "Ziganette", and

that he would make bets on these card games, usually in amounts ranging from $2 to $10.

The applicant stated that he was not employed by the club, but that he would sometimes fill in for the dealers for which he would be compensated by tips from the players. He denies any knowledge of or association with members of organized crime.

It appears from the testimony that petitioner had similar relationships with two (2) other "social clubs" in Buffalo. These other clubs were referred to as the Connecticut Street and Niagara Street Clubs. However, it was clear that petitioner's relationship with any illegal gambling occurring in these "social clubs" centered primarily around the Nairy Social Club.

Petitioner admitted selling a "tape deck" to Agent Genova for $40. He denies knowing that it was stolen and stated that he bought it from a "passerby". He admitted offering to sell a ring to Agent Genova and telling the agent that it was worth a lot of money. He denied any knowledge of it being stolen, and stated that he had previously bought it from a fellow construction worker. He denied any knowledge of stolen credit cards or references thereto.

Mr. Asciutto denied that he was ever indebted to the clubs, but rather explained that he would sometimes borrow from other persons at the clubs amounts ranging from $20 to $50. He added that he always repaid the loans.

The applicant denied ever stating that any informant should be tortured or murdered. He also denied ever telling Agent Genova to take the "Fifth Amendment" concerning the subpoenas to testify before the Grand Jury. He explained that the 1964 arrest in Buffalo concerned a "card game". In explaining the 1973 loitering arrest in Cheektowaga, the result of a police raid of an illegal gambling establishment, he stated that it was the only time he had been there, as he had went for a ride with a friend.

In reference to his gambling in the social clubs, he stated that he usually gambled with borrowed money, since he was not working and that he did such in order to bring home money for his family as there was no work available. He explained that he had no problems during his two (2) years of employment in Las Vegas (1976-78), and that he came to New Jersey because he thought there would be better opportunities and that he did not want to raise his son in the atmosphere of Las Vegas. His intentions were to take a position as a craps instructor, if licensed.

The applicant denies knowing that he had been named as an unindicted co-conspirator until such time as it was brought to his attention during this investigation based on his application for licensure in New Jersey. He explained that after he had been subpoenaed to appear before the Grand Jury, his scheduled appearance was adjourned, and shortly thereafter he went into the hospital for a gall bladder operation.

Subsequently, he moved to Las Vegas and stated that he heard no more about the Grand Jury investigation except for one contact from an F.B.I. agent in Las Vegas.

Mr. A. J. Dandurand, a polygraph consultant, testified on behalf of petitioner. His qualifications are set forth in Exhibit P-26. He explained that the applicant was administered a polygraph examination by himself at his office on April 26, 1979. The results of the examination are also contained in Exhibit P-26.

The Division objected to the admission of the results of such examination, particularly since such examination was administered unilaterally and without any participation by the Division. Legal arguments were submitted by both parties regarding its admission. I ruled that such evidence was admissable as being relevant and in accord with the liberal treatment afforded such evidence in administrative hearings as expressed in Section 108 of the Casino Act, and in the Regulations, N.J.A.C. 19:42-2.6. However, I gave limited weight to the results of the examination, in arriving at the decision in this case, since the examination was conducted in a unilateral manner. In fact, the witness admitted that the results would be less accurate when the examinee knew that the results, if not favorable, would not be used against him. Obviously, that was the case in this situation.

The conclusions of Mr. Dandurand, as based on the results of the polygraph examination, are generally that the applicant did not offer to sell a stolen ring or tape deck to Agent Genova, did not owe the Nairy Social Club $25,000 in gambling debts, did not threaten or

intend harm to the informant investigating the Nairy Social Club, did not plan to invoke the Fifth Amendment before the Grand Jury, did not knowingly associate with any members of organized crime, and was not employed by the Nairy Social Club as a dealer. However, the results of the examination indicate neither that applicant denies his membership affiliation with the Nairy Club, nor that he denies serving as a dealer at the club for which he was compensated with tips from the patrons.

The burden of proof is clearly upon the applicant in this type of proceeding. The objection lodged against the applicant concerns the question of whether he has commited any acts which indicate that his licensure would be inimical to the policy of the Casino Act and to casino operations. The Division has introduced evidence to substantiate allegations of such inimical acts, particularly the testimony of Agent Genova. The applicant denies much of the contentions of Agent Genova, but not all of them.

The Division contends that:

> "Mr. Asciutto gambled so much that he eventually was in debt to the sum of $25,000 to both clubs. Given the intense pressure at the clubs ... to repay the loans, it is easy to see why Mr. Asciutto classified himself as being desperate for money according to Agent Genova. Mr. Asciutto's desperation led him to offer stolen merchandise to Genova."

The evidence offered by both sides concerning the stolen property, the threats to the informant, and the Fifth Amendment before the Grand Jury, are all inconclusive. On the one hand there is the testimony of Agent

Genova, who is certainly a credible witness and who apparently has no interest in the outcome of this case. On the other hand, there are the denials of the applicant, who does have an interest, and the supporting results of the polygraph examination. More importantly, however, is the fact that by his own admission, the applicant was substantially involved in what amounts to illegal gambling activities at the social clubs in Buffalo. Furthermore, applicant's criminal record shows gambling related arrests in Cheektowaga, New York, and in Buffalo, as far back as 1964. The exhibits submitted by applicant, both in testimony and letter form, regarding his present and recent past standing in his communities, relating to his business relationships and his relationships with his fellow employees and superiors, were basically uncontested by the Division. Even assuming the truth and accuracy of all of these statements, i.e., that applicant pays his debts on time, he was a conscientious employee, etc., nevertheless, the question remains as to whether his past involvement with illegal gaming activities should classify licensure of him as being inimical to the policy of the Act and to casino operations.

In its letter of objection (Exhibit P-25), the Division states that it "objects to Mr. Asciutto's licensure, maintaining that his involvement in illegal gaming activities is inimical to the policy of the Act". In its closing statement, which was submitted subsequent to the close of the hearings, counsel for the Division contends that "Mr. Asciutto has longstanding ties to members of organized crime" and that he "is a prototype of the type of individual that the law was designed to keep

out of the New Jersey gaming industry". Additionally, he states that it is the Division's position that the applicant has commited offenses, which though not prosecuted, are nevertheless statutory disqualifiers under the Act. This latter position was not previously expressed as the Division's position as per the letter of objection. Nevertheless, when the applicant's standing is considered in light of all the facts brought forth throughout the hearings, I cannot escape the conclusion that the Commission must interpret the applicant's substantial history of involvement with illegal gaming as falling within the parameters of constituting an "offense which indicates that licensure of the applicant would be inimical to the policy of this Act" (Section 86c). Furthermore, I find that the applicant either knew or should have known that the Nairy Social Club was run or affiliated with characters known as being members of organized crime. Accordingly, I concur with the Division's position that applicant's licensure would be inimical to the policy of the Act.

Specifically, based upon the entire record, I FIND that:

1. Petitioner has applied for a casino license permitting him to work as a floorman in a casino and as an instructor in a gaming school.

2. Petitioner had substantial involvement with illegal gambling activities during the period 1970-75.

3. Said illegal gambling activities were affiliated with elements of "organized crime" in the Buffalo, New York area.

4. Petitioner was named as an unindicted co-conspirator in regard to these activities.

5. The inimical clause of Section 86c of the Act is applicable to this situation.

Based upon the facts adduced at the hearings in this proceeding, and the applicable statutory law, I CONCLUDE that applicant must be disqualified from receiving a casino employee license or gaming school instructor license, based upon the issues that were litigated during this proceeding.

I, THEREFORE ORDER that the licenses in issue not be granted to petitioner.

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

I HEREBY FILE with the Casino Control Commission my Initial Decision on this matter and the record in these proceedings.

June 23, 1980
DATE

Eugene D. Ginley
EUGENE D. GINLEY, A.L.J. c/b

Receipt Acknowledged:

June 25, 1980
DATE

Joseph P. Lordi
AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

E X H I B I T S

Petitioner

P-1	Letter of Recommendation -- A. Torcasio
P-2	Letter of Recommendation -- P. Bertges
P-3	Letter of Recommendation -- J. Gundacker
P-4	Letter of Recommendation -- S. Smith
P-5	Letter of Recommendation -- J. Walls
P-6	Letter of Recommendation -- L. Ginsburg
P-7	Letter confirming loan -- F. State
P-8	Statement regarding assistance -- J. Asciutto
P-9	Statement regarding assistance -- R. Virgillo
P-10	Statement regarding assistance -- J. Asciutto
P-11	Buffalo Arrest Record
P-12	Hospital Record
P-13	Letter from Dept. of Justice - 4/16/79 -- R. Endler
P-14	Letter from Dept. of Justice - 5/25/79 -- D. O'Keefe
P-15	Complaint -- Cheektowaga, New York
P-16	Certificate of Discharge or Conviction -- Cheektowaga, N.Y.
P-17	Letter of Recommendation -- R. Bisek
P-18	Letter regarding applicant's son -- R. Oldis
P-19	Letter of Recommendation -- J. Sisinni
P-20	Letter of Recommendation -- J. Bell
P-21	Letter of Recommendation -- M. Mavromatis
P-22	Letter of Recommendation -- M. LeWine
P-23	Letter of Recommendation -- J. Quattrone
P-24	Letter of Recommendation -- C. Zeno
P-25	Letter of Objection -- Division of Gaming Enforcement
P-26	Letter from A.J. Dandurand (Polygrapher) -- qualifications and results of examination
P-27	Polygraph charts
P-28	List of polygraph examination questions

Division of Gaming Enforcement

DG-1	New York State Police Record -- Raid at Cheektowaga, N.Y.
DG-2	Indictment -- Salvatore J. Pieri, et al.
DG-3	Rap sheets of the six indictees
DG-4	Petitioner's loan applications -- Guarantee Bank

Joint

J-1	Personal History Disclosure Form-2

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 107-79
CCC DOCKET NO. 79-EA-9

IN THE MATTER OF THE APPLICATION :
OF GANDOLPH V. ASCIUTTO FOR :
LICENSURE AS A CASINO EMPLOYEE : FINAL COMMISSION DECISION
AND GAMING SCHOOL INSTRUCTOR. :

F. Frederick Perone, Esq., appeared for the Applicant.

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

On July 14, 1978, Gandolph V. Asciutto [hereinafter: "Applicant"] filed an application for licensure as a casino employee and gaming school instructor with the Casino Control Commission. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter: "Division"] for the appropriate background investigation. See N.J.S.A.5:12-76.

As a result of this investigation, the Division submitted a letter-report dated January 23, 1979 to Chairman Lordi interposing an objection to the licensure of the Applicant. The Applicant thereafter was advised that there was a substantial possibility that the Commission would deny his application for licensure. He thereupon requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 5:12-107(a)(1).

After the issuance of a Prehearing Conference Order, the matter proceeded to formal hearing on August 9, 30 and 31, 1979.

Administrative Law Judge Eugene D. Ginley filed his Initial Decision in this matter on June 25, 1980, a copy of which is appended hereto as A-1 through A-16. The Initial Decision was served upon the parties on June 27, 1980. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded ten days from their receipt of the Initial Decision to file a statement of written exceptions or objections to the findings and conclusions of the Administrative Law Judge. No exceptions or objections have been filed by either party.

In his Initial Decision, the Administrative Law Judge recommended that the Applicant be denied licensure. The Commission agrees. However, for the purposes of clarity and completeness, we are constrained to set forth in detail the findings of fact and conclusions of law supportive of our decision.

Judge Ginley's recommendation to deny licensure is based primarily upon his finding that "the applicant's substantial history of involvement with illegal gaming ... [falls] within the parameters of constituting an 'offense which indicates that licensure of the applicant would be inimical to the policy of this Act' (Section 86c)." (A-14). The Commission is compelled to reject the recommendation to deny licensure on this specific ground for two reasons. First, no finding is set forth in the Initial Decision as to what specific criminal offense the Applicant has committed which would render his licensure inimical to the Act and casino operations. See N.J.S.A. 5:12-86(c)(4). The finding of substantial involvement in

illegal gaming simply lacks the specificity required for disqualification of an applicant from licensure pursuant to N.J.S.A. 5:12-86(c)(4) and (g). Moreover, assuming the Applicant's involvement in illegal gambling is equivalent to the commission of a specific criminal offense, the Initial Decision further fails to address the criteria that must be considered in assessing whether the offense involved indicates that the Applicant's licensure would be inimical to the policies of the Casino Control Act and to casino operations. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (1979) at p.15.

In the Commission's view, the primary question to be determined is whether the Applicant has sustained his burden of establishing by clear and convincing evidence the various affirmative qualifications for licensure set forth in N.J.S.A. 5:12-89(b)(2) which are incorporated by reference in N.J.S.A. 5:12-90(b). In the instant matter, there is no serious question as to the Applicant's financial stability, integrity and responsibility (N.J.S.A. 5:12-89(b)(1)) or business ability and experience, N.J.S.A. 5:12-89(b)(3). However, the Division strongly contends that the Applicant has failed to sustain his burden of establishing his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b). Although this issue was specifically addressed at the hearing, the Initial Decision fails to articulate specific findings of fact or

conclusions of law concerning these affirmative criteria. Thus, the Commission is compelled to review de novo the entire record in this regard.

While N.J.S.A. 5:12-89(b)(2) speaks in terms of reputation for good character, honesty and integrity, of primary concern to the Commission is an applicant's actual character. Nevertheless, an applicant's reputation is especially significant since it not only may reflect upon actual character, but is also significant in terms of public confidence and trust in the integrity of the regulatory process and casino operations. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 79-CL-1 (1979) at pp. 8-9. With these principles in mind, we will proceed to assess the character, honesty and integrity of the Applicant and to determine whether he has established these attributes by clear and convincing evidence in the proceedings herein.

Numerous factors bear upon an applicant's character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) enumerates, without limitation, those factors which the Legislature deems relevant in this regard. It provides:

> Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. 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. Each

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

The foregoing quotation indicates the comprehensive nature of the background information to be considered with regard to this issue.

Our review of the record reveals that the Applicant was born and raised in Buffalo, New York (T121-14).[1] After serving in the armed forces during World War II (T24-6), the Applicant returned to Buffalo where he married in 1947 (T27-5). Five children were born of this marriage during the 1947-57 period (T27-7). From 1947 to 1970, the Applicant was, for the most part, employed on a regular basis as a truck driver in the Buffalo area (T25-20 to T27-17). Commencing in 1970, and for a period of between four and five years thereafter, the Applicant testified, he was unable to find work and resorted to public assistance in order to support his family (T27-18 to T28-23).

Although the record is somewhat unclear, it appears that the Applicant in or about 1975 or 1976 moved to Las Vegas, where he was successful in securing employment in the gaming industry, first as a chip runner and later as a boxperson and floorperson in craps (T29-3 to T36-18). In April 1978, the Applicant left Las Vegas and relocated in the Atlantic City area (T36-20). In October 1978, the Applicant was employed by Penthouse Boardwalk Hotel in the personnel department and continued to be so employed in August 1979 when the hearings in this matter were held (T37-13).

---

[1] "T" refers to the transcript of the hearing held on August 9, 1979.

Generally speaking, it is clear that the Applicant's interest in gambling is more than a passing one. The Applicant's involvement in illegal gambling dates back to at least 1964, when he was arrested at a "social club" during a police raid of an illegal card game[2] (T91-3; T124-3 to 19). Again in 1973, the Applicant was arrested in Cheektowaga, New York, while participating in an illegal card game at another so-called "social club" (T93-24 to T95-21).[3] The Applicant also admitted going to Niagara Falls a few times to participate in illegal dice games (T176-1).

Standing alone, the Applicant's involvement as a player in illegal gambling activities on the above occasions reflects adversely, though not severely, upon his character, honesty and integrity. Yet when such conduct is viewed in the context of the whole record, it becomes readily apparent that the Applicant's involvement in illegal gambling was much more than casual. Moreover, the record amply demonstrates that the Applicant's participation in such activity transcended mere participation as a player.

Much of the testimony elicited at the hearing concerned the nature and scope of the Applicant's activities at various "social clubs" in Buffalo during 1974-75, particularly the Applicant's involvement in illegal gambling at the Nairy Social Club [hereinafter "Nairy"] and others from May 1974 to March 1975.

---

2 It is unclear from the record whether the Applicant was charged with the violation of any offense. Similarly, the nature of the Applicant's activity when arrested does not appear in the record.

3 The Applicant was charged with violating New York Penal Code, Section 210.35, loitering. This charge was ultimately dismissed.

The Applicant testified that as a member of the Nairy, he would frequent the club four to five times per week (T48-14; T51-10).[4] It is the Applicant's testimony that Nairy provided various activities for its members. These activities included ping pong, television and card games. One such card game played by the Nairy's members was ziganette (T48-25 to T49-6). Although other card games were played for money, the Applicant testified that the door to the club was generally left open unless ziganette was being played (T138-20 to T139-4). During the course of a ziganette game, entrance to the club could only be obtained by ringing a buzzer. A doorman would then look through a peephole in order to identify the person seeking to gain admittance. If the person were known, he or she would be admitted (T157-23 to T158-25). The Applicant further testified that the "house" would take a cut of five percent of the winnings from ziganette games (T62-12; T144-8 to 14). Credit from the "house" could also be arranged through one Mike Bona who acted as the manager of the Nairy (T144-1 to 24).

A far more graphic picture of the Nairy is revealed in the testimony of Richard A. Genova, a special agent for the Federal Bureau of Investigation. Genova was assigned to the F.B.I.'s Buffalo office in May 1974. The purpose of this assignment was to attempt to put a halt to what was seen as a developing power struggle among organized crime forces due to the illness of one Stefano Maggadino, the reputed organized crime boss in Buffalo (2T99-23 to 2T101-1).[5]

---

[4] Although the Applicant was a member of the Nairy, he admitted never having paid any dues (T50-20).

[5] "2T" refers to the transcript of the hearing held on August 30, 1979.

To accomplish this purpose, Genova assumed a fictitious identity, went undercover and attempted to associate himself with one Sam Pieri, who, according to the F.B.I.'s investigation, appeared to be the dominant force in this power struggle. F.B.I. investigations also indicated that Pieri was running various "social clubs" in Buffalo, including the Nairy. As a result, Genova was brought to the Nairy by an F.B.I. informant. Thereafter, Genova frequented the Nairy on a daily basis from May 1974 to March 1975 (2T101-2 to 2T104-22).

Genova testified that although various social activities were available to patrons of the Nairy, the purpose of this club was to provide an establishment for conducting illegal gambling, namely the card game ziganette (2T109-14). Upon review of the entire record we so find.

The evidence in support of this finding abounds. In addition to the testimony of the Applicant, Genova testified at length concerning the manner in which ziganette was conducted at the Nairy. First, those with supervisory authority at the club encouraged members to play ziganette, since this was how the club made its money (2T120-19). Secondly, while there were refreshments provided at the club, they were only made available to those playing ziganette (2T119-8). Thirdly, occasional patrons of the Nairy who did not play ziganette were discouraged from coming to the club (3T61-21 to 3T62-7).[6] Finally, the Nairy virtually never closed (2T118-16; 2T194-10).

---

[6] "3T" refers to the transcript of the hearing held on August 31, 1979.

As noted earlier, one of Genova's main objectives while undercover at the Nairy was to get as close as possible to Sam Pieri. Genova was successful in this regard. After a period of time, Genova became friendly with Pieri and was trusted as part of his group. On a number of occasions Genova acted as Pieri's chauffeur. Pieri and Genova also became partners in an illegal poker club. Through the organization of this club, Genova learned that these so-called "social clubs" could not operate without Pieri's permission (2T138-24 to 2T140-3).

Based upon Genova's discussions with Pieri and others, together with his observations of the Nairy's operation, he was successful in obtaining information regarding the club's organizational structure and management. Genova testified that Pieri himself advised him that he controlled the Nairy as well as another "social club" in Buffalo (2T211-10). In exercising such control, Pieri made the final decision on who would be employed by the Nairy and this included who served as the house dealer in ziganette (2T135-11). Although Pieri seldom appeared at the Nairy, others who were supervisors at the club were responsible for encouraging members to play ziganette, keeping order while ziganette was being played, arranging credit for players from the "house" and supervising the activities of the house dealer and doorman (2T196-11).

Bearing in mind that the issue presently before the Commission is the Applicant's character, honesty and integrity, we now focus upon the nature and scope of the Applicant's

involvement with the Nairy. The Applicant testified that he frequented the club four to five times per week (T5 to 10). While there he would watch television or play various card games, including ziganette (T51-13). The Applicant also admitted that on occasion when a regular ziganette dealer was absent, upon receiving permission from Mike Bona, one of the Nairy's supervisors, he would deal on behalf of the house (T53-20).[7]

While Genova's testimony confirms that the Applicant frequented the Nairy on almost a daily basis, his testimony is at odds with the Applicant's regarding the nature of the Applicant's activities at this club. While the Applicant denied acting as a doorman or house dealer regularly (T144-2; T155-3), Genova testified that the Applicant acted as both a house dealer and doorman on a regular basis (2T126-22 to 2T130-10). Based upon our review of the entire record, it is clear to us and we find that the Applicant regularly performed the functions of house dealer and

---

[7] A house dealer in the game of ziganette oversees the game while it is being played. This entails determining who has placed winning and losing wagers and paying off such wagers on behalf of the players. The house dealer also is responsible for taking the house "cut", which at the Nairy was five percent of the player dealer's (as distinguished from the house dealer) winnings, as well as arranging credit from the house for players (2T128-15 to 2T129-24).

doorman at the Nairy while ziganette games were in progress.[8] The question which must be answered is how such conduct reflects upon the Applicant's character.

To say the least, the Applicant's conduct as a dealer and doorman at the Nairy reflects negatively upon his character and integrity. See In the Matter of the Application of Thaddeus E. Watley for Licensure as a Casino Employee, Docket No. 78-EA-14(1979) The Applicant's long term occupational participation on behalf of the "house" in a moderately large scale illegal gambling operation strikes at the heart of fundamental policies of the Casino Control Act. See N.J.S.A. 5:12-1. Standing alone, such facts are enough to support the conclusion that the Applicant has utterly failed to sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b). However, even a casual perusal of the record in this matter reveals other factors which reflect adversely upon the Applicant's character, honesty and integrity.

During the course of the F.B.I.'s investigation of Sam Pieri and the activities at the Nairy, subpoenas were served upon numerous individuals who frequented the club, including

---

[8] Genova testified that he was never able to ascertain whether dealers or doormen received a salary from the house for the performance of their duties (2T222-15). Nevertheless, it is clear from the testimony of both the Applicant and Genova that dealers were compensated in the way of tips from players. Genova further testified that these positions were very lucrative, and that depending upon the amount won, which at times was as high as $1,000 per card, tips of $100 were not uncommon (2T127-14 to 2T128-6).

the Applicant, to appear before a Federal Grand Jury. After these subpoenas were served, it became apparent to the Nairy's patrons that an F.B.I. informant had infiltrated the club. Not surprisingly, speculation at the Nairy as to the identity of the informant was rampant. During the course of one particular conversation between the Applicant and Genova on this subject, Genova testified, the Applicant stated that "when they find the informant they should hang him by the balls and kill him" (2T161-12). Notwithstanding his testimony to the contrary, we find that the Applicant in fact made this statement to Genova. Needless to say, the Applicant's suggestion that the then unknown informant should be tortured and murdered is hardly that of a person of good character, honesty and integrity.

Apart from their speculations as to the identity of the informer, certain of those who frequented the Nairy often discussed what should be done with regard to the subpoenas. Genova testified that the Applicant in particular was extremely upset about being served with a subpoena and was fearful of incarceration (2T156-10 to 2T157-19). Genova also testified that he overheard the Applicant state to a third party that if worse came to worse those who had been served should flee rather than testify (2T158-1). Under cross-examination, the Applicant himself admitted that one of the reasons he left

Buffalo and went to Las Vegas was to avoid testifying before the grand jury (T203-25 to T204-24). Based upon our review of the entire record, we find that the Applicant left Buffalo at least in part to avoid testifying before the grand jury. This conduct further reflects adversely upon the Applicant's character, honesty and integrity.

As part of his efforts to gain credibility with the patrons of the Nairy, Genova would at times express interest in, and in fact, purchase what was represented to him to be "hot", i.e., stolen, merchandise from various patrons. The Applicant was one such person. Genova testified, and we find, that the Applicant sold Genova a tape deck, which the Applicant admitted to having purchased from a "passerby" (2T144-25 to 2T-146-4; T71-21 to T74-16). We also find that the Applicant sold a ring to Genova that the Applicant represented as being stolen property (2T141-1 to 2T142-17). We find further that the Applicant solicited Genova to enter into a scheme involving the use of stolen credit cards (2T146-5 to 2T147-17). These are assuredly not the acts of a person of good character, honesty and integrity who would inspire public confidence in the industry.

In making the foregoing findings regarding the Applicant's suggestion of torture and murder of the informant, his sale of merchandise represented to be stolen and finally his attempt to engage Genova in a scheme involving stolen credit

cards, we are not unmindful of the findings of the Administrative Law Judge concerning these matters. In the Initial Decision it is stated:

> The evidence offered by both sides concerning the stolen property, the threats to the informant, and the Fifth Amendment before the Grand Jury, are all inconclusive. On the one hand there is the testimony of Agent Genova, who is certainly a credible witness and who apparently has no interest in the outcome of this case. On the other hand, there are the denials of the applicant, who does have an interest, and the supporting results of the polygraph examination.

Based upon our review of the entire record, including the interest, or lack thereof, of the witnesses in the outcome of this proceeding, the finding of the Administrative Law Judge that Genova was a credible witness (A-13), and the weight we ascribe to the evidence, including the results of the polygraph examination admitted over the Division's objection, we reject the foregoing finding of the Administrative Law Judge to the extent that it implies that the proofs on these issues are in equipoise. We find that they are most assuredly not. In crucial respects we have relied upon the clear and coherent testimony of Agent Genova as to whom no motive to falsify appears in the record. We find that testimony to be both forthright and credible.

As noted above, the Legislature has mandated that numerous factors are to be considered in assessing an applicant's character, honesty and integrity. These factors, of course, include business, professional and personal associations. N.J.S.A.5:12-89(b)(2). The Commission has had occasion to address how such associations reflect upon character, honesty and integrity.

> Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associates's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of its associates, termination of the association and the reasons for termination. Only after all the significant circumstances are taken into account can it be determined whether an association casts an unfavorable light upon the applicant or person to be qualified. The mere fact that some innocent relationship may have existed with persons of unsuitable character would not alone indicate a failure to meet the standard of good character, honesty and integrity. Of course, it is incumbent on the applicant to demonstrate either that it had no involvement with notorious or unsavory persons or that such involvement indicates no lack of good character, honesty and integrity.
> In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket 79-CL-1 (1979) at p.10.

At issue in this matter is whether the Applicant's association with the Nairy reflects adversely upon his character, honesty and integrity. With respect to the patrons of the Nairy, as distinguished from those performing employment functions on behalf of the "house," little can be gleaned from the record regarding their character or reputation. While it was Agent Genova's opinion that the club was frequented by "the criminal element

or degenerate gamblers" (2T189-15), there is nothing before us to substantiate this opinion. Although questions are certainly raised regarding the character of the Nairy's patrons based upon their presence at this club alone, we decline to determine whether the Applicant's association with such patrons reflects adversely upon his character, honesty and integrity upon this sparse basis. However, the Applicant's association with those individuals at the Nairy who were employed by the "house", requires closer scrutiny. From our review of the record, it is clear that the Applicant associated with those individuals on an almost daily basis during the period Genova remained under cover (May 1974 - March 1975). It is also apparent that the purpose of these associations was neither social nor casual. Rather, we find that the dominant purpose of the Applicant's association with the employees of the Nairy was to engage in concert with such employees in the maintenance and operation of an illegal gambling club for economic gain.

In assessing whether these associations reflect adversely upon the Applicant's character, honesty and integrity, we focus upon the reputation and character of the associates together with the Applicant's knowledge of such reputation or character. Additionally, we consider what effort, if any, was made by the Applicant to determine the suitability of these associates.

Although the record is not entirely clear regarding the reputation of each of the individuals who engaged together in the maintenance and operation of the Nairy, we have, at minimum, the Applicant's admission that he had read in the Buffalo newspaper that Joseph Fino and Joseph Moses, both of whom played a part in the management of the club, were affiliated with organized crime (T166-4). Hence, it becomes obvious that the Applicant willingly associated with persons known to him to have unsavory reputations. Given the fact of such knowledge, the negative reflection these associations cast upon the Applicant's character, honesty and integrity is manifest.

The final issues with regard to these associations are whether they have been terminated, and if so, the reason for the termination. The Applicant testified that the Nairy closed after subpoenas were served in connection with the grand jury investigation (T259-10). Assuming without deciding, that the Applicant's recent contact with these associates has been curtailed, if not completely terminated, nothing has been brought to the attention of the Commission probative of any conscious intent or effort on the part of the Applicant to affirmatively sever these unsavory relationships. Rather, we find that any curtailment or termination thereof resulted fortuitously from the Applicant's somewhat forced relocation to Nevada and later, New Jersey. Consequently, no favorable

inference may be drawn from the apparent cessation of the Applicant's associations discussed above.

In light of the foregoing, the Commission finds that the Applicant's long-standing association in an occupational manner with those persons involved in the management and supervision of the Nairy were unconscionable. No substantially mitigating circumstances have been proffered by the Applicant. In their absence, these associations reflect most adversely upon the Applicant's character, honesty and integrity.

In light of the foregoing discussion, it is abundantly clear that the Applicant has utterly failed to establish by clear and convincing evidence either his reputation for good character, honesty and integrity or his actual good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b). Moreover, based upon the Applicant's general involvement in illegal gambling activities over a period of years, his long-term direct participation as an employee in the operation of illegal gambling at the Nairy, his sale of goods represented by him to be stolen, his suggestion that the law enforcement informant at the Nairy be tortured and murdered and his occupational association with those responsible for the management and operation of illegal gambling at the Nairy, we find that the Applicant abysmally lacks the attributes of good character, honesty and integrity. We therefore conclude that the Applicant is not qualified for licensure.

A further issue specifically addressed at the hearing was whether the Applicant is disqualified from licensure for having intentionally failed to disclose on his Personal History Disclosure Form [hereinafter: "PHDF"] the fact that he was named as an unindicted co-conspirator in the indictment in United States v. Salvatore J. Pieri, et al., Docket No. 77-58, which was returned in the Western District of New York on March 23, 1977 (DG-2 evid.). Conspicuous by their absence are any findings of fact or conclusions of law on this issue in the Initial Decision.

Based upon our de novo review of the entire record, we find that the Applicant's nondisclosure does not disqualify him. At the hearing, the Applicant testified that he was unaware of being named as an unindicted co-conspirator until apprised of this fact by the Division during the course of an interview conducted subsequent to the Applicant's submission of his PHDF (T41-13 to T42-3). Correspondence in the record from the United States Department of Justice supports the Applicant. The Justice Department's letter of April 16, 1979 (P-13 evid.) confirms that although the Applicant is named in the aforedescribed indictment, he was neither served with a copy of the indictment, nor contacted by the Justice Department's Buffalo office concerning the then pending trial of those individuals who were in fact indicted. Hence, we cannot say that the Applicant intentionally or consciously withheld the requested information. See N.J.S.A. 5:12-86(b).

Also addressed at the hearing was the issue of whether the Applicant is an associate of a career offender or a career offender cartel within the meaning of N.J.S.A. 5:12-86(f). This subsection mandates disqualification upon:

. . . .

> f. The identification of the applicant ... as ... an associate of a career offender or a career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations. For purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State. A career offender cartel shall be defined as any group of persons who operate together as career offenders;

. . . .

The findings and conclusions of the Administrative Law Judge which appear to be addressed to this issue are less than clear. Although the Judge concluded that licensure of the Applicant would be inimical to the policies of the Act (A-14), whether he based his recommendation to deny licensure upon N.J.S.A. 5:12-86(c)(4)[9] or upon N.J.S.A. 5:12-86(f) is simply not apparent from the Initial Decision.

---

[9] N.J.S.A. 5:12-86(c)(1), (2) and (3) enumerate offenses, conviction of which results in disqualification from licensure. N.J.S.A. 5:12-86(c)(4) provides that disqualification from licensure results from conviction for "any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and casino operations."

We have found above that the Applicant's association with those persons directing the conduct of illegal gambling at the Nairy firmly demonstrates his lack of good character, honesty and integrity. While our review of the record suggests that the Applicant may very well have been an associate of a career offender or a career offender cartel, because the Applicant's unsavory associations have been considered in the context of the affirmative qualification criteria of good character, honesty and integrity and have been found to demonstrate his lack of these essential qualifications, we find it unnecessary to reach any conclusion regarding whether his associations fit the terms of N.J.S.A. 5:12-86(f).

One further matter bears discussion. It has been our experience that issues often arise during hearings which have not been formally framed for administrative determination. See In the Matter of the Application of Charles Clentschscale for Licensure as a Casino Employee, Docket No. 79-EA-113 (1979). This case is no exception. As a result of the testimony adduced at the hearing regarding the Applicant's involvement in the operation of illegal gambling at the Nairy, questions pertaining to a host of disqualification criteria surface. We note in passing that the following issues are implicated in this record:

1. Was the Applicant's involvement in illegal gambling at the Nairy, although not prosecuted, conduct constituting a criminal offense which would render his licensure inimical to the Act and casino operations? N.J.S.A. 5:12-86(c)(4) and (g).

2. Is the Applicant a career offender or a member of a career offender cartel? N.J.S.A. 5:12-86(f).

3. As a result of the Applicant's occupation as a house dealer at the Nairy, has he pursued economic gain in a manner contrary to N.J.S.A. 5:12-86(e)? [10] For the reasons we have expressed above, we deem it unnecessary to make findings and conclusions regarding these issues.

For the reasons set forth herein, we conclude that the Applicant has failed to sustain his burden of establishing by clear and convincing evidence, his reputation for and actual good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b). Accordingly, the application of Gandolph V. Asciutto for licensure as a casino employee and gaming school instructor is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: October 1, 1980

---

[10] N.J.S.A. 5:12-86(e) provides for disqualification on the basis of:

> . . . .
>
> The pursuit by the applicant...of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, if such pursuit creates a reasonable belief that the participation of such person in casino operations would be inimical to the policies of this act or to legalized gaming in this State. For purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain; ...
>
> . . . .

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-110

IN THE MATTER OF THE APPLICATION	:	
OF HELEN M. BAKIS FOR LICENSURE	:	FINAL ORDER
AS A CASINO EMPLOYEE (DEALER)	:	

This matter having been opened to the Casino Control Commission at its public meeting of September 5, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, no exceptions having been filed, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge as hereinafter modified, and to deny Helen M. Bakis' application for licensure.

IT IS on this 6th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter as hereinafter modified be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Helen M. Bakis be and hereby is denied based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof, except that the Applicant's fraudulent collection of $732 in unemployment benefits is hereby found to be a

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

IT IS FURTHER ORDERED that the Administrative Law Judge's conclusion that the Applicant's fraudulent collection of unemployment benefits constitutes an offense rendering her licensure inimical to the policy of the Act and casino operations be and hereby is rejected as unnecessary.

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: 9/6/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

HELEN M. BAKIS, PETITIONER, DIVISION OF GAMING ENFORCEMENT, RESPONDENT.	INITIAL DECISION OAL DKT. NO. CCC 3993-79 AGENCY DKT. NO. 79-EA-110

APPEARANCES:

Joseph A. Mussemeli, Esq., Deputy Attorney General for the Division

Helen M. Bakis, Petitioner, Pro Se

WITNESSES:

Helen M. Bakis

Henryka Schneider

Ronald Lemanowicz

EXHIBITS:

P-1 Letters of Recommendation
C-1 Personal History Disclosure Form
R-1 Agreement for Repayment of Refund and Fine
R-2 Request for Wage and Separation Information
R-3 Letter, dated 3/1/78
R-4 Unemployment Insurance Request for Information
R-5 Determination and Demand for Refund of Unemployment Benefits
R-6 Possible Wage Benefit Conflict
R-7 Possible Wage Benefit Conflict

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

On January 18, 1979 the petitioner filed her application with the Casino Control Commission for licensure as a casino employee (dealer). On August 15, 1979 the Division of Gaming Enforcement objected to the petitioner's application. The Casino Control Commission advised the petitioner of the objection and of the petitioner's right to a hearing by letter dated September 4, 1979. A hearing was requested by the petitioner by letter received by the Casino Control Commissioner on September 11, 1979.

A hearing was held before the undersigned on April 3, 1980. At the conclusion of the hearing, I allowed Mrs. Bakis to file supplemental affidavits which she did on April 29, 1980, at which time the record was closed.

The first objection of the Division pertains to an alleged failure on the part of Mrs. Bakis to reveal facts material to her qualification, in violation of N.J.S.A. 5:12-86b. The facts concerning this allegation are largely undisputed and can be taken from the testimony of Mrs. Bakis herself together with her answers to the Personal History Disclosure Form (C-1). I find those facts to be as follows:

From November, 1976 to February, 1978 Mrs. Bakis worked as a waitress at a diner in Brooklawn, New Jersey (T-20 - 18 to T-21 - 15). She worked forty (40) or more hours per week (T-21 - 16 to 17). On February 18, 1978 she was called into the manager's office and accused of taking a $1 tip belonging to another waitress (T-22 - 1 to 12; R-2; R-3). She had apparently been watched for approximately two (2) months by the management (T-22 - 9 to 10; R-3). She was also accused of having taken tips on past occasions and stealing coffee and other items (R-2).

Mrs. Bakis denies having intentionally taken the dollar tip on the evening in question, asserting that it was a mistake on her part due to her busy schedule that night (T-22 -1 to 4). She also testified that she was fired, in her opinion, for refusing the sexual advances of her manager (T-22 - 13 to 18).

Despite her full time employment from November, 1976 to February, 1978, Mrs. Bakis failed to reflect that employment in answer to part 7 of the Personal History Disclosure Form (C-1; R-20-18 to 23). She intentionally omitted that employment in order to prevent the Casino Control Commission from learning that she was fired on an accusation of stealing (T-21-18 to 22). "I didn't put that down because I thought it was going to hurt me." (T-35-5 to 6).

Question Number 33 of the Personal History Disclosure Form reads as follows:

"Were you ever discharged or asked to resign from employment?"

Mrs. Bakis answered "Can't recall" (C-1 page 14). She did this intentionally in an effort to be consistent with her previous ommission of her employment at the diner in Brooklawn:

"*** Why didn't you just say yes there?

"That would be contradicting what I put down on the other one.***" (T-23-22 to 24).

The investigator for the Division of Gaming Enforcement, Ronald Lemanowicz, confronted Mrs. Bakis with information concerning her employment and termination at the diner in Brooklawn. When that occurred, Mrs. Bakis turned to her husband and complained that they had squealed on her (T-26-13 to 18).

The fact that Mrs. Bakis was fired from her employment on an accusation of stealing, less than one year prior to the date on which she filed her application for licensure, must certainly be considered a fact material to qualification within the meaning of N.J.S.A. 5:12-86b. There can be no doubt, from the testimony of Mrs. Bakis herself, that she intentionally withheld this information on her Personal History Disclosure Form because she knew that it would have a negative impact on her application for licensure. I CONCLUDE that the foregoing findings require the disqualification of Mrs. Bakis by the express mandatory terms of the aforesaid statute.

The second objection of the Division of Gaming Enforcement is the allegedly fraudulent collection of unemployment compensation benefits by the petitioner. R-5 in evidence is a determination and demand for refund of unemployment benefits and imposition of penalty and disqualification of conflicting wages prepared by the Division of Unemployment and Disability Insurance of the Department of Labor and Industry. This form shows that from June 20, 1978 to December 26, 1978, Mrs. Bakis collected Unemployment Benefits while she was working at Cinelli's Country House. This evidence was uncontradicted and, in fact, corroborated in large part, by Mrs. Bakis. R-1 in evidence is a signed acknowledgment by Mrs. Bakis that she in fact defrauded the Division of Unemployment and Disability Insurance and agreed to pay a penalty of $260 above and beyond the required repayment of the undeserved benefits. The contents of this document are also uncontradicted by Mrs. Bakis.

Based upon R-1 in evidence, R-5 in evidence and Mrs. Bakis' own testimony, I find that Mrs. Bakis collected unemployment benefits fraduently in the amounts and for the time periods set forth in those documents. N.J.S.A. 2A:111-2 was the applicable statute prohibiting this fradulent conduct at the time that it took place. That statute was not set forth in N.J.S.A. 5:12-86c as originally adopted. The revised Criminal Code has replaced that statute with N.J.S.A. 2c:120-4a which is listed as a specific disqualifier in the amended Casino Control Act. This apparent conflict can be easily resolved in this case because I CONCLUDE that the offense, continuing for a period of six (6) months and ending less than one (1) month prior to the filing of the application for licensure, renders licensure of the applicant inimical to the policy of the Casino Control Act and to casino operations within the meaning of N.J.S.A. 5:12-86c.

The lengthy duration of the fradulent conduct and its very recent occurrence also bar a finding of rehabilitation within the meaning of N.J.S.A. 5:12-90h, and I SO CONCLUDE.

I FURTHER CONCLUDE that the intentional ommission of relevant information and the recent occurrence of fraudulent conduct require a finding that Mrs. Bakis has not demonstrated by clear and convincing evidence her good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2).

Although I was impressed with the letters of recommendation (These were forwarded subsequent to the hearing with the Judges' permission and marked P-1 in evidence by the Judge. They do not appear in the transcript), they pale in probative value when compared to the concrete evidence of the specific acts recorded in the foregoing findings.

For all of the foregoing reasons IT IS HEREBY ORDERED that the application of petitioner for licensure as a casino employee (dealer) be DENIED.

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

I HEREBY FILE with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

6/9/80.
DATE

NORMAN D. SMITE, ALJ

Receipt Acknowledged

June 12 1980
DATE

AGENCY HEAD

Mailed to Parties

DATE

OFFICE OF ADMINISTRATIVE LAW

mjl

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CL-2

IN THE MATTER OF THE APPLICATION :
OF BALLY'S PARK PLACE, INC., a :
New Jersey Corporation, FOR A :
CASINO LICENSE. :

FINAL ORDER GRANTING
CASINO LICENSE WITH
CONDITIONS.

This matter having been brought before the New Jersey Casino Control Commission upon the application of Bally's Park Place, Inc., a New Jersey corporation, for a casino license; Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq. (Sills, Beck, Cummis, Radin & Tischman, Esqs.) appearing for the applicant; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel;

IT IS on this 13th day of January, 1981, ORDERED that, for the reasons stated in the record and subject to all of the conditions set forth therein, Bally's Park Place, Inc., a New Jersey corporation, be and hereby is issued a casino license effective as of December 29, 1980;

And is is further ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CSI- 13

IN THE MATTER OF THE APPLICATION :
OF BALLY MANUFACTURING CORPORATION, :
a Delaware Corporation, FOR A :
CASINO SERVICE INDUSTRY LICENSE. :

FINAL ORDER GRANTING
CASINO SERVICE INDUSTRY
LICENSE WITH CONDITIONS

This matter having been brought before the New Jersey Casino Control Commission upon the application of Bally Manufacturing Corporation, a Delaware corporation, for a casino service industry license (gaming related); Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq., (Sills, Beck, Cummis, Radin & Tischman, Esqs.) appearing for the applicant; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel;

IT IS on this 31st day of January, 1981, ORDERED that, for the reasons stated in the record and subject to all of the conditions set forth therein, Bally Manufacturing Corporation, a Delaware corporation, be and hereby is issued a casino service industry license pursuant to N.J.S.A. 5:12-92(a) and (b), effective as of December 29, 1980;

And it is FURTHER ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 80-CL-2
80-CSI-13

IN THE MATTERS OF THE APPLICATION :
OF BALLY'S PARK PLACE, INC., a :
New Jersey Corporation, FOR A :
CASINO LICENSE AND THE APPLICATION :
OF BALLY MANUFACTURING CORPORATION, :
a Delaware Corporation, FOR A :
CASINO SERVICE INDUSTRY LICENSE. :

FINAL ORDER REGARDING
THE QUALIFICATION OF
WILLIAM T. O'DONNELL

These matters having been brought before the New Jersey Casino Control Commission upon the application of Bally's Park Place, Inc., a New Jersey corporation, for a casino license, and upon the application of Bally Manufacturing Corporation, a Delaware corporation, for a casino service industry license (gaming related); Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq. (Sills, Beck, Cummis, Radin & Tischman, Esqs.) appearing for the applicants; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence

in the record and the briefs and arguments of counsel; and the Commission having, for good cause shown and for the reasons set forth in the record, made the following findings:

1. By virtue of his role in Bally Manufacturing Corporation, his significant stock holdings therein and his reasonable expectation of returning to his former position of leadership in the company if permitted by this Commission, William T. O'Donnell was:

(a) a person required to meet the qualification standards, except residency, for a casino key employee in order for Bally's Park Place, Inc., a subsidiary of Bally Manufacturing Corporation, to be eligible to receive a casino license (N.J.S.A. 5:12-85(c) and (d)); and

(b) a person required to meet the qualification standards, except residency, for a casino key employee in order for Bally Manufacturing Corporation to be eligible to receive a gaming related casino service industry license (N.J.S.A. 5:12-92(a) and (b); N.J.A.C. 19:43-1.14(a)(1)).

2. William T. O'Donnell has failed to establish by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) for a casino key employee.

IT IS on this 13th day of January, 1981, ORDERED that William T. O'Donnell be and hereby is adjudged not qualified to the standards of a casino key employee; and

IT IS FURTHER ORDERED that William T. O'Donnell comply with all agreements, conditions and restrictions stated in the record and designed to remove the said William T. O'Donnell as a

person required to be qualified in order to issue a casino license to Bally's Park Place, Inc., or a casino service industry license to Bally Manufacturing Corporation; and

IT IS FURTHER ORDERED that William T. O'Donnell refrain from accepting any position, taking any employment or acquiring any interest whereby the said William T. O'Donnell would be required by the Casino Control Act or the regulations of the Commission to qualify to the standards of a casino key employee; and

IT IS FURTHER ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Nos. 80-CL-2
80-CSI-13

IN THE MATTERS OF THE APPLICATION :
OF BALLY'S PARK PLACE, INC., a :
New Jersey Corporation, FOR A :
CASINO LICENSE AND THE APPLICATION :
OF BALLY MANUFACTURING CORPORATION, :
a Delaware Corporation, FOR A : OPINION
CASINO SERVICE INDUSTRY LICENSE. :

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman
Martin B. Danziger, Vice-Chairman
Don M. Thomas, Commissioner
Carl Zeitz, Commissioner
Madeline H. McWhinney, Commissioner

APPEARANCES

For Bally's Park Place, Inc., and Bally Manufacturing Corporation:

Clive S. Cummis, Esq.
Stanley Tannenbaum, Esq.
Robert A. Baime, Esq.
Sills, Beck, Cummis, Radin & Tischman, Esqs.,
Newark, New Jersey

For William T. O'Donnell:

Albert E. Jenner, Esq.
Anton R. Valukas, Esq.
William D. Heinz, Esq.
Jenner & Block, Esqs., Chicago, Illinois

For Alexander R. A. Wilms and family:

Peter H. Ehrenberg, Esq.
Freda L. Wolfson, Esq.
Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs., Roseland, New Jersey

For the Division of Gaming Enforcement:

G. Michael Brown, Assistant Attorney General
Robert B. Sturges, Assistant Attorney General
Stephen C. Becker, Deputy Attorney General

For the Casino Control Commission:

R. Benjamin Cohen, General Counsel
Robert J. Genatt, Senior Assistant Counsel
David C. Missimer, Assistant Counsel

I.

INTRODUCTION

On February 24, 1978, Bally's Park Place, Inc., a New Jersey corporation (then known as Bally of New Jersey, Inc.) applied to the Casino Control Commission for a casino license.[1] In accordance with the Casino Control Act, the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into the qualifications of Bally's Park Place. While the investigation was in progress, Bally's Park Place proceeded with the reconstruction of the former Dennis Hotel into a proposed casino hotel facility involving substantial other new construction upon the site of the former Marlborough-Blenheim Hotel.

1. Bally's Park Place, Inc., the corporate casino license applicant is a wholly-owned subsidiary of publicly-traded Bally's Park Place, Inc., a Delaware corporation. ["Bally's Park Place (Delaware)"]. Bally's Park Place (Delaware) is in turn an 82.8% owned subsidiary of publicly-traded Bally Manufacturing Corporation, a Delaware corporation whose principal place of business is at 2640 West Belmont Avenue, Chicago, Illinois. As will be seen, Bally Manufacturing Corporation is itself a direct applicant for a casino service industry license.

On October 1, 1979, Bally's Park Place formally requested issuance of a temporary casino permit pursuant to N.J.S.A. 5:12-95.1, et seq. After conducting a hearing on this request, the Commission found that, subject to certain conditions, Bally's Park Place met the requirements for a temporary casino permit. The Commission then issued such a permit and a certificate of operation effective December 29, 1979. Bally's Park Place has been operating its casino hotel continuously since that date. The temporary casino permit expired at midnight on December 29,1980.

The statutory requirements for a temporary casino permit are limited to areas which do not concern the suitability of the corporate applicant or the suitability of the entities and persons required by law to be qualified for a casino license. However, those deferred suitability issues are essential to this plenary casino license determination.

In addition to the casino license application of Bally's Park Place, this Commission must decide the casino service industry license application of Bally Manufacturing Corporation, a Delaware Corporation [hereinafter, at times, "Bally"]. On January 25, 1978, Bally applied for a casino service industry license seeking authorization to conduct business directly relating to casino or gaming activity pursuant to N.J.S.A. 5:12-92(a) and (b). In the usual course, the matter was referred to the Division for investigation.

On August 12, 1980, the Division filed with the Commission its "Report" with regard to the application of Bally's Park Place for a casino license and the application of

On August 12, 1980, the Division filed with the Commission its "Report" with regard to the application of Bally's Park Place for a casino license and the application of Bally Manufacturing Corporation for a casino service industry license. Along with the Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. N.J.S.A. 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See N.J.S.A. 5:12-87.

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, five pre-hearing conferences were conducted. Those conferences resulted in five pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's Report. Further, the applicants and the Division have entered into limited stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such

matters pose no cause for concern. In this regard, the Commission takes notice of the fact that the applicants have to date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing. The real task at hand is to determine whether the evidence actually developed at this hearing indicates that the applicants are suitable or not.

The statutory standards which must be applied in deciding the suitability of Bally's Park Place for a casino license are contained in sections 84, 86 and 89 of the Act. N.J.S.A. 5:12-84, -86 and -89. Sections 84 and 89(b) set forth the criteria which the casino license applicant and the other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderence standard but somewhat less than the reasonable doubt requirement. Clear and convincing

evidence should produce in the mind of the Commission a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, an applicant must present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. N.J.S.A. 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For Bally's Park Place, a corporate casino license applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. N.J.S.A. 5:12-85(c) and-85(d). In determining whether a person is one required to be qualified, the paramount consideration is whether or not that person has the ability to significantly influence or control operations of the relevant company. Under Section 85(c), the following persons connected with Bally's Park Place must qualify:

(a) each officer;

(b) each director;

(c) each person holding any beneficial interest, direct or indirect, in the securities of the applicant corporation;

(d) any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and

(e) any lender, underwriter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Bally's Park Place, Inc., (Delaware) (the intermediary company) and Bally Manufacturing Corporation (the holding company) must qualify to the standards under Section 89, except residency. See N.J.S.A. 5:12-89. However, since both the intermediary company (Bally's Park Place, Inc., (Delaware)) and the holding company (Bally Manufacturing Corporation) are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities of the applicant corporation, Bally's Park Place, and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified in order for Bally's Park Place to receive a casino license. The Division also indicated those individuals to whom it interposed an objection and the

grounds for such objection. These materials were provided to the Commissioners and the parties. Of the 23 persons ultimately required to qualify, only William T. O'Donnell drew a specific and express objection from the Division. Although the Division initially objected to Alexander R. A. Wilms as well, the Division later agreed to waive Mr. Wilms as a person required to qualify if certain conditions are met. These matters are discussed in greater detail below.

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be demonstrated by clear and convincing evidence for the corporate applicant and the persons to be qualified.

The first such affirmative qualification criterion is that of "financial stability, integrity and responsibility." N.J.S.A. 5:12-84(a); N.J.S.A. 5:12-89(b). The second affirmative qualification criterion appears in Section 84(c) and in Section 89(b)(2). Although the wording of the two sections is not precisely the same, the difference is without consequence. A casino license applicant or a person required to qualify must demonstrate "by clear and convincing evidence...reputation for good character, honesty and integrity." N.J.S.A. 5:12-89(b)(2). Although literally this language refers to "reputation," the Commission has previously held the basic standard to be the actual character and trustworthiness of the individual. See In the Matter of the Application of Resorts International Hotel, Inc., for a

Casino License, (1979) Opinion at pp.8-9. Of course, reputation is an accepted indicator of character and an applicant would be obliged to convincingly dispel any negative reputation evidence.[2]. The third affirmative qualification criterion requires the applicant or qualifying person to demonstrate, by clear and convincing evidence, "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a successful, efficient casino operation," or that the qualifying person will achieve "success and efficiency in the position involved." N.J.S.A. 5:12-84(d); N.J.S.A. 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project. N.J.S.A. 5:12-84(b).

As previously indicated, in addition to the casino license application of Bally's Park Place, the Commission must also rule upon the casino service industry license application of Bally Manufacturing Corporation. This corporation seeks to provide goods or services to New Jersey

---

2. A fuller explanation of the licensing criteria and the decisional process is contained in the written instruction provided by the presiding officer, Vice-Chairman Danziger, to the Commission members for their guidance. The instruction has been transcribed in the record and need not be restated at length here. (T12/25/80 appendix). It suffices to note that the Commission followed the guidelines in reaching its decision.

casinos which directly relate to casino or gaming activity. More precisely, this company is a manufacturer and supplier of gaming equipment. Thus, the suitability standards to be satisfied by Bally Manufacturing Corporation in order to obtain a casino service industry license are those set forth in Sections 92(a) and 92(b), 86 and 89 of the Casino Control Act. N.J.S.A. 5:12-92(a), -92(b), -86 and -89.

Under Section 92(b), Bally Manufacturing Corporation, as well as its owners, management and supervisory personnel and other principal employees must qualify under standards, except residency, established for qualification of a casino key employee under Section 89 of the Act. The affirmative qualification criteria of this section have been set forth above. The so-called negative or disqualification criteria of Section 86 are also incorporated by reference in Section 89. N.J.S.A. 5:12-89(d). As to the persons who must meet these criteria as part of the Bally casino service industry license application, they will be considered together with the group of individuals who must similarly qualify as part of the Bally's Park Place casino license application.

Simply stated, the task of the Commission on these applications is to determine whether Bally, Bally's Park Place and the persons required to individually qualify have convincingly demonstrated the positive attributes required by

the Act.[3] In its investigative report and its "Statement of Issues" the Division directed the attention of the Commission to several areas of concern. Each of the significant areas were fully explored at the hearing. At the conclusion of this proceeding, the Division objected to William T. O'Donnell as a person who must qualify for both the casino license application of Bally's Park Place and the casino service industry license application of Bally Manufacturing Corporation. Further, the Division objected to both companies as being generally unfit for licensure. A review of the lengthy record and the voluminous exhibits reveals that Mr. O'Donnell either initiated the most important events in question or bore direct responsibility for them in his role as Bally's undisputed leader. Put differently, to recount Mr. O'Donnell's activities is to recount the relevant history of Bally. Thus, we address ourselves first to Mr. O'Donnell's suitability and the suitability of the other "qualifiers." Thereafter, we consider the suitability of the corporate entities.

---

3. There is no allegation that any of these entities or individuals falls under one or more of the disqualifying or negative criteria of Section 86. N.J.S.A. 5:12-86.

II.

PERSONS REQUIRED TO QUALIFY

A. WILLIAM T. O'DONNELL

1. INTRODUCTION

William T. O'Donnell who presently resides in Winnetka, Illinois, was born on September 26, 1922, in Chicago, and was educated at Loyola Academy and Sullivan High School in Chicago. He left high school before graduation to help support his family. From 1943 to 1945 he served in the United States Marine Corps. Early in 1946 William O'Donnell became employed by Lion Manufacturing Company in the purchasing department. Approximately six to eight months later he moved to the sales department. By the mid 1950's he had become the sales manager and by late 1950's the general sales manager.

Lion Manufacturing had been founded in the 1920's by Raymond J. Moloney, primarily as a mail order business. In 1931 the company was incorporated and began manufacturing a pinball machine known as the "Bally-hoo." During the 1940's and 1950's Lion produced and sold pinball machines and various other types of coin operated machines (including, until about 1949, slot machines), primarily for domestic consumption.

In 1958 Mr. Moloney died and his estate, which included Lion Manufacturing, was placed in trust with the American National Bank and Trust Company of Chicago as administrator. William O'Donnell was one of five directors of Lion appointed by American National. In 1962 American National advised the Lion directors that it intended to

liquidate the assets of Lion since the company was not then profitable and since American National felt that liquidation was in the best interests of the estate. Mr. O'Donnell requested, and American National granted him, the opportunity to raise the necessary money to purchase the assets of Lion. Ultimately, Mr. O'Donnell succeeded in assembling a small group of investors who acquired the assets of Lion on June 17, 1963, from the estate of Mr. Moloney for $1.2 million.

In March 1968, Bally Manufacturing Corporation was incorporated, and in April 1968, Lion was merged into Bally. In 1969 Bally made its initial public offering of common stock, and in 1971 Bally made a second public offering of common stock. In August 1975, Bally's common stock began to be traded on the New York Stock Exchange.

Bally is today a publicly-traded corporation. The approximately 25,500,000 shares of common stock of the company are distributed amongst approximately 22,676 stockholders of record and approximately 65,000 beneficial owners. In addition, approximately $35 million of 6% convertible subordinated debentures due 1998 are owned by 369 holders of record. Bally's principal business involves the design, manufacture, sale and distribution of slot machines, German gaming machines, various types of pinball machines, arcade-amusement games and other related products. Bally-owned distributors sell these and competitive lines of machines, as well as types of coin-operated equipment which Bally does not itself manufacture. Bally

operates 209 arcade-amusement centers in 37 states and leases coin-operated products and equipment, including slot machines. Since December 29, 1979, a majority-owned subsidiary has operated a casino hotel in Atlantic City. Products manufactured by Bally are distributed throughout the world by a network of distributors, including distributors which are wholly-owned or majority-owned subsidiaries of Bally. Distributors of Bally's products market such products through approximately 70 locations in the United States and Canada and approximately 20 locations abroad. 18 distribution locations in the United States and 6 locations in other countries are maintained by wholly-owned or majority-owned subsidiaries of Bally. As of December 31, 1979, Bally had total assets of $602 million. For the first three quarters of 1980, Bally's revenues were $347 million, net income was $38.6 million and earnings per share were $1.45.

Until December 1979, Mr. O'Donnell was president, chairman of the board of directors and chief executive officer of Bally. At that time, investigative concerns relating to Mr. O'Donnell's suitability were expressed by the Division with regard to the application of Bally's Park Place for a temporary casino permit. As part of an agreement among Bally Manufacturing Corporation, Bally's Park Place (Delaware), Bally's Park Place and Mr. O'Donnell, dated December 5, 1979, Mr. O'Donnell resigned as president, chairman of the board, employee and director of Bally and all its subsidiary companies. He agreed not to exert any influence or control over Bally and its subsidiary companies. Additionally, he further agreed to

execute an irrevocable voting trust with regard to all his shares of stock in Bally Manufacturing Corporation and in Bally's Park Place (Delaware). The voting trustees are authorized and directed to vote Mr. O'Donnell's shares in accordance with the majority of the shareholder votes cast in any particular election by the shareholders. Finally, Mr. O'Donnell agreed that: (1) upon a Commission finding of non-qualification as to him, he would promptly submit to the Commission for approval a plan of divestiture of his stock; and (2) upon final adjudication of a Commission finding of non-qualification as to him, he would divest himself of the stock of Bally and its subsidiaries owned by him. This agreement was made a condition of the temporary casino permit issued to Bally's Park Place, effective December 29, 1979. Mr. O'Donnell is the largest single stockholder of Bally. In addition, he owns stock in Bally's Park Place, (Delaware). Mr. O'Donnell was up until the time of his resignation the acknowledged leader and prime mover of the Bally group.

As an officer, director, major stockholder and principal employee of Bally and some of its subsidiaries, William O'Donnell clearly would have been a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Bally's Park Place to be eligible to hold a casino license. While Mr. O'Donnell has resigned from these positions and placed his stock in a voting trust, all parties to this proceeding, including Mr. O'Donnell, seek a determination as to his

qualification. In any event, by virtue of the history of Mr. O'Donnell's relation to Bally, his significant stock interests and his intent to return to a position of control should he be found to be qualified, he is a person whom the Commission considers appropriate for qualification. N.J.S.A. 5:12-85(c) and (d). For these reasons, Mr. O'Donnell also falls into the group of "owners, management and supervisory personnel" who must meet the same high standards as part of the application of Bally Manufacturing Corporation for a gaming-related casino service industry license. See N.J.S.A. 5:12-92(b). Mr. O'Donnell, therefore, has the affirmative responsibility to establish by clear and convincing evidence his "financial stability, integrity and responsibility," his "good character, honesty and integrity," and his "business ability and casino experience." N.J.S.A. 5:12-89(b).

With regard to Mr. O'Donnell, the bulk of the evidence presented to the Commission relates to the licensure criterion of "good character, honesty and integrity." The Act requires the Commission in determining an individual's "good character, honesty and integrity" to examine, among other factors, that individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs and business, professional and personal associates." N.J.S.A. 5:12-89(b)(2).

In order to determine whether an individual is in fact qualified, this Commission must make a judgement as to how that individual will conduct himself in the

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

"Good character" is a concept used repeatedly in legal as well as everyday affairs. It is demanded in sundry situations, including, among others, business, personal and governmental relationships. A person's "character" is usually thought to embrace "all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men." Mester v. United States, 70 F.Supp. 118, 122 (E.D. NY. 1946), aff'd 332 U.S. 749 (1947). Because of its generality, the subject defies a cataloguing of all conceivable facts and factors which define the standard. When viewed in a vacuum, the concept loses all significance. The standard, however, draws specificity from each setting and from the

particular objectives sought to be achieved. Trap Rock Industries v. Kohl, 59 N.J. 471, 483 (1971) cert.den. 405 U.S. 1065 (1972). So here, the nature of the subject, that is, the suitability to participate in the sensitive casino gaming industry in New Jersey, itself supplies concreteness to the concept of "good character." The demand is for a party who will perform honestly and whose record does not suggest a lack of that essential integrity. Hence, we must look to an individual's past conduct as a guide to how that individual is likely to operate a casino facility in the future.

In an effort to meet his statutorily imposed burden, Mr. O'Donnell produced evidence in support of his good character, honesty and integrity. Witnesses having substantial backgrounds in law enforcement testified as to Mr. O'Donnell's good character, honesty and integrity. David P. Schippers, a former head of the Chicago Strike Force, whose prior testimony was placed in evidence, stated that at no time had he received "information indicating that any of the officers or agents of that firm [Bally] were directly or indirectly involved in organized crime." Mr. William F. Beane, the former FBI Special Agent in Charge for Chicago, testified that he had personally reviewed the FBI files on Bally and Mr. O'Donnell and that he "would be willing to put [his] 28 years in the Bureau on the line and go to work for them." The Commission also heard the testimony of Thomas A. Foran, a former United States Attorney with an impressive record of prosecuting organized crime, who testified that when he asked the FBI for a report on Mr.

O'Donnell, he was told that "Bill O'Donnell was as straight as an arrow and was extremely helpful to the Bureau." James M. Rochford, Bally's Vice President of Corporate Security and a former Superintendent of Police for the City of Chicago, described Mr. O'Donnell as "absolutely honest" and "a man of his word and when he says something you can bet your life on it."

Numerous bankers and other members of the financial community gave their opinions of Mr. O'Donnell's good character and testified to his good reputation in the financial community. These included: J. Joseph Anderson, Senior-Vice President of Continental Illinois Bank and Trust Company; Alan Stults, Honorary Chairman of the Board, and Robert Engelman, Jr., Executive Vice President, both of American National Bank and Trust Company of Chicago; Samuel W. Sax, Chairman of the Board of the United of America Bank; and Lee S. Isgur of Paine, Webber.

Other witnesses testified as to Mr. O'Donnell's good character and his reputation in the community where he lives and works. Two Jesuit priests, the Reverend Lawrence Reuter, president of Loyola Academy (a private secondary school operated by the Society of Jesus), and the Reverend John H. Reinke, Chancellor of Loyola University in Chicago, stated that Mr. O'Donnell's reputation in the community where he lives and works is "very favorable" and "impeccable." In addition, the Honorable Abraham L. Marovitz, Senior Judge of the United States District Court for the Northern District of Illinois, testified

that Mr. O'Donnell's reputation in the community is that of "an honest, decent man and member of our community." Judge Marovitz also testified that in his own opinion, Mr. O'Donnell is "a very excellent human being." Still other witnesses, such as Mary Mitchell and Walter Wojtaszek, testified as to good deeds done by Mr. O'Donnell during his lifetime.

In examining the whole man and the entire circumstances in which he performed, the Commission must carefully consider all of the testimony regarding Mr. O'Donnell's character, honesty and integrity. Several individuals with impeccable credentials willingly came forward to praise Mr. O'Donnell's candor, honesty, generosity and compassion. Based either on their personal contacts with Mr. O'Donnell or on law enforcement sources available to them, these witnesses were aware of no reason to doubt that Mr. O'Donnell is an upright, trustworthy and law abiding businessman.

Due regard must be given to such positive opinion and reputation testimony. However, in determining the proper weight to accord this evidence, the Commission must consider not only the relationship of each witness to Mr. O'Donnell and Bally but, more importantly, the reliability and scope of the basis on which the opinion or reputation testimony rests. In point of fact, none of the character witnesses produced by Mr. O'Donnell exhibited knowledge of all the significant information regarding his activities and associations which has now been brought to the attention of this Commission. Thus, with the opinion and reputation testimony in mind, the Commission must scrutinize the

entire record to reach its own conclusion as to the character of Mr. O'Donnell.

Since the bulk of the evidence concerned specific acts and events in which Mr. O'Donnell was personally involved or for which he was directly responsible, a threshold question arises as to the relative value of specific act evidence, opinion testimony and reputation in judging character, honesty and integrity. Again the latter two types of evidence may not be ignored. However, if the Commission finds that an individual engaged in certain conduct which, under all the circumstances and in light of all the relevant evidence, indicates character flaws or shortcomings, the insights thus obtained would naturally deserve greater weight than contrary favorable proofs in the form of opinion or reputation evidence. Evidence of specific acts provides "the most decisive revelation of character." McCormick,Evidence, §187 at 443 (2 ed. 1972). Although true character can never be viewed directly, it is manifested by the actual behavior of the individual. Opinion and reputation, when accurate, are themselves nothing more than the residue of an individual's conduct. Quite simply, it is a theorem long-since proven by human experience that actions speak louder than words.

The Division of Gaming Enforcement has recommended that the Commission find William T. O'Donnell to be unsuitable for qualification. In so recommending, the Division points to evidence of specific acts and events which assertedly belie the favorable opinion and reputation testimony and raise serious

questions about Mr. O'Donnell's character. Thus, the Commission is required to determine whether Mr. O'Donnell's actions, viewed in the context in which they occurred, do disclose a lack of fitness. While the record is too voluminous to permit a detailed recitation of the proofs regarding Mr. O'Donnell's behavior, the Commission has taken pains to carefully assess all the pertinent evidence. We now proceed to comment upon these matters which we deem most significant.

2. GERARDO CATENA

Shortly after he began working for Lion in 1946, Mr. O'Donnell became acquainted with a company known as Runyon Sales, which was for many years the largest distributor for Lion, having exclusive rights to the New York, New Jersey and Connecticut areas. (In the coin machine business, the distributor is the entity which purchases the product from the manufacturer, and in turn sells it to the operator, who is the ultimate owner of the equipment). Mr. O'Donnell was in frequent contact during that period with Runyon Sales' principals including Abe Green, with whom he became friends. Mr. O'Donnell also had telephonic and personal contact during this period with Barnet Sugarman, a partner in Runyon Sales. On a visit to Runyon Sales in the middle 1950's Mr. O'Donnell was introduced to Gerardo Catena, whom he knew to be associated with Runyon.

Sometime in the early 1950's, Mr. O'Donnell had heard rumors that both Catena and Joseph "Doc" Stacher were connected with Runyon Sales. He had also learned at that time, from a Dun and Bradstreet report, that Runyon Sales was reputed to have

hoodlum or unsavory connections. At that point Mr. O'Donnell had asked Abe Green if Catena or Stacher were Green's partners. Green had replied that Stacher had been, but was no longer, and that Catena still was a partner.

In point of fact, during the period from 1950 to 1965 Gerardo Catena was the subject of numerous governmental and media reports in the public record, all of them negative and all referring to his organized crime affiliations. One particular example involved the so-called Apalachin meeting in 1957, in which Catena was stopped in a car along with Russel Bufalino and Vito Genovese. The matter generated substantial publicity. Based upon this and other factors, the reputation of Gerardo Catena was that he was a member of organized crime. Catena's reputation was, in the words of the Nevada Gaming Commission, of a "notorious and unsavory" nature.

In 1962, four years after the death of Lion's founder, Raymond Moloney, American National Bank and Trust Company of Chicago ("American National"), the administrator of Mr. Moloney's estate, stated its intent to liquidate the assets of Lion. Mr. O'Donnell sought an opportunity to raise the necessary money to purchase Lion. Mr. O'Donnell made unsuccessful attempts (a) to persuade American National to finance the purchase of Lion; (b) to persuade the Moloney family to keep the company together; and (c) to purchase Lion's assets in conjunction with R.F. Jones (a San Francisco-based Bally distributor). Thereafter, Mr. O'Donnell turned to Abe Green of Runyon Sales, with whom such a proposal was discussed at a

dinner meeting in Chicago. At that point in time Mr. O'Donnell knew that Green was a partner with Gerardo Catena in Runyon Sales, that Green and Catena were also partners in other businesses, and that Catena was reputed to be a hoodlum.

Green indicated interest in Mr. O'Donnell's proposal, and in 1963 contacted Sam W. Klein concerning the purchase of Lion. Klein was already acquainted with both Green and Catena since, as O'Donnell learned later, Klein had met Catena and had attempted to purchase Runyon Sales in 1960. Klein brought in Louis M. Jacobs, a principal of the Emprise Corporation, who, in turn, contacted Frank J. Prince. Another investor was Barnet Sugarman. As noted, Mr. O'Donnell knew Mr. Sugarman to be a partner in Runyon Sales. Green and Sugarman also brought in Irving Kaye, who was known to Mr. O'Donnell and who was an owner of the Irving Kaye Company along with Green, Sugarman, and Catena.

The named individuals formed a corporation, K.O.S. Enterprises, which in June of 1963 acquired the assets of Lion for approximately $1.2 million. The principals of K.O.S. were at that time divided into two groups: (1) the O'Donnell group, consisting of Messrs. O'Donnell, Kaye, Green, and Sugarman; and, (2) the Klein group, consisting of Klein, Jacobs, and Prince. Klein and Jacobs subsequently purchased Prince's shares.

In March of 1964 Barnet Sugarman died. Mr. O'Donnell testified that he then first learned that Catena had a hidden ownership interest in Lion. Specifically he was advised that Sugarman and Abe Green

had each acquired one-half of their respective interests in K.O.S. Enterprises for the benefit of Catena. At that point Catena and Green purchased what had been Sugarman's interest in K.O.S. from his widow. Thereafter Green told Mr. O'Donnell that Catena was getting older and wanted to liquidate his assets. Mr. O'Donnell was interested in buying out Catena because of his reputation and prior hidden ownership of Lion. By this time, Catena's underworld reputation as the underboss of the Vito Genovese crime family was well documented publicly. In July of 1965, an agreement was signed whereby Mr. O'Donnell purchased some of Green's record shares of Lion. This agreement was intended to buy out Catena's interest in the company, although it contains no reference to Mr. Catena or any other third party.

In the meantime, in October of 1964, a partnership was formed for the purpose of purchasing the real estate on which the Lion premises were located. This was the 2640 West Belmont Avenue Partnership, and consisted of all the shareholders of Lion, those then being Messrs. O'Donnell, Klein, Kaye, Green and Jacobs. Although Mr. O'Donnell had learned prior to that time that Green had fronted for Catena in the purchase of Lion and in the Irving Kaye Co., he recalls making no inquiry of Green as to whether he was fronting for Catena in the real estate partnership as well.

Green himself remained a partner of Catena in Runyon Sales until late 1970 and Runyon Sales was retained as the exclusive Bally distributor in the New York, New Jersey, and

Connecticut areas until at least 1974, when it was nominally replaced by Coin-Op. Although Mr. O'Donnell had "some concern" over Bally's use of a distributor partly owned by Catena, such concern was not acted on in any way other than for O'Donnell to occasionally express such concern to Green.

Green did not buy Catena out of Runyon Sales until December of 1970 at a time when Catena was in prison for contempt of the New Jersey State Commission of Investigation. During the period from 1970 to 1975, Catena was confined continuously in New Jersey for his contemptuous refusal to answer questions put to him by the State Commission of Investigation concerning organized crime activities, following a grant of testimonial immunity.

According to Mr. O'Donnell, Irving Kaye first learned in March of 1964 that Green and Sugarman had been fronting for Catena in the Irving Kaye Co. Kaye nevertheless knowingly remained a partner of Catena in that company until 1971. This was despite suggestions from Mr. O'Donnell that Kaye, who was a vice president of Bally during this period, should buy out Catena because of Catena's reputation.

Meanwhile, Bally Manufacturing Corporation was incorporated in 1968. In 1966 the Jacobs interests were purchased by the Klein and O'Donnell groups. Thereafter, in 1968, Bally Manufacturing Corporation was formed and Lion was merged into Bally. The resulting equity structure of Bally remained substantially unchanged from the Lion ownership until Bally's initial public securities offering in 1969.

By this time, Mr. O'Donnell's ambitions for Bally had begun to be realized. In a period of just four years, Bally had become so dominant in the Nevada slot machine market that, in 1968, Bally sold over 90% of the new slot machines in that State. Mr. O'Donnell attributed this near sales monopoly to the superiority of the company's product.

The evidence before us suggests that during the 1960's there were hidden ownership interests in a group of casinos in Nevada, including the Sands, Flamingo, Freemont, and Horse Shoe, to which Bally supplied its slot machines. Hidden profits were reportedly skimmed out of these casinos, and some were ultimately funnelled from Las Vegas to New Jersey where they were shared by, among others, Gerardo Catena. Michael "Mickey" Wichinski, who was Bally's first successful Nevada slot machine distributor during the 1960's, had a familial relationship with Catena by virtue of the marriage of Wichinski's nephew to Catena's daughter. Wichinski had been referred to Mr. O'Donnell by Abe Green. Wichinski himself held a percentage ownership in the Sands Hotel, which was one of the first Nevada casinos to which Bally sold slot machines, and Wichinski received commissions for all these sales. Wichinski also became an investor along with Mr. O'Donnell in the Westronics Co. in or about 1965 and remains so to this day.

In 1971 Bally made a second public offering of its stock. A portion of the proceeds therefrom were used to redeem the shares owned by Abe Green and his family. This was prompted by earlier discussions with Nevada authorities concerning

Bally's contemplated bid for public registration there. Nevada officials indicated to Mr. O'Donnell that Bally would have difficulty being licensed as long as Green was associated with the company. Pursuant to an agreement with Bally, Irving Kaye also disposed of a quantity of his stock and used the proceeds to buy out the record and beneficial interests then held by Green, Catena and Mrs. Catena in various companies in which Kaye was an owner.

Subsequent to the 1971 public offering, the only remaining shareholders of Bally who had participated in the 1963 acquisition of Lion were Irving Kaye, Sam Klein, and William O'Donnell. In 1975, Kaye was denied a gaming license in Nevada based upon his "numerous business relationships over a period of years with Gerardo Catena, a person of notorious and unsavory reputation." Kaye subsequently resigned as an officer of Bally and sold his stock. Kaye died in 1977. In 1976, Klein's probationary licensure was revoked by Nevada, and Klein was ordered to resign from Bally and divest himself of his stock, although his continued partnership with Mr. O'Donnell in the 2640 West Belmont Avenue Partnership was left, and remains to this day, undisturbed. These events now leave William O'Donnell as the only remaining shareholder of Bally who participated in the acquisition of Lion.

From these facts it is apparent that, in order to acquire Lion Manufacturing in 1963, William O'Donnell entered into partnership with individuals (Green and Sugarman) "fronting" for Gerardo Catena, who was then known to Mr.

O'Donnell as a member of organized crime. Mr. O'Donnell was made aware that Green, Sugarman and Kaye were partners with Catena in numerous business ventures. Moreover, another of the K.O.S. partners, Sam Klein, turned out to be too tolerant of the disreputable Gerardo Catena. Nevada's 1976 revocation of Klein's probationary license followed his being observed in May of 1976 playing golf in Florida with Catena. These relationships occurred, for the most part, at the very inception of what was to become a highly successful gaming enterprise led by Mr. O'Donnell. They were conceived as a result of his calculated business judgments which, from a strictly commercial point of view, proved well-founded. They were cultivated by Mr. O'Donnell, through the years, despite his notice and increasing awareness of facts that should have counseled him to immediately sever these potentially corruptive influences. Illustrative is the fact that although Catena's interest in Bally (then Lion) was bought out in 1965, Bally nevertheless continued a business relationship with Runyon Sales until at least 1974, and that until 1971, Catena continued his part ownership of Runyon. Moreover, to this very day, William O'Donnell remains a partner of Sam Klein's in the 2640 West Belmont Building Partnership which leases to Bally the premises on which its main factory in Chicago is located.

3. DINO CELLINI

Another questionable and disturbing association which William O'Donnell was instrumental in formulating was one with Dino Cellini, whom this Commission has previously found to be an

"associate of Meyer Lansky and a person of unsuitable character." In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, (1979) at p. 36. ["Resorts"]. According to Mr. O'Donnell, Dino Cellini appeared at his office, unannounced, sometime in 1964 or 1965. Cellini had been referred by Cyril Schack, who was a principal of Phonographic Equipment Co., a substantial Bally distributor in England. Schack and Cellini were part owners of the Colony Club, a private gaming club in England, at which Cellini also performed managerial functions. Mr. O'Donnell himself had visited the Colony Club during the 1960's and had there socialized with Cellini.[4]

At the meeting in Mr. O'Donnell's office, Cellini told Mr. O'Donnell that he would have the authority to select slot machines for a new casino in the Bahamas. Based upon this conversation, in 1965 Mr. O'Donnell accompanied Cellini to the Bahamas where, after various discussions, the Bally Bahamian Company was set up.

Shortly thereafter, Cellini contacted Mr. O'Donnell to inform him that he, Cellini, had been excluded from the Bahamas for formerly running one of Meyer Lansky's casinos in Cuba. At that time Mr. O'Donnell knew Meyer Lansky to be a notorious

---

4. The Colony Club's other owners included Alexander Wilms, the managing director of one of Bally's European distributorships, and Carl Glickman, a close friend of Sam Klein and a Bally consultant. Also noteworthy is the fact that in 1968 newspaper articles appeared in Britain which alleged that Klein was a hidden owner of the Club.

organized crime figure. In 1967, Cellini was excluded from Great Britain for the same reasons he had been excluded from the Bahamas. Bally continued to pay commissions to Cellini for his sales of Bally slot machines in the Bahamas and Portugal in 1967 and 1968. However, Cellini was not paid directly. His commissions went instead to third party companies. This method of payment may have been selected to avoid the appearance of Dino Cellini's name in Bally's records.

At some subsequent point, Mr. O'Donnell recommended to Alexander Wilms that Cellini become a slot machine salesman for Bally Continental, a Belgium based distributorship which became a wholly-owned Bally subsidiary in 1969. Cellini did commence such employment in that year. Subsequently, Cellini began to receive from Bally Continental a draw against commissions in the amount of $2,000 per month. In addition to his receipt of this draw, Cellini's business expenses (which in some years totalled in excess of $50,000) were also paid by Bally Continental.

Sometime in 1971, inquiries were made concerning the possibility of Bally Manufacturing Corporation becoming licensed in Nevada for the purpose of purchasing Bally Distributing, a separate corporation selling Bally slot machines in Nevada. William O'Donnell was informed by Philip Hannifin, Chairman of the Nevada Gaming Control Board, that the company's association with Dino Cellini would cause substantial problems insofar as licensing was concerned.

From December 1971, (when a federal indictment was returned against Bally and Mr. O'Donnell in New Orleans) until

April 1973, (the date of their acquittal on that indictment), Bally's licensing initiative in Nevada was held in abeyance. Mr. O'Donnell spoke to Wilms occasionally during this period about terminating Cellini. Mr. O'Donnell testified that Wilms resisted, and so he, O'Donnell, did not insist.[5] Dino Cellini was eventually severed in May of 1973 about one month after Bally's acquittal and one month before its licensing effort in Nevada was resumed in June of 1973.

4. SOUTHLAND DISTRIBUTING: THE KENTUCKY BRIBERY INCIDENT

In the late 1940's or early 1950's, William O'Donnell first met or spoke to Gilbert K. Brawner, who was then an employee of Branson Distributing Company. Branson was at that time Lion's distributor in Kentucky and was selling bingo machines. Brawner later came to own Branson, which became Southland Distributing Company.

As a result of federal legislation in 1961, a question arose as to whether these bingo machines could be sent into various states. Test litigation involving a machine shipped to Branson in Kentucky was initiated by Bally in 1964, but was abandoned in 1966 when the Kentucky Legislature amended

---

5. In this period, on June 6, 1971, Dino Cellini was indicted by a federal grand jury in Florida. The indictment charged Cellini with evasion of taxes due on money skimmed from junkets to casinos in London and the Bahamas. Meyer Lansky was named as a co-defendant. Although O'Donnell was aware of this indictment, he claimed to have no knowledge of the specific allegations. The indictment was ultimately dismissed in 1977 or 1978.

the applicable statute so as to clearly prohibit importation of the bingo machines.

In late 1967, Mr. O'Donnell became aware of an initiative on the part of Brawner and others to attempt to have the Kentucky statute amended to legalize the bingo games. Letters on the subject were exchanged between Brawner and Mr. O'Donnell. The passage of such an amendment was in the interest of both Bally and Mr. O'Donnell. In response to a request from Brawner, legal advice was provided by Bally's attorneys at Bally's expense.

In a letter dated February 2, 1968, addressed to Mr. O'Donnell by Brawner, Brawner stated in part:

> One other thing, Bill, we have turned the bingo bill into the Research Committee this week. It seems as though more of the representatives and senators who have read the bill so far seems [sic] to think that we do have a very good chance of putting this bill over. My biggest problem is trying to raise enough to take care of the expenses in Frankfort...

Brawner also stated, in a letter to Mr. O'Donnell dated February 20, 1968:

> ...I am awfully afraid that I am not going to have enough money to get it through the House. It is really shameful because we have made all the arrangements with the representatives, and they all tell us that we have a 99 per cent chance to get it through. We are not worried too much about the senate, as we have made the senators an if come basis.
>
> Just last night I gave the chairman of the committee, which this bill is in, $500. That is what he wanted. It seems as though word got out that we have given him some money. Now, they are trying to put me on for more money...

In still another letter to Mr. O'Donnell dated February 23, 1968, Brawner stated:

> Our bill came out of the House favorably. There was [sic] eleven on the committee, and ten voted for it. We feel that we do have a big job ahead of us; but in addition, we have made a lot of contacts with the representatives. We feel that we will have in the neighborhood of 67 votes out of 100, which we only need 51.
>
> The only thing that we are now worried about is being able to have enough money on hand to get it through the House, but we are hoping that we will be able to get a lot of the representatives with less money than they are asking for. Mr. Akers, who introduced the bill, and myself have obligated ourselves to all of them.
>
> It is like I mentioned the other day that we feel that we will be able to work a deal with our senate when it gets that far. Our biggest problem is in the House...

On March 1, 1968, Mr. O'Donnell sent an airmail, special delivery letter to Brawner which read in part:

> Enclosed is the $4,000 loan you asked me for. Also enclosed is a note which I ask you to please sign and return to me.

At the time this letter and check were sent, the bill Brawner was supporting had passed the House and was pending in the Senate. The bill did not ultimately pass the Senate, however, and the $4,000 was returned to Mr. O'Donnell with a letter from Brawner dated March 18, 1968, which read in part:

> Enclosed you will find the note along with a check for $4,000. I want to take this opportunity to thank you for all the favors you have done for me, and I am sorry that we have to return this, as it could have been a real big thing for you and myself...

In testifying before this Commission, Mr. O'Donnell stated clearly that he interpreted Brawner's February 20, 1968,

letter to be referring to bribery. In particular, he interpreted the "if come basis" language of the second paragraph to refer to a contingent bribe arrangement with senators.

Mr. O'Donnell's explanation of this matter was that he never saw the February 20 and February 23 letters from Brawner, and that the $4,000 constituted a loan to Brawner. Mr. O'Donnell said he supposed he had spoken to Brawner prior to sending him the money, but could not recall any details of the conversation or the purpose for the loan other than his conviction that it was not for purposes of bribery.

When questioned as to how he could be so certain that he had never read the February 20th and February 23rd letters, Mr. O'Donnell responded:

> I think there are two facts that make [me] believe I never read those letters The first fact is that it was in my files. The second fact is that I never would have sent a check down there if I had read those letters.

At a later point, Mr. O'Donnell again stated that, had he read such letters, he would have thrown them away without bringing them to the attention of any enforcement agency.

On still another occasion, Mr. O'Donnell stated:

> If I had read those letters, your question is would I have referred that to a law enforcement agency...I think I have to answer I'm not sure what I would have done.

5. OTHER MATTERS OF CONCERN

During the course of the hearing, evidence was adduced on numerous other matters which bear upon Mr. O'Donnell's suitability. Although no single one of those other matters appears as a meaningful as any of the three areas set forth above, several of them do give cause for concern. Moreover, when these seemingly less significant events are viewed together with the more serious ones, the developing picture of Mr. O'Donnell is brought into sharper focus. Specifically, the quality of his business practices, the nature of his attitude toward regulatory authorities, and the degree of his commitment to disentangle the company from its suspect origins are better revealed in the

added light cast by these other matters. As always, the Commission has considered each event or sequence of events in the context of the entire record and in the circumstances in which they occurred. In the interest of clarity and brevity, however, our comments are directed to those which best serve to illuminate and refine the critical issue of whether Mr. O'Donnell may be trusted to influence or control a casino operation or an essential casino service industry.

In the fall of 1971, federal law enforcement authorities were conducting an investigation into illegal gambling in Chicago. Pursuant to court authorization, a wiretap was installed on the telephone line of one of the suspected participants. On four occasions from September 16, 1971, to October 17, 1971, conversations involving Mr. O'Donnell were intercepted and recorded. These taped conversations were introduced into evidence along with transcripts of their contents. (D-112, 113, 114 and 115). Mr. O'Donnell admitted that he was a party to the telephone conversations, that the purpose of the calls was to place wagers on football games and that he then knew bookmaking activity to be illegal under Illinois law. He claimed not to have been aware at the time that the act of placing a wager with a bookmaker was also illegal under Illinois law. See 38 Ill. Rev. Stat. §28-1(a)(2).[6] However, Mr. O'Donnell acknowledged that he was then familiar with the fact

---

6. It is understood that New Jersey does not impose criminal penalties on individuals who participate in illicit gaming solely as players. See N.J.S.A. 2C:37-2.

that illegal bookmaking and gambling operations frequently provided funds for other organized criminal ventures.[7] Thus, some importance attached to the question whether Mr. O'Donnell regularly bet substantial sums with a person whom he knew to be part of such an operation.

According to Mr. O'Donnell, he had previously engaged in a course of friendly wagering with a long-time friend, one Arthur "Jake" Sommerfield. These bets had escalated to $500 or $1000 each when Mr. Sommerfield indicated he would be traveling out of the state. Mr. O'Donnell explained: "I knew it was illegal to bet across state lines and I asked him if he knew somewhere where I could place the bet and to give me the number." (T1801-1 to 22). Mr. Sommerfield obliged and Mr. O'Donnell called the number four times at approximately one week intervals to place bets on the next weekend's football games.

In the first call, Mr. O'Donnell was instructed to refer to himself as "Bill for J" which signified that he was referred by Jake Sommerfield. This form of identification was necessary because different people might answer the telephone when Mr. O'Donnell called and because Mr. O'Donnell was told to "straighten up whatever you do with J." (D-112). The other party explained that Mr. O'Donnell should pay his losses or collect his winnings through Jake Sommerfield and that when "he [Jake] lets

---

7. The New Jersey Supreme Court has recognized the fact that illegal gaming operations are a prime source of revenue for organized crime. See State v. DeStasio, 49 N.J. 247, 257 (1967).

me know then your figure will be clear." To avoid confusion, the other party decided to begin "clean" with Mr. O'Donnell's account notwithstanding Mr. O'Donnell's assertion that he was $1,500 "to the good" with Sommerfield. The other party added that if "J tells me to give you credit for $1,500, I will gladly do it." (D112). The other party then proceeded to inform Mr. O'Donnell of the betting "line" on that week's football games and Mr. O'Donnell made wagers aggregating $5,000. In the three subsequent calls, Mr. O'Donnell announced himself as "Bill for J" and made bets totalling $2,500, $6,000 and $2,000 respectively. Mr. O'Donnell testified that an unidentified man would come to his office to collect losses or to pay winnings.

In fairness, it must be observed that sports betting is widespread in our society. Nevertheless, Mr. O'Donnell's illicit gaming hardly serves to enhance his image. Of more significance are Mr. O'Donnell's responses to questions regarding this episode. On direct examination, he was asked whether he knew he was placing bets with an illegal bookmaking operation. He answered that "if I had thought about it, yes, I would have known that it was a bookie." (T1347-9 to 14). On cross-examination, Mr. O'Donnell restated this response and declared that he had not given any thought at the time to whether he was dealing with a bookmaker. (T1810-7 to 20).

While anyone would be reluctant to admit he knowingly patronized an illicit gaming operation with its probable organized crime affiliations, this motivation only makes Mr. O'Donnell's answers more disturbing. A man of Mr. O'Donnell's

intelligence and acumen could hardly have failed to realize he was betting with a bookmaking ring. Indeed, if Mr. O'Donnell truly did not grasp this fact, then he is capable of ignoring or avoiding the most obvious implication of information coming to his attention. Thus, Mr. O'Donnell was being less than honest either with the Commission when he testified or with himself when he placed the wagers. Neither alternative speaks well for Mr. O'Donnell's trustworthiness and candor.

Similar doubts about Mr. O'Donnell are raised by the evidence regarding Bally's efforts to sever business relationships with Louis Boasberg whose company, New Orleans Novelty Company, had been Bally's distributor in Louisiana for many years. As noted previously, Mr. O'Donnell and Bally were indicted by a federal grand jury in 1971 for interstate transportation of illegal gaming equipment, to wit, Bally "bingo" pinball machines, and for conducting illegal gambling with such ekquipment. Louis Boasberg was also named in the indictment. (D-474). Following the jury trial at which Bally and Mr. O'Donnell were acquitted, Mr. Boasberg was found guilty of promoting illegal gambling and operating an illegal gaming business, i.e., New Orleans Novelty Company. (D-475). Contemporaneously with this prosecution, Mr. Boasberg was charged in a separate federal indictment with bribery of public officials. The stated purpose of the bribery was to protect an illegal gaming operation using coin operated machines, including Bally "bingo" machines. Mr. Boasberg ultimately pleaded guilty to the bribery charge and was sentenced in 1973 to several

months in federal prison. (T1772-1 to 1773-14). Thereafter, in January 1974, Mr. Boasberg was sentenced on the jury verdicts to a $7,000 fine and a three year probation to commence on his release from federal prison on the bribery sentence. (D-476).

Mr. O'Donnell was fully aware of the existence and nature of Mr. Boasberg's federal convictions. Despite this knowledge and despite his professed intolerance for bribery of any sort, Mr. O'Donnell initiated no action to ascertain whether Bally should cease using Mr. Boasberg's company as a distributor.[8] Indeed, New Orleans Novelty Company continued its relationship with Bally during Mr. Boasberg's imprisonment and after his release on May 15, 1974. Eventually, the Nevada Gaming Commission demanded, as a condition of the probationary registration order entered on March 20, 1975, that Bally terminate all business relationships with Mr. Boasberg or any company under his control. (D-210).

By letter dated March 24, 1975, Bally notified Mr. Boasberg of the Nevada order and advised him that New Orleans Novelty Company would be discontinued as a Bally distributor on May 24, 1975. (D-167A). Thereafter, Mr. Boasberg arranged to have the Bally distributorship transferred from New Orleans Novelty Company to Playtime Sales Company, a partnership composed of Mr. Boasberg's five children and one other individual.(D167B).

---

8. Mr. O'Donnell's response was also inadequate in the face of convictions or admissions of four other Bally distributors regarding illegal gambling operations or bribery of public officials or both. No effective action was taken with respect to these matters until Nevada demanded severance of business relations with such individuals in 1977.

This arrangement was acceptable to the Nevada authorities so long as Mr. Boasberg refrained from any involvement in the new company. However, Mr. Boasberg was allowed to purchase Bally equipment from Playtime for use in his pinball and vending machine routes. In addition, New Orleans Novelty Company remained as a distributor for several other coin-operated machine manufacturers.

By its order of October 20, 1977, the Nevada Gaming Commission found that Bally had failed to comply with certain requirements of the 1975 registration order and, more specifically, that Bally had continued to maintain business relationships with Louis Boasberg or a company under his control. (D-213). From the evidence in the present record, there is no doubt about the correctness of Nevada's finding. In fact, shortly after the order was issued, Mr. O'Donnell instructed James Rochford, Bally's newly appointed vice-president for corporate security, to conduct an on-site inquiry into the involvement of Louis Boasberg with Playtime Sales Company. Mr. Rochford, accompanied by Bally's General Counsel Glenn Seidenfeld and its Nevada counsel, Donald Carano, visited the premises of Playtime Sales Company and Louis Boasberg's New Orleans Novelty Company in New Orleans. The two companies were located at the same address in adjacent rooms. When he viewed the facility and spoke to Louis Boasberg, it became immediately apparent to Mr. Rochford that Mr. Boasberg controlled the operation of Playtime through his son, G. Robert Boasberg. (T2314-1 to 2316-2).

Although Bally's compliance failure is established, Mr. O'Donnell's personal culpability, if any, must be determined. Mr. O'Donnell testified that he was intent on complying with the 1975 Nevada order and that he was confident the company was "in every way" complying. His confidence was based upon the internal reporting system which had been established to assist Nevada authorities in monitoring the company and upon the "almost daily" contact between Bally representatives and Nevada officials. (T1885-1 to 17). Mr. O'Donnell's confidence was not shaken when he learned that Mr. Boasberg's company (New Orleans Novelty) and Playtime Sales were located in the same building. According to Mr. O'Donnell, Nevada had been informed of this fact and had registered no protest. Nor was Mr. O'Donnell troubled by Mr. Boasberg's continuing use of stationery proclaiming New Orleans Novelty as the Louisiana and Mississippi distributor for Bally. In a response reminiscent of his explanation regarding his illegal wagers, Mr. O'Donnell stated: "I'm afraid I have to say I didn't reflect on that." (T1905-11 to 22).

Mr. O'Donnell asserted that other items coming to his attention after the 1975 order provided no cause to question Mr. Boasberg's separation from Bally or Playtime. In January 1976, Mr. O'Donnell's secretary approved payment by Bally of a trip to be taken by Mr. Boasberg from New Orleans to Chicago to London and back to New Orleans. This payment was made at the behest of Ross Scheer, Bally's marketing director, to reward Mr. Boasberg for research and marketing assistance which he provided to Bally prior to the 1975 severance order. Mr. Scheer acknowledged that

Bally was under no legal obligation to provide this benefit. Mr. O'Donnell was unsure when he first learned of this payment although he claimed that the Nevada officials were aware of it. In Mr. O'Donnell's view, there was no reason to suspect that the trip was payment for more recent services or business with Mr. Boasberg.

Mr. O'Donnell maintained his position notwithstanding certain communications from Mr. Boasberg. By all accounts, Mr. Boasberg was a prolific correspondent. A batch of letters introduced at the hearing attests to this trait and to his close personal relationship with Mr. O'Donnell. (E.g. D-154,158).[9] Mr. O'Donnell considered the business advice and suggestions offered by Mr. Boasberg to be consistent with Mr. Boasberg's use of Bally equipment as a route operator, i.e., a customer of a Bally distributor rather than as a distributor. While many of the letters do not indicate any involvement of Mr. Boasberg in Playtime, some contain passages which are difficult to reconcile with that conclusion.

In a letter dated February 16, 1976, and written on the stationery of New Orleans Novelty, Mr. Boasberg complained to Mr. O'Donnell about the price which Bally was charging for its pinball games. Mr. Boasberg asked: "[H]ow can a distributor get $35.00 more" for a certain Bally game than a competitor's model (D-167F). Later in the same letter, Mr. Boasberg wrote:

---

9. Other evidence of the duration and closeness of this relationship appears in the record. For example, Mr. Boasberg guaranteed a $50,000 bank loan for Mr. O'Donnell in 1966, the proceeds of which were used to pay off a debt secured by a voting trust in favor of Louis Jacobs. At the time, Mr. Jacobs was attempting to wrest control of Lion from the other founders. (T2325-5 to 21).

> We won't use many Flip Flops [a Bally product] not only because of the price but because we still haven't been paid yet for some Wizards [a Bally product] to say nothing of Bows and Arrows [a Bally product] and other games. We have reached the end of the line as far as credit, and need a little rest to catch up.

After receiving this letter, Mr. O'Donnell sent copies to key personnel in Bally's marketing and engineering operations. In his transmittal memorandum, Mr. O'Donnell stated that Mr. Boasberg's letter was "self-explanatory" and that Bally's response would be "that he [Boasberg] had better buy" the named pinball game at Bally's current price. (D-167F).

By letter dated April 30, 1976, again on New Orleans Novelty stationery, Mr. Boasberg advised Mr. O'Donnell that Bally's direct operation of an amusement arcade had alienated competing operators who were also purchasers of Bally equipment. Mr. Boasberg enclosed a letter from one such operator who had written to New Orleans Novelty to protest such competition and to state his intent to boycott Bally products. In Mr. Boasberg's letter, he bemoaned the loss of a good customer and noted in a post-script that "TAC did not order any Old Chicagos [a Bally product], however, Operation Sales did order ten." (D-156).

On April 20, 1976, Mr. Boasberg wrote to Mr. O'Donnell once again on New Orleans Novelty stationery. Most of the letter, which was designated as "personal", was devoted to praising Bally and Mr. O'Donnell for their recent success. In the final paragraph, however, Mr. Boasberg changed the subject to his own business concerns:

> Now after all this lovemaking, let me remind you that I have on order two trailer loads of Capt. Fantastics. Will you please inform your Sales Department to stop sending Fantastics to the bootleggers, the home offices, and take care of New Orleans Novelty Co., and how about cutting my price on Twin Joker to $250. [D-153].

Mr. O'Donnell saw this request as perfectly consistent with the fact that Mr. Boasberg's company ran a large route operation which was permitted by the Nevada order to purchase Bally equipment from Playtime Sales Company. Mr. O'Donnell also insisted that Nevada knew all of this, although he could not cite a specific conversation or document discussing this with the Nevada officials prior to Nevada's expression of dissatisfaction in mid-1977.

While we have carefully considered the explanation given by Mr. O'Donnell, we are constrained to find that the combined facts known to Mr. O'Donnell should have given him a clear signal that Mr. Boasberg was continuing as a Bally distributor through his sons' company. Instead of heeding the warning signs, Mr. O'Donnell either did not "reflect" on them or did not see them as being inconsistent with compliance. Mr. O'Donnell's failure to properly interpret these indications does not necessarily mean that he intentionally violated the Nevada order. However, at best, his performance does reveal an indifference to a regulatory restriction which required Bally to terminate a well established and successful distributor. Further, when considered together with his lack of reaction to other distributors involved in illegal gaming and bribery, Mr. O'Donnell's conduct displays an acceptance, if not an approval, of such practices by Bally distributors.

The 1975 Nevada order contained other conditions to Bally's registration as a slot machine operator and manufacturer. As already discussed herein, Abe Green had held a hidden interest in Bally for the notorious Gerardo Catena. In addition, Mr. Green was a business partner of Mr. Catena in several ventures including Runyon Sales Company, a New Jersey corporation which had long been Bally's distributor for the New York metropolitan area. Mr. Green assertedly purchased Mr. Catena's interests in their businesses in late 1970 or early 1971. Mr. Green also sold his own Bally shareholdings back to the company in 1971. However, Nevada's 1975 order required Bally to have no business dealings with Mr. Green or with any company which he controlled or in which he had a 5% or greater interest in voting securities. Mr. O'Donnell understood that this requirement meant Bally could no longer deal with Runyon Sales. (T1925-12 to 22).

In apparent anticipation of the Nevada position, Abe Green's son, Irving Green, had advised Mr. O'Donnell in mid-1974 that he would be using the trade name Coin-Op. An internal memorandum dated July 15, 1974, to key Bally personnel, including Mr. O'Donnell, stated that Runyon was to be replaced by Coin-Op for all purposes (A-351). Subsequent to the Nevada prohibition, by letter dated May 16, 1975, Irving Green reminded Mr. O'Donnell of his earlier notification that "in the future, Runyon Sales Company would be conducting business as Coin-Op Distributing with Irving Green as its president." (D-12). Mr. Green asserted that Coin-Op had been engaged in the distribution and sale of coin-operated machines since the 1974 notice. Id. Attached to this

letter was a trade name certificate, dated May 9, 1975, in which Irving Green declared that he was "about to transact" business under the name of Coin-Op Distributing and that the business "will be conducted" at Route 22 and Fadem Road, Springfield, New Jersey.

Irving Green's letter and the attached trade name certificate provide information relevant to the independence of Coin-Op from Runyon. From the letter, it appears that Mr. Green considered Coin-Op as a mere alter ego or fictitious name for Runyon. The trade name certificate reveals that Coin-Op was not a separate business entity but a name being used by Irving Green to conduct business. The address stated in the certificate was also the address of Runyon Sales, and, most significantly, Irving Green was also the manager of Runyon Sales, a fact which standing alone renders suspect any claim of arms-length dealings between Runyon and Coin-Op.

Mr. O'Donnell knew of Irving Green's simultaneous ownership of Coin-Op and management of Runyon. (T1926-1 to 3). As to the sharing of facilities, Mr. O'Donnell certainly became aware of that arrangement by April 1976 when he received a memorandum from William J. Tomlinson[10] on the subject. The April 13, 1976, memorandum (D-13) was sent to Mr. O'Donnell for "Action by the Executive Committee."[11] Mr. O'Donnell

---

10. Mr. Tomlinson had been Bally's general counsel from July 1, 1971, to January 1, 1976. Thereafter until January 1977, he continued as an outside consultant on a part-time basis.

11. As a condition of Bally's probationary registration in 1975, Nevada demanded that an internal control system be established and enforced. Under the system, which was designed by Mr. Tomlinson, an executive committee comprised of directors and senior management personnel was ultimately responsible for compliance.

explained that he did not schedule the memorandum for committee review since the memorandum found no control of or interest in Coin-Op by Abe Green despite evidence of overlap and confusion between Runyon and Coin-Op such as shared facilities and use of Runyon business forms by Coin-Op. Rather, Mr. O'Donnell instructed Mr. Tomlinson to take the additional measures suggested in the memorandum (T1934-7 to 1936-7).

The actions recommended by Mr. Tomlinson included physical separation of Runyon from Coin-Op, use of Coin-Op forms and documents for Coin-Op business, submission of a true copy of a certificate of incorporation for Coin-Op[12] and a yearly reporting of the officers and directors of Coin-Op (D-13, p.2). The memorandum further stated that, until these steps were taken, "no further shipments will be made from Bally to Coin-Op."

The memorandum continued with a summary of what was asserted to be Bally's existing policy with regard to Coin-Op. Essentially, the memorandum claimed that Bally had not had an official distributor in the New York-New Jersey area since the 1975 Nevada order and that any distributor with approved credit status could order direct from the factory until Coin-Op demonstrated its independence from Runyon. The memorandum declared flatly that it "encompasses the procedure followed by Bally since the registration order went into effect and sets forth the policy for the future." Mr. Tomlinson then concluded

---

12. In fact, Coin-Op was not incorporated until February 21, 1978. (D-16).

by noting that the memorandum would be submitted to Nevada as part of Bally's annual compliance report. (D-13, p.3).

The recommended actions were apparently not taken and shipments were made to Coin-Op.[13] Mr. O'Donnell was content to leave the matter in the hands of Mr. Tomlinson who was then a part-time consultant. Moreover, Mr. O'Donnell saw no reason to inquire about the Coin-Op situation before he signed Bally's annual compliance report ("Review of Order of Registration") on June 8, 1976, and submitted it to the Nevada regulatory bodies. Mr. Tomlinson's memorandum was attached to the report and referenced in the text. (A-181, §11(c)). Similarly, the following year, Mr. O'Donnell signed the annual compliance report, dated June 30, 1977, which stated that the company remained in compliance as previously reported and thatthat the status of these matters had not changed. (D-15, §11(c)).

By its order of October 20, 1977 (D-213), the Nevada Gaming Commission found that Bally had failed to comply in several respects with the 1975 registration order and extended Bally's probation for an additional three year period. While the order recited continuing business relationships with one

---

13. There is also considerable doubt whether Bally had implemented the policy of having no official distributor and taking direct orders from any distributor in the New York-New Jersey areas. Mr. Jerome Gordon, Vice-President of H. Betti Enterprises, testified that his company was a coin-operated equipment distributor in New Jersey and that, until it acquired the Runyon Sales distributorship in 1978, it could not purchase equipment directly from Bally. (T5344-3 to 5347-8).

unacceptable distributor, Louis Boasberg, no mention was made of Abe Green or Runyon Sales. However, Bally was directed to strengthen its system of internal reporting and, specifically, to provide copies of all reports to a company compliance committee which, in turn, was to file every such report with the Nevada Gaming Control Board.

In early 1978, Glenn K. Seidenfeld, Bally's general counsel, read an announcement in a magazine that a course in repair and maintenance of Bally products would be conducted by Runyon Sales. Upon being advised of this, Mr. O'Donnell directed Mr. Seidenfeld to visit Irving Green and inquire into the matter. In February 1978, Mr. Seidenfeld met Irving Green at the Runyon Sales offices on Route 22 in Springfield, New Jersey. In this meeting, which lasted only about 30 minutes, Mr. Green admitted that Coin-Op had no employees of its own and that Mr. Green spent 90 to 100% of his time at Runyon. In addition, Mr. Seidenfeld learned that Coin-Op had only one customer, Runyon. During the meeting, Irving Green indicated that he would be selling the distributorship business and concentrating on the more profitable route operations.

On his return to Bally, Mr. Seidenfeld reported to Mr. O'Donnell in the presence of James M. Rochford, Bally's vice-president for security. It was decided that both Mr. Rochford and Mr. Seidenfeld should return to New Jersey for another meeting with Irving Green. Mr. Rochford and Mr. Seidenfeld both testified that they were not then aware of the issues raised by Mr. Tomlinson's memorandum nearly two years

earlier (D-12) and Mr. O'Donnell made no reference to that history.

On April 12, 1978, Messrs. Seidenfeld and Rochford visited Irving Green but, on this occasion, the meeting took place at the Coin-Op office in Union, New Jersey. After speaking to Mr. Green and observing the facility, both Mr. Rochford and Mr. Seidenfeld found an "almost total intermixing" between Runyon and Coin-Op. Indeed, Mr. Rochford received the impression that the Coin-Op office had been recently set up solely to create some appearance of separation for the sake of the Nevada order.[14] (SeeT797-17 to 799-5).

These findings were reported to Mr. O'Donnell who decided that, since Irving Green intended to dispose of the distributorship, he would be given 60 days to do so or be terminated as a distributor. Eventually, by an agreement dated June 6, 1978, between Runyon Sales, Inc., and H. Betti Industries, Inc., the assets of Runyon were sold. The agreement, which was signed for Runyon by Abe Green and Irving Green and which makes no reference to Coin-Op, was contingent upon H. Betti Industries obtaining a Bally distributorship. (D-330). Mr. O'Donnell agreed to the transaction and Betti received the requested distributorship.

Although not conceded by Mr. O'Donnell, Mr. Seidenfeld or Mr. Rochford, the information obtained from the two 1978

---

14. This should have caused no great surprise to Mr. O'Donnell since Bally's sales department had advised him and other key employees of Coin-Op's relocation in a memorandum dated March 8, 1978. (D-506).

visits should have confirmed earlier indications that no real distinction between Coin-Op and Runyon existed. However, no written report was prepared for the compliance committee on this matter until a year later when Mr. Rochford was requested to file such report by Bally's New Jersey counsel. (A-7, exhibit E).[15] The absence of a timely written submission in this instance contrasts with the prompt reporting by Mr. Rochford of other inquiries which he conducted regarding Bally distributors. Moreover, on May 19, 1978, Mr. O'Donnell signed Bally's annual compliance report to the Nevada authorities in which he declared: "the company's compliance with this provision [against direct or indirect business with Abe Green] was set forth in the 1976 and 1977 submission and the status of these matters has not changed since the date thereof." (D-148, p.6). In defending this representation, Mr. O'Donnell contended that he was not obliged to report any failure of compliance because Messrs. Rochford and Seidenfeld "told me they didn't know if it was or it wasn't [a violation]." (T1956-1 to 6).

The respect which Mr. O'Donnell accorded directives of the gaming authorities is further illustrated by his response to the Nevada order regarding Sam W. Klein. As previously discussed, Mr. Klein had been brought in by Abe Green to be one of the founders of Bally in 1963. In addition to being a major stockholder, he was a director and vice-president of the company. Thus, Mr. Klein, as did Mr. O'Donnell, weathered the adverse

---

15. In the interim, on February 22, 1979, Bally was released from probation in Nevada and granted a permanent registration. (A-206).

publicity and regulatory skepticism arising from Bally's corporate relationship to reputed mobsters, especially Gerardo Catena. Further, Mr. Klein personally had drawn unfavorable comment for his alleged associations with undesirables and for his relationship to the oft-suspected Central States, Southeast and Southwest Areas Teamsters Pension Fund. In particular, Mr. Klein was criticized for his gift of Bally stock to an influential teamster official at a time when Bally held sizable loans and was seeking major financing from the fund. (See D-137).[16] Indeed, in a letter dated August 26, 1976, to Mr. O'Donnell, Mr. Klein recognized the responsibility of Nevada officials "to protect the gaming industry from even the hint of organized crime involvement." (A-94).

In his letter, Mr. Klein related that, in June 1976, he had been visiting Irving Kaye, a fellow Bally founder, who was seriously ill in Florida. Also present was another old friend of Mr. Kaye, Gerardo Catena.[17] Over the course of a ten day period, Mr. Klein attended three dinners with Mr. Catena and, at

---

16. The record discloses that Mr. Klein was making gifts of stock to several recipients in early 1972. A very generous gift, 3,700 shares, was bestowed on the family of William Presser, a trustee of the pension fund. In February 1971, Mr. Presser had been convicted on federal charges of conspiracy and acceptance of unlawful payments for a labor organization [D-479, 480].

17. Mr. Catena had been released the previous year from a New Jersey prison where he had been incarcerated for five years for his steadfast refusal, under a grant of immunity, to answer questions regarding organized crime.(D-499).

Mr. Catena's request, Mr. Klein arranged a golf date at his country club. Mr. Klein, Mr. Catena and a friend of Mr. Catena played golf and lunched together. While maintaining that this was the extent of his contact with Mr. Catena and that there was no discussion of Bally, Mr. Klein expressed a willingness to resign his positions and dispose of his stock for the good of the company.

By its order entered on September 23, 1976, the Nevada Gaming Commission revoked all earlier licenses and findings of suitability of Mr. Klein and further ordered: (1) that Mr. Klein resign as an officer and director of Bally; (2) that he divest himself of all his Bally stock within four years and relinquish his voting rights immediately; (3) that he pay a fine of $50,000 to the Nevada Gaming Commission; and (4) that Bally "and its controlled subsidiaries shall henceforth not employ Sam W. Klein in any capacity." (D-212). Both Mr. Klein and Bally consented to the entry of this order. Mr. O'Donnell testified that he was well aware of this order and that he intended to comply with its spirit as well as its letter. (T1873-6 to 13).

Later in 1976, following passage of the New Jersey casino gaming referendum, Mr. O'Donnell was contacted by Mr. Klein who advised that a friend, one Al Toll, owned a property in Atlantic City, the Howard Johnsons Motel, which was very well-suited for development as a casino hotel. In early 1977, Mr. O'Donnell went to Atlantic City where he met with Mr. Klein and Mr. Toll to discuss the possible acquisition of the property by Bally. There were four or five such meetings in all.

At some point in these negotiations, Mr. Klein indicated that he expected a finder's fee from Bally if the acquisition took place. Mr. O'Donnell turned to Bally's general counsel, Glenn Seidenfeld, for an opinion as to whether payment of the finder's fee would violate the Nevada order. Mr. Seidenfeld in turn contacted George Aronoff, one of Bally's outside counsel, and they discussed the issue. After deliberating for some time, they concluded that the order would not prohibit such a payment to Mr. Klein as an independent contractor. However, Mr. Aronoff added that it would be "improvident" for Bally to proceed without the approval of the Nevada authorities. (T3287-5 to 3288-5). Mr. O'Donnell did not seek such approval. The finder's fee was not paid because Bally did not purchase the property.

Subsequent to the entry of the 1976 Nevada order, Mr. Klein involved himself in a separate matter but one also related to Bally's entry into the Atlantic City casino industry. Mr. O'Donnell testified that during a telephone conversation he apprised Mr. Klein of his intent to ask William Weinberger, a casino executive in Las Vegas, to lead the Bally casino project in Atlantic City. Mr. Klein revealed that he knew Mr. Weinberger from their college days and suggested that "a contact coming from me...would be more fruitful." Mr. O'Donnell accepted the offer. Later, Mr. Klein reported that he had contacted Mr. Weinberger and he was interested. To Mr. O'Donnell's knowledge, Mr. Klein played no other part in this effort, which resulted in Mr. Weinberger becoming president of Bally's Park Place. (T1360-9 to 1361-17).

On cross-examination, Mr. O'Donnell denied that the purpose of Mr. Klein's intervention was to have Mr. Weinberger be more receptive to Bally's offer. (T1870-16 to 20). When asked why he did not notify the Nevada authorities before authorizing Mr. Klein to approach Mr. Weinberger, Mr. O'Donnell asserted that he acted in reliance on the legal opinion which he obtained relative to Mr. Klein's requested finder's fee. According to Mr. O'Donnell, the lawyers had said the earlier arrangement was "perfectly okay," so he could see no problem with this "mere phone call, or a visit, or whatever he [Klein] was going to do with Mr. Weinberger." (T1875-21 to 1876-4).

The foregoing does not speak well of Mr. O'Donnell's vigilance and sensitivity to regulatory obligations. Of more significance, however, is the fact that these matters, especially Runyon and Klein, involved direct links to the admittedly dubious origins and early life of Bally. Mr. O'Donnell's reluctance to break cleanly with these elements, even in the face of possible or apparent regulatory violations, seriously undermines the credibility of his avowed determination to put Bally's past behind it.

6. CONCLUSIONS AS TO WILLIAM T. O'DONNELL

The facts recited above, all of which we find to be supported by credible evidence in the record before us, simply do not square with the positive testimony adduced as to the good character, honesty and integrity of William T. O'Donnell. Stated plainly, Mr. O'Donnell's previous behavior provides powerful proof that he should not be trusted to control a company which

seeks licensure either to operate a casino or to supply essential gaming equipment in New Jersey. To repeat, three aspects of Mr. O'Donnell's history are most troublesome:

(1) the direct and indirect associations of Gerardo Catena with Bally which resulted from the acquisition effort led by William O'Donnell and which endured over the course of several years thereafter;

(2) the association with Dino Cellini which William O'Donnell led Bally to engage in and which he engaged in personally; and

(3) the participation of William O'Donnell in an apparent attempt to secure passage of favorable legislation in Kentucky by offering monetary payments to members of the Kentucky Legislature.

Based on the substantial credible evidence in the record as a whole, including the evidence summarized above, this Commission finds Gerardo Catena to be a person of unsuitable character and reputation. Similarly this Commission also finds, as it has previously, that the late Dino Cellini was a person of unsuitable character and reputation.

The Commission has noted in the past that under the Casino Control Act a person's associations may bear upon his character and, hence, upon his present fitness for licensure. Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the

associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of his associates, termination of the association and the reasons for termination. Resorts, supra at 10.

Viewing Mr. O'Donnell's associations with Gerardo Catena and with Dino Cellini in light of each of these factors we find that both of these associations reflect adversely on Mr. O'Donnell's character.

Upon careful review of all of the evidence relating to the alleged 1967-68 Kentucky bribery incident, we find that Mr. O'Donnell participated in an attempt to buy the votes of members of the Kentucky Legislature in an effort to influence the passage of legislation which would be to the economic benefit of Mr. O'Donnell and Bally. This too reflects adversely on Mr. O'Donnell's character.

The negative impressions which emerge from these associations and actions are reinforced by the other behavior which we have examined, including: Mr. O'Donnell's wagering with a bookmaking ring, his attitude toward Nevada's regulatory concerns, his seeming tolerance of public corruption and illegal gaming activity by Bally distributors, his willingness to continue business relationships which threaten to renew the appearance if not the fact of organized crime affiliations, and his unsatisfactory explanations on several occasions during this hearing. These matters, are too proximate and too numerous to be dismissed as isolated, abberational, petty or stale.

Although no single one of them would require disqualification, they substantiate the adverse inferences which we have drawn from the three most serious areas of concern. Further, these additional matters did not occur in the distant past. Indeed, many transpired during the pendency of the present application or at this hearing. Thus, they tend to oppose any finding that, whatever Mr. O'Donnell's failings may have been at one time, the character deficiencies exposed thereby have been overcome.

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First, "character" is an elusive concept which defies precise definition. Next, we can know the character of another only indirectly, but most clearly through his words and his deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a man's character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.

Who then is William O'Donnell? He is obviously a man with many fine attributes including those of kindness, generosity, loyalty, intelligence and leadership ability. However, in light of the evidence in the entire record and particularly those facts which we have summarized here, we are constrained to conclude that he has not satisfied us by clear and convincing evidence that he possesses the high standard of good character, honesty and integrity demanded by the Casino Control Act. Accordingly, William T. O'Donnell is not qualified.

B. ALEXANDER R. A. WILMS

Alexander R. A. Wilms, a Belgian national, was the founder of Bally Continental, Ltd., N.V. ("Bally Continental"), a Belgian corporation which was a successor to a limited partnership formed by Mr. Wilms in 1949. Both companies distributed Bally manufactured products, including coin-operated amusement and slot machines, in Europe, Africa and the Middle East. All of the outstanding and issued shares of Bally Continental were acquired by Bally from Alexander Wilms in 1969. In conjunction with this acquisition, Alexander Wilms received compensation in part in the form of unregistered Bally securities. Subsequent to this acquisition, Mr. Wilms was elected a director of Bally and continued to serve as the chief executive officer of Bally Continental.

In 1974, Alexander Wilms applied to the Nevada Gaming Commission for a state gaming license in conjunction with Bally's application for a state gaming license and concurrent registration as a publicly-traded corporation. Bally's gaming

license and registration were granted by the Nevada Gaming Commission on a probationary basis by order dated March 20, 1975. Based upon certain evidence adduced at an investigatory hearing conducted by the Nevada State Gaming Control Board, serious questions were raised regarding the qualification of Alexander Wilms for a gaming license in Nevada. By order dated March 21, 1975, Mr. Wilms was permitted to withdraw his application for a Nevada state gaming license, subject to the following conditions:

1. He resign as president of Bally Continental within nine months; and

2. He resign immediately from any other offices or directorships or positions that he may hold with Bally or any of its subsidiaries; and

3. He not seek employment as an officer, employee, or agent of Bally or any of its subsidiaries without prior approval of the Nevada Gaming Commission.(D-214).

The Nevada Gaming Commission did, however, permit Alexander Wilms to remain as a shareholder in Bally and he retains that status to this date.

Throughout the past decade, Alexander Wilms has conveyed by gift to various members of his immediate family shares of Bally stock. As of March 6, 1980, Bally had one class of voting capital stock, par value 66 2/3 cents, of which there were approximately 25,500,000 shares issued and outstanding. As of that date, the record ownership of Bally stock by Alexander Wilms and his family was as follows:

Shareholder (Relationship to Alexander Wilms)	Number of Shares Owned of Record	% of Total Shares Issued and Outstanding
Alexander R.A. Wilms	449,128	1.77%

Elise Wilms (wife)	284,800	1.12%
Alfred Wilms (son)	705,000	2.76%
Lucien Wilms (son)	633,800	2.49%
Sophie Wilms and Stephanie Wilms (granddaughters)	8,000	.031%
	2,080,728	8.16%

With minor exceptions, all of the Bally voting stock owned of record by Elise, Alfred, Lucien, Sophie and Stephanie Wilms was obtained directly or indirectly as a gift from Alexander Wilms.

As of March 6, 1980, there were 22,700,000 shares of Bally's Park Place (Delaware) voting common stock outstanding. As of that date, the record ownership of Bally's Park Place (Delaware) stock by the Wilms' family was: Alexander, 98,083 shares (0.43%); Elise, 53,427 shares (0.24%); Alfred, 112,504 shares (0.5%); and Lucien, 112,015 shares (0.49%). In the aggregate, these shares amount to 1.65% of the outstanding voting common stock of Bally's Park Place (Delaware). There is no indication in the record that the shareholdings in Bally or Bally's Park Place (Delaware) of any member of the Wilms' family have changed materially since March 6, 1980.

Pursuant to Sections 85(c) and 85(d)(1) of the Act, N.J.S.A. 5:12-85(c) and -85(d)(1), the securities holders of Bally (the holding company) and Bally's Park Place (Delaware) (the intermediary company) must qualify to the standards of a casino key employee, except for residency, in order to issue a

casino license to the operating subsidiary. However, since both the holding company, Bally, and the intermediary company, Bally's Park Place (Delaware), are publicly-traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any security holder if they are satisfied that he does not have the ability to control the publicly-traded corporation or elect one or more directors thereof.

By virtue of their status as shareholders in Bally and Bally's Park Place (Delaware), Alexander, Elise, Alfred, Lucien, Sophie, and Stephanie Wilms appeared to be individuals required to qualify as part of the casino license application of Bally's Park Place. Thus, the question was presented whether Alexander Wilms or any of the named Wilms' family members, as shareholders of the intermediary and holding companies of Bally's Park Place, had the ability to control such publicly-traded intermediary or holding companies or elect one or more directors thereof within the meaning of Section 85(d)(1). If the answer to this question was in the affirmative then there could be no waiver of any requirement imposed by the Act that any or all of the Wilms family members be qualified as a condition of the casino license application. The Division took the position that Alexander Wilms would not be qualified for approval as a casino key employee pursuant to the provisions of the Act. The Division took no position with regard to the qualifications of Elise, Alfred, Lucien, Sophie or Stephanie Wilms.

At the conclusion of the evidentiary portion of the license hearing, the Commission found that, as matters then stood, there were substantial reasons why the grant of a waiver to any member of the Wilms family should be withheld. To that point, the Commission and the Division were operating under the assumption that, subsequent to the termination of the temporary casino permit of Bally's Park Place, the Wilms family would reassume the right to exercise the voting powers of their stock in Bally and Bally's Park Place (Delaware). By virtue of the terms of the December 5, 1979 agreement and with the assent of each member of the Wilms family, the Wilms' stock in Bally and Bally's Park Place (Delaware) had been subject to an irrevocable proxy during the course of the temporary casino permit.

By their terms, these proxies directed the secretaries of the holding and intermediary companies to vote the Wilms' stock in accordance with the majority of the stockholder's votes cast at any particular meeting. The proxies were to remain in effect from the date of their execution (December 12, 1979) until "the last date on which Bally's Park Place, Inc. holds a temporary casino permit in accordance with the laws of New Jersey, or for such further period of time as may be fixed by the New Jersey Casino Control Commission." Furthermore, the proxies provided that they would be irrevocable during such period unless revoked with the written consent of the New Jersey Casino Control Commission.

The Commission was thus faced with the very difficult issue of whether any or all members of the Wilms family must be qualified as part of the casino license application of Bally's Park Place. Alexander Wilms, through his counsel, steadfastly maintained that he should not be required to qualify as part of the application of Bally's Park Place. Therefore, the record of this proceeding is sparse as to the ultimate issue of the qualification of Alexander Wilms. If the Commission were forced to make a determination as to the qualification of Alexander Wilms based upon this record, the Commission might be unable to find that the statutory standard has been met. Thus, a determination that Mr. Wilms was required to qualify as part of the casino license application of Bally's Park Place could potentially have serious ramifications for that corporate casino license applicant.

The Commission considered whether an alternative response to this problem would be feasible and appropriate. The policies and purposes of the Casino Control Act would best be served by a resolution which adequately protects the law enforcement concerns contained in the Act without needlessly frustrating the mutual interests of the State and the corporate applicant. These interests, namely the economic revitalization of Atlantic City and the issuance of a casino license to an otherwise qualified applicant, would be unjustifiably jeopardized by placing in the hands of a shareholder, who is unable to control the actions of the corporate casino license applicant,

the power to disqualify that applicant by refusing to cooperate in the application process.

To avoid this dilemma without eroding the Act's mandate that the integrity of any controlling or influential person be established, the Commission proposed that certain restrictions be imposed as a precondition to issuance of a casino license to the applicant. These restrictions were specifically designed to assure that there will be no control or significant influence over the operations of Bally's Park Place or Bally Manufacturing Corporation by any member of the Wilms family.

On December 23, 1980, as part of its preliminary determination, the Commission announced its intent to pursue this course of action and described the conditions which would be imposed. In view of the fact that William T. O'Donnell would be foreclosed from playing any role in the management or in the formulation of policy of the corporate applicants as a result of his failure to qualify, the Commission believed that the proposed conditions would effectively foreclose the ability of Alexander Wilms or any other member of the Wilms family (1) to significantly influence or control the operations or policies of the casino license applicant or (2) to control Bally or Bally's Park Place (Delaware) or elect one or more of the directors thereof.

After expressing these findings and opinions, the Commission offerred the Director of the Division an opportunity to consider whether he would join the Commission in waiving any

qualification requirement for the Wilms family members, pursuant to Section 85(d)(1).

When the license hearing reconvened on December 29, 1980, the Director declared his agreement with the Commission's position that waivers of qualification were appropriate. The Director emphasized that his continuing concurrence was contingent on strict compliance with the proposed conditions and unstinting cooperation by the applicant with the Division in enforcing them. Additionally, the Director suggested a modification to the condition imposed on business dealings between Bally and Alexander R. A. Wilms. We consider the suggested modification, which expands the scope of the condition to include other Wilms family members, to be a reasonable safeguard against indirect influence by Alexander R. A. Wilms. We therefore adopt it.

Section 92(b) of the Act, N.J.S.A. 5:12-92(b), requires that the owners, among others, of a casino service industry license applicant which is subject to the provisions of Section 92(a) (gaming related) must qualify under the standards, except residency, established for qualification of a casino key employee under the Act. See N.J.S.A. 5:12-89. Commission regulations provide that each owner of a casino service industry license applicant who directly or indirectly holds any beneficial interest or ownership in excess of five percent of the enterprise must so qualify. N.J.A.C. 19:43-1.14(a)(1)(iii). As with casino license qualifiers, these statutory and regulatory provisions are grounded in those policies of the Act which require all

individuals who may have the ability to significantly influence or control the operations of a Section 92(a) enterprise to be qualified under the appropriate standards of the Act.

Bally Manufacturing Corporation, in addition to being a holding company as to Bally's Park Place, is itself an applicant for a Section 92(a) casino service industry license as a gaming equipment manufacturer and supplier. If the Bally stock held by the Wilms family were to be aggregated, the Wilms family could be found to be an owner required to be qualified in accordance with the provisions of the Act and Commission regulations. There is no credible evidence in the record of this proceeding, however, which would support a finding that the members of the Wilms family have historically pooled the non-voting beneficial interests which accrue as a result of their ownership of Bally stock; furthermore, there is a similar lack of support for a finding that such an event is likely to occur in the future. By imposing the same conditions on the casino service industry license as will be imposed on the casino license, including a restriction on the voting power of the Bally stock owned of record by Alexander, Elise, Alfred and Lucien Wilms, the Commission hereby finds that none of these individuals ~~are~~ is now persons required to be qualified as an owner of a Section 92(a) casino service industry enterprise.

The conditions thus imposed upon both the casino license of Bally's Park Place and the casino service industry license of Bally Manufacturing Corporation to assure that the

Wilms family members are appropriately granted a waiver from any qualification requirement are as follows:

1. that the irrevocable proxies which were executed on December 12, 1979, by Alexander R. A. Wilms, Elise Wilms, Alfred Wilms and Lucien Wilms in accordance with the December 5, 1979, agreement and which provide that the Wilms' stock in Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall be voted with the majority of shareholders voting on any matter, shall be continued in full force and effect so long as the companies are holding or intermediary companies with respect to a licensed New Jersey casino operator, or so long as either company holds a gaming related casino service industry license;

2. that Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall notify the Commission and the Division before recording any transfer of stock in said companies held by any member of the Wilms family;

3. that the management and directors of Bally Manufacturing Corporation and its subsidiaries shall immediately notify the Commission and the Division of any effort by any member of the Wilms family to influence any actions or decisions of the companies, their officers, directors or employees;

4. that Bally Manufacturing Corporation and its subsidiaries shall have no direct or indirect business transactions of any nature whatsoever with Alexander R. A. Wilms, Elise Wilms, Alfred Wilms or Lucien Wilms or any corporation or other business entity controlled by them, or any of them, or in which they or any of them own beneficially a 5% or greater

interest of any class of voting securities, without notice to the Division of Gaming Enforcement and the prior approval of the Casino Control Commission; provided that they may continue as stockholders subject to the irrevocable proxies; and further provided that the notice and prior approval provision of this paragraph shall become effective sixty (60) days following the issuance of a casino license to Bally's Park Place or a casino service industry license to Bally Manufacturing Corporation; and

5. that Bally Manufacturing Corporation and its subsidiaries shall not permit any member of the Wilms family to act as a director, officer, employee or agent without the prior approval of the Commission.

All of the findings of the Commission regarding whether or not Alexander, Elise, Alfred, Lucien, Sophie and Stephanie Wilms are individuals required to be qualified as part of the applications of Bally Manufacturing Corporation or Bally's Park Place are predicated upon the facts contained in the record presently before the Commission. The parties should be mindful of the fact that any significant change in these facts may require the Commission to re-evaluate its findings as to whether the above-stated conditions are adequate or effective and whether any member of the Wilms family should be required to qualify in the future.

C. OTHER PERSONS REQUIRED TO QUALIFY

Aside from William T. O'Donnell and the Wilms family, the Commission finds that there are 22 persons required to qualify either as part of the Bally's Park Place casino license

application or as part of the Bally Manufacturing Corporation casino service industry license application or both. As to the casino license, the Commission and the Division concurred, under N.J.S.A. 5:12-85(c) and -85(d)(1), as to those individuals affiliated with the publicly-traded holding and intermediary companies who were required to qualify. As to the casino service industry license, the Commission has determined the qualifiers in accordance with the Act, N.J.S.A. 5:12-92(a) and (b), and the regulations, N.J.A.C. 19:43-1.14. The 22 individuals, none of whom were the subject of an objection and about whom no grounds for rejection appear on this record, are the following:

1. GEORGE NORMAN ARONOFF, an Ohio resident, 47 years of age, is a Director of Bally Manufacturing Corporation.

2. DOROTHY J. ATTANASIO, 56 years of age and a New Jersey resident, is Vice-President of Administration for Bally's Park Place.

3. ALAN H. BIBLE, 70 years of age and a Nevada resident, is a Director of Bally Manufacturing Corporation.

4. STEVEN R. BOLSON, 34 years of age and a New Jersey resident, is Secretary and General Counsel of both Bally's Park Place (Delaware) and Bally's Park Place.

5. JERRY ALLEN BLUMENSHINE, 40 years of age and an Illinois resident, is Corporate Controller for Bally Manufacturing Corporation.

6. JOHN ANTHONY BRITZ, 62 years of age and an Illinois resident, is Executive Vice-President of Technology and a Director of Bally Manufacturing Corporation.

7. WILLIS H. BROCKHOFF, 62 years of age and an Illinois resident, is Treasurer of Bally Manufacturing Corporation.

8. GEORGE D. CROWLEY, 67 years of age and an Illinois resident, is a Director of Bally Manufacturing Corporation and Chairman of that company's Finance & Long Range Planning Committee.

9. REDENIA C. GILLIAM, 32 years of age and a New Jersey resident, is Vice-President for Government Relations of both Bally's Park Place (Delaware) and Bally's Park Place.

10. RICHARD GILLMAN, 49 years of age and a New Jersey resident, is Chairman of the Board of both Bally's Park Place (Delaware) and Bally's Park Place.

11. RICHARD KNIGHT, 32 years of age and a New Jersey resident, is Corporate Controller for both Bally's Park Place (Delaware) and Bally's Park Place.

12. ALFRED C. LINKLETTER, 68 years of age and a New Jersey resident, is a Director and consultant of both Bally's Park Place (Delaware) and Bally's Park Place.

13. CHRISTIAN MARI, 29 years of age and a New Jersey resident, is Vice-President for Hotel Operations of Bally's Park Place.

14. GEORGE BERNARD MORAN, 70 years of age and a New York resident, is a Director of Bally Manufacturing Corporation.

15. ROBERT E. MULLANE, Jr., 48 years of age and an Illinois resident, is President and Chairman of the Board of Bally Manufacturing Corporation.

16. JAMES M. ROCHFORD, 59 years of age and an Illinois resident, is Vice-President for Corporate Security of Bally Manufacturing Corporation.

17. IRVING ROM, 57 years of age and an Illinois resident, is a Director and Executive Vice-President for Finance of Bally Manufacturing Corporation.

18. ROSS BERYL SCHEER, 50 years of age and an Illinois resident, is Director of Marketing for Bally Manufacturing Corporation.

19. GLENN K. SEIDENFELD, Jr., 36 years of age and an Illinois resident, is Secretary and General Counsel for Bally Manufacturing Corporation.

20. CHARLES R. TANNENBAUM, 46 years of age and a New Jersey resident, is Vice-President of Entertainment & Special Events for Bally's Park Place.

21. WALTER WECHSLER, 67 years of age and a New Jersey resident, is a Director of Bally's Park Place.

22. WILLIAM S. WEINBERGER, 67 years of age and a New Jersey resident, is a Director and President of both Bally's Park Place (Delaware) and Bally's Park Place.

Having considered all of the information supplied by each of the qualifiers and by the Division, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license or a gaming-related casino service industry license.

III

SUITABILITY OF THE CORPORATE APPLICANTS

Having considered the suitability of the individuals required to qualify, we must now decide whether the corporate applicants, Bally Manufacturing Corporation and its subsidiary, Bally's Park Place, possess the requisite good character, honesty and integrity for a casino service industry license (gaming-related) and a casino license, respectively.

Bally Manufacturing Corporation is a large, publicly-traded company. Although the Casino Control Act considers this company to be a "person" required to qualify, it is evident that such an entity and its subsidiaries (collectively "the company") cannot be evaluated in the same manner as an individual like Mr. O'Donnell. Common experience teaches that an individual's character develops over time and manifests itself through acts and omissions. Once formed, individual character usually resists precipitous transformation. A corporation, however, does not possess a separate moral character. As our Supreme Court has stated: "The moral responsibility of a corporation is one and the same with the moral responsibility of the individuals who give it direction."[1] Thus, a corporation mirrors the attributes of its principal officials and must bear responsibility in a broad sense for their failings.

---

1. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972).

This reflective character also permits the entity to remove a stain from the corporate image by removing the persons responsible for the misdeeds. In order to accomplish this cleansing, the corporation must be able to isolate the wrong done and the wrongdoers from the remaining corporate personnel.

> If, as a consequence, the corporation has purged itself of the offending individuals and they are no longer in a position to dominate, manage or meaningfully influence the business and operations of the corporation, the responsibility of the corporation should then be assayed, not upon the moral infirmities of the removed malefactors, but upon the integrity of the persons who remain in ownership and control of it.[2]

The question thus becomes whether the improprieties in Bally's history can be localized in any one individual. Stated differently, this Commission must be convinced that the persons remaining after Mr. O'Donnell's removal possess the necessary measure of integrity. In examining the personal qualities of these remaining individuals, at least two contentions must be considered: first, that the other key personnel, especially the directors, tolerated or ratified unacceptable conduct and associations; and second, that the very retention of Mr. O'Donnell as President and Chairman of the Board itself demonstrates the defective character of other corporate officials. Since we have already found that the persons required to qualify have done so, we have implicitly concluded that, on

---

2. Trap Rock Industries, Inc. v. Sagner, 133 N.J.Super. 99, 108 (App. Div. 1975), aff'd 69 N.J. 599 (1976).

the present record, these contentions are unfounded as to the current management. We now explain why we reach this conclusion.

As previously stated in regard to Mr. O'Donnell, three areas of concern emerge as most damaging. First is the acquisition of the predecessor company in 1963 by the K.O.S. group formed by Mr. O'Donnell and the resulting association of the company with Gerardo Catena and confederates of Mr. Catena. While this association gives us cause for deep concern as to Mr. O'Donnell's fitness, the present company can hardly be held responsible for those activities. It has been demonstrated during this hearing that each of the original K.O.S. members have been severed from the company with the sole exception of Mr. O'Donnell. The last such severance occurred in 1976 when Sam W. Klein was ordered by the Nevada Gaming Commission to divest himself of his shares and to resign all positions with the company. There is no reason to believe that Mr. Klein can exercise any control or influence over Bally today, especially in view of this Commission's demand that Mr. O'Donnell be separated from the company. Further, no evidence appears to indicate that any other present corporate official has participated in or condoned any illicit activity by Mr. Klein or by any other member of the K.O.S. group.

The second major area of concern with regard to Mr. O'Donnell is the alleged bribery of Kentucky legislators in 1968. It is true that passage of the bill in question would have benefitted Bally, but there is no indication that anyone else in

the company had any knowledge of Mr. O'Donnell's apparent intent. Although two current members of the company's management, Mr. Brockhoff and Mr. Britz, signed the $4,000 check which Mr. O'Donnell sent to Gilbert Brawner, we are convinced that they acted on instructions of Mr. O'Donnell to send a loan to one of Bally's distributors. The responsibility for this action falls squarely on Mr. O'Donnell.

The third troublesome area regarding Mr. O'Donnell is his employment of Dino Cellini as a salesman in the Bahamas and later in Europe. Mr. O'Donnell made it quite clear that it was his decision to engage Mr. Cellini and that he was aware of Mr. Cellini's reputation. As chief executive officer, Mr. O'Donnell certainly did not have to confer with anyone else before taking those actions. However, if anyone else could be faulted, it would be Alexander Wilms who was Mr. Cellini's immediate superior at Bally Continental. In any event, no active member of the corporate group appears to be chargable with any negative inferences flowing from Mr. Cellini's work for the corporation. That work ended in May 1973 and Mr. Cellini died in 1978.

During this hearing, several other matters have been examined. These include: the adequacy of compliance with the 1975 Nevada probationary registration, especially the requirement to cease all business with Louis Boasberg and Abe Green; the several borrowings from the Teamsters Pension Fund; the placement of insurance with the United Founders company through Alan Dorfman's agency; the use of Michael Wichinsky as a distributor for the company in Nevada; compliance with the 1976 order of the

Nevada Gaming Commission to refrain from employing Sam W. Klein in any capacity; and the placement of illegal wagers by Mr. O'Donnell for a month in 1971.

After reviewing the evidence pertaining to all of these matters, the Commission is satisfied that they may reflect on Mr. O'Donnell but they do not reflect adversely on the present management and directors of Bally. In this regard, the Commission observes that the membership of the board of directors has undergone almost a complete change since 1974 and that the company now appears earnest in its commitment to regulatory compliance.

Further, the company has presented for this Commission's scrutiny virtually every director, officer and key employee in the present corporate management. No allegation has been leveled against these individuals that they personally approved or participated in any of the troublesome associations, regulatory violations or improper behavior discussed herein. It is true that the Bally leadership, especially the board, has been perhaps too passive and too reliant on Mr. O'Donnell with respect to important matters. However, we do not find willful neglect or purposeful abdication which would cause us to doubt the character of the present personnel. Thus, while this Commission realizes the difficulty of weeding out culpable individuals from the corporate thicket, under the present circumstances we do not find cause to reject this publicly-traded corporate group.

For all of these reasons and subject to the conditions stated hereafter, the Commission finds that the corporate applicants have established the requisite good character, honesty and integrity for licensure. However, no license could issue unless William T. O'Donnell is no longer a person to be qualified and unless the unsavory or questionable associations in the company's past are fully severed. To assure that neither Mr. O'Donnell nor any of the disreputable individuals previously affiliated with the company is in a position to dominate, manage or meaningfully influence the company's business or operations, the Commission hereby imposes several conditions on both the casino service industry license of Bally Manufacturing Corporation and the casino license of Bally's Park Place. Strict compliance with these conditions and the Wilms conditions (see Part IIB) is an essential premise for both the issuance and continuation of these licenses. The conditions are as follows:

1. that the irrevocable voting trust executed by William T. O'Donnell pursuant to the December 5, 1979, agreement, entered by Mr. O'Donnell to induce the issuance of a temporary casino permit to Bally's Park Place, shall be extended until the Commission is satisfied that a permanent divestiture of those securities held by Mr. O'Donnell in Bally Manufacturing Corporation and Bally's Park Place (Delaware) has been achieved;

2. that, in accordance with the December 5, 1979, agreement, William T. O'Donnell shall submit to the Division and the Commission by no later than February 2, 1981, a plan of

divestiture for his securities which plan shall be modified as the Commission may direct;

3. that Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall not distribute to Mr. O'Donnell any dividends or interest accruing to his securities in accordance with the terms of an agreement with Mr. O'Donnell dated and excuted December 24, 1980;

4. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Mr. O'Donnell or any corporation or other business entity controlled by him or in which he has a 5% or greater interest of any class of voting securities, except as may be necessary to effectuate the divestiture of Mr. O'Donnell's securities and except with respect to his partnership interest in the 2640 West Belmont Partnership;

5. that Bally Manufacturing Corporation and its subsidiaries shall immediately notify the Commission and Division of any effort by Mr. O'Donnell to influence any action or decision of the companies, their officers or directors or employees;

6. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Gerardo Catena, Abe Green, or Sam W. Klein (except with respect to his partnership interest in 2640 West Belmont Partnership) or with any corporation or other business entity controlled by them or any of them or in which they or any of

them have a 5% or greater interest of any class of voting securities;

7. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Irving Green or Louis Boasberg or with any corporation or other business entity controlled by any of them or in which any of them have a 5% or greater interest of any class of voting securities, without the prior approval of the Commission;

8. that Bally Manufacturing Corporation and its subsidiaries shall not permit Jack Rooklyn to act as a director, officer, employee or agent without the prior approval of the Commission;

9. that by no later than February 2, 1981, Bally Manufacturing Corporation shall either show cause why the 2640 West Belmont Partnership should be allowed to continue as owner and lessor of the Bally headquarters or submit a plan for acquisition or reconstitution of the said partnership so as to eliminate the participation of Messrs. Klein and O'Donnell therein;

10. that by no later than July 1, 1981, Bally Manufacturing Corporation shall cause at least 50% of the membership of its board of directors to be independent, outside members and shall maintain such minimum proportion thereafter;

11. that Bally Manufacturing Corporation shall maintain in full force and effect its present system of internal reporting, shall amend such system as required by the Commission

and shall not amend such system without the prior approval of the Commission, provided that nothing herein shall require Bally Manufacturing Corporation to modify or not modify the said system without the concurrence or against the directive of any other jurisdiction; and

12. that Bally Manufacturing Corporation shall continue to maintain an adequately and competently staffed security department to assure that the company and its subsidiaries are not dealing with persons lacking integrity, to assure that the internal reporting system is functioning properly and to assure compliance with these conditions.

IV

FINDINGS AS TO COMPLIANCE WITH
OTHER LICENSE REQUIREMENTS

At the hearing, the contested issues covered the standards of good character, honesty and integrity as applied to the corporate applicants and to certain key persons required to qualify in order for the licenses to issue. Although these disputed matters have now been addressed, there remain several other areas in which findings are mandated by the Act, by the regulations of the Commission and by the conditions attached to the temporary casino permit granted to Bally's Park Place. A detailed recitation of proposed findings and conditions in these other areas was prepared by the Commission's Licensing Division and presented to the parties before the close of the hearing. No objection was raised and the proposal was formally adopted and included in the record. (T 12/29/80, 4-23 to 47-17). For the sake of completeness, the operative findings and conditions are set forth herein. They are as follows:

1. That Bally's Park Place has satisfied N.J.S.A. 5:12-85(a)(1) to (9) requiring it to file information concerning the organization, businesses, personnel, securities, and securities holders of it and its holding companies;

2. That Bally's Park Place is wholly-owned by an intermediary company, Bally's Park Place, Inc., (Delaware), which is qualified to do business in New Jersey and which has issued in excess of 22 million shares of common stock,

publicly-traded in the over-the-counter market, which is presently held by approximately 18,000 shareholders of record, both direct and beneficial, of which shares the holding company, Bally Manufacturing Corporation, is the owner of approximately 83% (See N.J.S.A. 5:12-26 and 28 and Exhibit J-1, par. 68-69);

3. That the holding company, Bally Manufacturing Corporation, is a Delaware Corporation with principal offices in Chicago, Illinois is qualified to do business in New Jersey and has issued in excess of 25 million shares of common stock, publicly-traded on the New York Stock Exchange which is presently held by more than 22,000 record and 65,000 beneficial shareholders (See N.J.S.A. 5:12-26 and Exhibit J-1, par. 1-3);

4. That the two said corporations, Bally Manufacturing Corporation and Bally's Partk Place, are presently the sole holding and intermediary companies of Bally's Park Place, a subsidiary (See N.J.S.A. 5:12-47), and that both have registered with the Commission as required by N.J.S.A. 5:12-85(b) (See Exhibit J-1, par. 68-69);

5. That Bally Manufacturing Corporation is a casino service industry as defined by N.J.S.A. 5:12-12 in that it does business with New Jersey casinos and provides them with goods and services on a regular or continuing basis;

6. That Bally Manufacturing Corporation is required to hold a casino service industry license pursuant to N.J.S.A. 5:12-92(a) in that its goods or services directly

relate to casino or gaming activity and it is a manufacturer and supplier of gaming equipment;

7. That Bally Manufacturing Corporation as well as its owners, management, supervisory personnel, and other principal employees, must qualify under the standards, except residency, for qualification of a casino key employee as required by N.J.S.A. 5:12-92(b), and that all required entities and persons, except as otherwise noted in this opinion and subject to the conditions previously stated, have so qualified;

8. That Bally's Park Place owns the entire casino hotel building and owns in fee the former Dennis Hotel site portion of the land thereunder; that the holding company, Bally Manufacturing Corporation, owns in fee the former Marlborough-Blenheim site portion of the land thereunder which it leases as landlord to Bally's Park Place; and that Bally's Park Place is thus eligible to hold a casino license (See N.J.S.A. 5:12-82(b)(1), (2), and (4));

9. That the said lease is in writing, has been filed with the Commission, has a duration of in excess of thirty years and includes a fixed sum buy-out provision conferring upon Bally's Park Place, as lessee, the absolute right to acquire the entire interest of lessor holding company Bally Manufacturing Corporation in the event the said lessor is found to be unsuitable (See N.J.S.A. 5:12-82(c)(5));

10. That Bally's Park Place manages its own casino (N.J.S.A. 5:12-82(b)(3) and(c));

11. That Bally's Park Place and Bally Manufacturing Corporation as parties to the said lease agreement shall each in accordance with N.J.S.A. 5:12-82(c)(9) be jointly and severally liable for all acts, omissions, and violations of the Casino Control Act by either party regardless of actual knowledge of such act, omission, or violation and notwithstanding any provision in said agreement to the contrary;

12. That Bally's Park Place meets the incorporation, on-site office, state corporation law compliance, ownership ledger, operating bank account, and express corporate charter provision requirements of N.J.S.A. 5:12-82(d)(1) through (6);

13. That Bally's Park Place has adopted provisions which establish the right of the Commission to prior approval of all transfers of interests in Bally's Park Place as required by N.J.S.A. 5:12-82(d)(7) and which establish the absolute right of Bally's Park Place to repurchase at the lesser of market or purchase price any interests the transfer of which has been disapproved by the Commission as required by N.J.S.A. 5:12-82(d)(8);

14. That Bally's Park Place neither holds nor has been issued a casino license and thereby meets the requirement of N.J.S.A. 5:12-82(e) limiting to three the number of casino licenses a person may hold;

15. That Bally's Park Place obtained, in addition to monies advanced to it by Bally Manufacturing Corporation out of its operating funds, $288.6 million to finance the casino

proposal from the following sources: (See Exhibit J-1, par. 70-76 and Exhibit J-2);

(a) $176.2 million in credit lines and revolving loans from the following twelves banking institutions;

(1) $60.1 million from Continental Illinois National Bank and Trust Company (Including $11.1 million from its Nassau, Bahama's Branch)

(2) $26.5 million from Manufacturers Hanover Trust Company

(3) $16.0 million from Marine Midland Bank

(4) $11.3 million from American National Bank

(5) $12.3 million from Girard Bank

(6) $ 7.5 million from Industrial National Bank of Rhode Island

(7) $ 7.5 million from First National State Bank of New Jersey

(8) $10.0 million from Union Bank of America

(9) $ 5.0 million from National Westminister Bank

(10) $ 5.0 million from Barclays Bank International, Ltd.

(11) $10.0 million from Credit Suisse

(12) $ 5.0 million from Canadian Imperial Bank of Commerce;

(b) $3.9 million from a mortgage to First Peoples National Bank of New Jersey of Haddon Township, New Jersey, on the Marlborough-Blenheim site extending to December 1, 1997, which was assumed by Bally Manufacturing Corporation at the time that site was purchased;

(c) $4.0 million from a mortgage to Norman Palley and Alexander Blatt, as trustees, on the Marlborough-Blenheim site extending to March 1, 1981;

(d) $56.0 million from the sale of 3.9 million shares of Bally's Park Place, (Delaware) common stock issued on July 23, 1979 (See Exhibit J-1, par. 71);

(e) $48.5 million from the sale of Bally Manufacturing Corporation twenty-year convertiblesubordinated debentures issued effective September 19, 1978 (See Exhibit J-1, par. 72);

16. That no other financial sources which bear any relation to the casino proposal have been identified;

17. That Bally's Park Place has established by clear and convincing evidence both the integrity and reputation of the named financial sources and that its financial resources are adequate to complete the casino proposal and to operate the casino as required by N.J.S.A. 5:12-84(b) (See

Stipulation, Exhibit J-2);

18. That the casino hotel facility is situated on an approximately 8.3 acre tract fronting on the Boardwalk between Park Place and Michigan Avenue and consists of wholly new construction integrated with a complete reconstruction of the historic Dennis Hotel into a single convention hotel building which conforms to the "approved hotel" requirements of N.J.S.A. 5:12-27 and 83;

19. That, as a condition to the issuance of a Temporary Casino Permit, the casino hotel facility was required both to comply with all appropriate provisions of the Uniform Construction Code Act (N.J.S.A. 52:27d-119, et seq.) and the law relating to barrier-free design for the physically handicapped (N.J.S.A. 52:32-4) and to obtain a Certificate of Occupancy from the City of Atlantic City;

20. That Bally's Park Place has complied with all appropriate provisions of the Uniform Construction Code Act and the law relating to barrier-free design for the physically handicapped and has obtained a Certificate of Occupancy from the City of Atlantic City;

21. That, as a condition of its casino license, Bally's Park Place shall maintain a current Certificate of Occupancy issued by the City of Atlantic City;

22. That, as a condition to the issuance of a casino license and as required by N.J.S.A. 5:12-83 and 84(e), any expansion of the casino hotel facility and other related construction is subject to full review and approval by the

Commission and all other appropriate jurisdictional agencies, which shall include consultation with the Division of Gaming Enforcement;

23. That, as a condition to the issuance of a Temporary Casino Permit, Bally's Park Place was required to submit for Commission review and approval a design solution which would achieve the goal of N.J.S.A. 5:12-98(b)(4) by eliminating any visibility of the casino from outside the facility through the temporary Boardwalk entrance;

24. That, although Bally's Park Place effectively eliminated any visibility of the casino from outside the facility through the temporary Boardwalk entrance, there remains an issue as to whether total compliance with N.J.S.A. 5:12-98(b)(4) has been achieved in that the casino floor may be visible from outside the facility;

25. That, as a condition of its casino license, Bally's Park Place shall within thirty (30) days of the date of this decision demonstrate to the Commission that the casino is not visible from outside the facility in compliance with N.J.S.A. 5:12-98(b)(4) and shall, after consultation with the Division of Gaming Enforcement, present a design solution to eliminate any such visibility that may be found to exist;

26. That, as required by N.J.S.A. 5:12-84(e), Bally's Park Place has established to the satisfaction of the Commission that, subject to the various conditions identified herein, the casino and its related facilities and its

location are suitable and that neither the Atlantic City patron market nor the overall environment including economic, social, demographic, competitive, or natural resource conditions have been, are being, or will be adversely affected by the casino hotel facility;

27. That, as a condition to the issuance of a Temporary Casino Permit, the Commission required that parking provisions and traffic circulation be subject to continuing review and approval by both the Atlantic City Department of Police and the Commission;

28. That, as a condition of the issuance of the casino license, parking provisions and traffic circulation shall remain subject to the continuing review and approval of both the Atlantic City Department of Police and the Commission;

29. That, as a condition to the issuance of its Temporary Casino Permit, Bally's Park Place was required to cooperate with and aid in the development and implementation of plans both to improve the traffic circulation in the Brighton Park area including that on Pop Lloyd Boulevard, Park Place, Indiana Avenue and the connecting loop street and to redesign and upgrade Brighton Park itself;

30. That Bally's Park Place has in fact assumed the major cost in the upgrading of Brighton Park including the installation of an all-new irrigation system, the complete re-sodding and replacement of all damaged shrubs and the new paving of existing walkways;

31. That, as a condition of its casino license, Bally's Park Place shall to the extent appropriate continue to cooperate with and aid in the development and implementation of plans to improve such traffic circulation and to redesign Brighton Park;

32. That Bally's Park Place is required by N.J.S.A. 5:12-84(e) to establish to the satisfaction of the Commission that its proposal does not adversely affect the overall environmental conditions in the Atlantic City region including its economic, social and demographic conditions;

33. That by virtue of the fact that Bally's Park Place employs at the approved hotel facility in excess of 4,300 persons, the proposal does affect the overall environment in the Atlantic City region and does particularly affect the limited residential housing stock available as a practical matter for the employees which Bally's Park Place has added to the Atlantic City workforce;

34. That, as a condition to the issuance of a Temporary Casino Permit, Bally's Park Place was required to participate with the Commission in assessing the Atlantic City regional housing needs and, if so required, further participate in providing a reasonable share of the housing construction requirement for Atlantic City;

35. That, as a condition of its casino license, Bally's Park Place shall continue to participate with the Commission in assessing the Atlantic City regional housing needs and, if so required, further participate in providing a reasonable share of the housing construction requirement for Atlantic City;

36. That Bally's Park Place on December 6, 1979, committed itself to introduce 56 units of family housing to the Atlantic City housing stock through the construction of 28 townhouses to be known as the Jacobs Family Terrace project on a site between Mediterranean and Baltic Avenues at New York Avenue; that, to date, both New Jersey Department of Environmental Protection and Atlantic City Planning Board approvals have been obtained; and that Bally's Park Place has represented that these housing units will be ready for occupancy by November of 1981;

37. That, as a condition of its casino license, Bally's Park Place shall use its best efforts, giving consideration to among other factors the cost of money, to have the said 56 units ready for occupancy by November of 1981 and shall within thirty days of this decision submit to the Commission a detailed outline of its projected completion dates;

38. That the approved hotel presently contains 503 qualifying sleeping units of a typical size of 407 square feet and an average size of 415 square feet and thereby exceeds the minimum qualifying sleeping units requirement set forth in N.J.S.A. 5:12-27 and 83(a);

39. That the approved hotel presently contains a total of 129, 974 square feet of qualifying space including 56,470 square feet of qualifying dining, entertainment and sports space, 27,170 square feet of qualifying meeting and exhibition space, and 46,334 square feet of qualifying kitchen support facilities and thereby exceeds the minimum qualifying space requirements set forth in N.J.S.A. 5:12-83(b), (c), (d) and (g);

40. That the approved hotel contains a single casino room of 60,000 square feet which does not exceed the maximum square foot limitations set forth in N.J.S.A. 5:12-83(d);

41. That Bally's Park Place has projected the following completion dates for the listed amenities it proposes to add to its "approved hotel" as described in detail in its application for this casino license and as analyzed in the Report of the Approved Hotel and Impact Bureau of the Commission's License Division at pages 11(a) through 11(c), admitted as Exhibit C-3 at the license hearings:

Component	Completion Date as of December 1979	Completion Date as of December 1980
a. North meeting room expansion		March, 1981
b. Park Place entrance renovation		January, 1982
c. 3-level grand Boardwalk entry & health club	June 1, 1980	January, 1983
d. Boardwalk Mezzanine slab		July, 1983
e. Coffee Shop		June, 1982
f. Chinese Restaurant		June, 1983
g. Gourmet Restaurant		June, 1984

42. That, as a condition of its casino license, Bally's Park Place shall, on a quarterly basis, continue to inform the Commission in writing as to its then current intention concerning the construction and completion of the indicated amenities;

43. That, upon completion of the Boardwalk entry and mezzanine slab, the casino room may unduly dominate the convention hotel complex in violation of N.J.S.A. 5:12-(1)(b)(5) and (6) by virtue of the fact that no meaningful access may then exist from the extensive Boardwalk frontage to non-casino amenities within, other than access unduly dominated by the casino, its gaming tables and its slot machines;

44. That, as a condition of its casino license, Bally's Park Place shall provide meaningful access from the Boardwalk to non-casino amenities not dominated by its casino;

45. That construction of the approved hotel facility commenced in September 1978;

46. That Bally's Park Place, on November 16, 1979, filed a written guarantee that it would require its contractors and subcontractors to afford an equal employment opportunity to all employees in connection with the construction of its approved hotel; that it filed documents in support of its position that it made a good faith effort to afford an equal employment opportunity to such employees as required by N.J.S.A. 5:12-134(a); and that it has failed to make all construction equal employment opportunity submission on a timely basis;

47. That Bally's Park Place initially relied upon Joseph Nigro and subsequently Sharon Vavrek, employees of its general contractor Turner Construction Company, as affirmative action officers for its construction workforce as required by N.J.S.A. 5:12-135(f) and, thereafter, on April 30, 1979, appointed its own employee, William L. McKnight as its equal employment officer;

48. That Bally's Park Place has failed to meet the percentage employment goals in N.J.A.C. 19:53-1.5(3) and 1.14(a) of 20% minority and 6.9% female journeyworkers and apprentices by trade;

49. That Bally's Park Place construction workforce from November 18, 1979, to October 14, 1980, contained the following proportions of protected class individuals:

a. Journeyworkers

Trade	Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
Plasterer	4	2	50%	0	0%
Bricklayer	12	4	33%	0	0%
Elevator Mechanic	211	43	20%	10	4.7%
Electrician	1,946	361	19%	2	0.1%
Painter	549	77	14%	10	1.8%
Plumber	726	81	11%	1	0.1%
Ironworker	70	6	9%	0	0%
Operating Engineer	68	6	9%	0	0%
Cement Mason	68	6	9%	0	0%
Roofer	333	24	7%	0	0%
Carpenter	1,954	105	5%	8	0.4%
Sheetmetal Worker	351	18	5%	13	3.7%
Floor Coverer	114	4	4%	0	0%
Sprinkler Fitter	348	10	3%	0	0%
Vinyl Worker	127	3	2%	0	0%
Taper	16	0	0%	0	0%
TOTALS	6,853	746	11%	44	0.6%

b. Apprentices

Trade	Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
Painter	22	18	82%	8	10.3%
Sheetmetal Worker	4	3	75%	0	0%
Vinyl Worker	7	5	71%	0	0%
Brick Layer	2	1	50%	0	0%
Sprinkler Fitter	88	32	36%	20	22.7%
Floor Coverer	57	15	26%	0	0%
Electrician	154	4	3%	10	6.5%
Plumber	79	2	3%	5	6.3%
Cement Mason	1	0	0%	0	0%
TOTALS	570	106	19%	45	7.9%

c. Laborers

Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
919	657	71%	87	9.5%

50. That in each of the two trades of Carpenter and Plumber, which collectively represent thirty-nine percent of the total journeyworker workforce on Bally's Park Place hotel project between November, 1979, and October, 1980, the percentage of minority journeyworkers failed to exceed eleven percent; that, despite some efforts by the Bally's Park Place, the goal of twenty percent minority journeyworkers within each trade has not been achieved; and, that construction of the casino hotel project has been substantially completed;

51. That Bally's Park Place, as a condition of the issuance of its operation certificate, was required to make a meaningful financial contribution to Atlantic Construction Training Program, Inc., a non-profit corporation formed to develop apprentice training programs;

52. That Atlantic Construction Training Program, Inc. presently appears to be one viable vehicle to increase the representation of protected classes in journeyworker positions within the Atlantic County area construction workforce;

53. That Bally's Park Place, as a condition to the issuance of its operation certificate, was required to employ an additional person on its affirmative action staff whose expertise relates to the construction workforce and whose duty is to make good faith efforts on behalf of the company to ensure that construction at its approved hotel complex is accomplished with a construction workforce which conforms to equal employment goals;

54. That, as a condition of its casino license, Bally's Park Place shall employ such a person on its affirmative action staff prior to the commencement of any new construction;

55. That the Commission will continue to review the question of whether Bally's Park Place has made and continues to make good faith efforts to conform to the affirmative action and equal employment opportunity requirements pertaining to its construction workforce as required by N.J.S.A. 5:12-134;

56. That Bally's Park Place employs approximately 4,361 individuals;

57. That Bally's Park Place has filed guarantees that it will afford an equal employment opportunity to all prospective employees; has filed an affirmative action program designed to afford equal employment opportunities; has filed documents in support of its position that it has made and continues to make good faith efforts to afford an equal employment opportunity to all prospective employees and to abide by its program; and has made all equal employment opportunity filings pertaining to operations in a timely manner as required by N.J.S.A. 5:12-134(b) and (c);

58. That Bally's Park Place on April 30, 1979, appointed its employee William L. McKnight as operations equal employment officer pursuant to N.J.S.A. 5:12-135(f);

59. That Bally's Park Place has developed and implemented training and upward mobility programs as a means of making all job classifications available to minorities and female workers in accordance with N.J.A.C. 19:53-1.15(a)(6);

60. That Bally's Park Place presently meets the protected class employment goals of twenty percent for minorities and forty-three percent for females set forth in N.J.A.C. 19:53-1.5(e) with respect to its present 4,361 employee workforce, which consists of 29.6% minority and 47.0% female individuals, but presently fails to meet these goals in the indicated (*) categories as required by N.J.A.C. 19:53-1.5(a)(2) and (f);

Category	Positions	Minority	Female
*Executives	35	5 (15%)	8 (23%)
*Managers	419	60 (14%)	142 (34%)
*Asst. Managers	111	12 (11%)	14 (13%)
Supervisors	241	73 (30%)	116 (48%)
*Officials & Managers	806	150 (18.6%)	280 (34.7%)
*Professionals	844	120 (14%)	305 (36%)
*Technicians	75	11 (15%)	21 (28%)
*Sales	13	2 (15%)	6 (46%)
Office & Clerical	697	175 (25%)	575 (82%)
*Craftworkers	84	20 (24%)	6 (7%)
*Operatives	77	28 (36%)	28 (36%)
*Laborers	385	317 (82%)	169 (44%)
Service Workers	1,380	471 (34%)	661 (48%)

61. That Bally's Park Place, as a condition of its operation certificate is required by January 1, 1981, to increase within the "officials and managers" level of its workforce from 18% to at least 20% minority employees and from 30% to at least 37% female employees as an interim goal and to increase such minority and female representation in each of the four subcategories included within the "officials and managers" level; and that the female and minority representation in these areas are summarized as follows:

"Officials and Managers" Level

	Total Employees		Minority		Female		Category
	12/79	10/80	12/79	10/80	12/79	10/80	
Executives	22	35	2 (10%)	5(15%)	4 (19%)	8 (23%)	
Managers	290	419	38 (13%)	60(14%)	73 (25%)	142(34%)	
Asst.Managers	95	111	15 (16%)	12(11%)	13 (14%)	14(13%)	
Supervisors	171	241	49 (29%)	73(30%)	82 (48%)	116(48%)	
TOTAL (Officials and Managers)	578	806	104 (18%)	150(18.6%)	172 (30%)	280 (34.7%)	

62. That, as a condition of its casino license, Bally's Park Place shall by January 1, 1982, seek to achieve interim goals in the "officials and managers" category of 20% minorities and 40% females;

63. That Bally's Park Place has made good faith efforts to achieve the protected class employment goals at all levels of its workforce;

64. That, as a condition of its casino license, Bally's Park Place shall timely submit information regarding its affirmative action goal compliance levels in the form and manner prescribed by the Commission staff;

65. That, as a condition of its casino license, Bally's Park Place shall, within 30 days of this decision, submit a finalized description of its training program to the Commission staff and shall implement all phases of said program immediately upon approval of said program by Commission staff;

66. That, as a condition of its casino license, Bally's Park Place shall, at the direction of and in the form prescribed by the Commission staff, timely submit all relevant information regarding its complaint review procedure and information evidencing affirmative action it has taken to afford an equal employment opportunity including but not limited to methods of employment, upgrading, demotion, transfer, recruitment, layoff, termination, compensation, and employee selection as described in N.J.A.C. 19:53-1.5(a)(2);

67. That, subject to the conditions previously stated, Bally's Park Place has established by clear and convincing evidence its financial stability, integrity, and responsibility as required by N.J.S.A. 5:12-84(a);

68. That Bally's Park Place has established by clear and convincing evidence that it has sufficient business ability and casino experience to make likely the continued maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d).

V

CONCLUSION

Based on our review of the entire record, including our observation of the witnesses who testified before us, we find that Bally Manufacturing Corporation and Bally's Park Place qualify for a conditional gaming-related casino service industry license and a conditional casino license, respectively. The major conditions attached to the licenses are designed to assure that neither William T. O'Donnell nor Alexander R. A. Wilms can exercise any control or influence over the policies, business or activities of either corporate applicant. In the case of Alexander R. A. Wilms, the conditions underpin both (1) our concurrence with the Director of the Division of Gaming Enforcement that Mr. Wilms and members of his family need not qualify as part of the casino license application and (2) our separate determination that the same individuals need not qualify as part of the gaming-related casino service industry license application.

In the case of William T. O'Donnell, the conditions must effect a full severance of Mr. O'Donnell from the applicants. Since Mr. O'Donnell was clearly a person required to qualify under the casino license application and since he has failed to establish his good character, honesty and integrity by clear and convincing evidence, the Casino Control Act demands a denial of the casino license application and the institution of a conservatorship to control the already operating casino

hotel, unless the unqualified person is totally and utterly separated from the applicant and its holding company. See N.J.S.A. 5:12-105 and -130.1b. Similarly, since Mr. O'Donnell was also required to qualify under the casino service industry license application, denial of the casino service industry license would be mandated if any significant relationship with Mr. O'Donnell continued. See N.J.S.A. 5:12-92(b). Given the virtual identity between Mr. O'Donnell and Bally Manufacturing for nearly 20 years, any business contact between them carries an especial significance and the potential for real influence over company policy. Thus, only unstinting compliance with the purposely severe conditions appended to the licenses will satisfy the policies of the Act.

Based on the foregoing and on our belief that the corporate applicants will honor punctitiously the conditions stated herein, orders granting an appropriately conditioned casino service industry license (gaming-related) and casino license to Bally Manufacturing Corporation and Bally's Park Place, respectively, will be entered. Further, an order finding William T. O'Donnell not qualified to the standards of a casino key employee shall also be entered.

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman

Marvin B. Danziger, Vice-Chairman

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Madeline H. McWhinney, Commissioner
(Except as to Part IIA)

Dated: March 16, 1981

Commissioner McWhinney, Dissenting in Part as to William T. O'Donnell.

While I agree with the majority that William T. O'Donnell does not qualify, I believe that this finding should be based solely on Mr. O'Donnell's past associations with Gerardo Catena and with Dino Cellini. Unlike my fellow Commissioners, I am unable to draw any conclusions as to Mr. O'Donnell's character from the evidence in the record relating to the incident which occurred thirteen years ago involving Southland Distributing Company and an alleged attempt to buy the votes of members of the Kentucky Legislature.

Moreover, I do not find that any of the other issues raised by the Division of Gaming Enforcement rises to the level of disqualification. In any event, these matters must be balanced against the testimony of the extremely impressive array of character witnesses who testified on Mr. O'Donnell's behalf.

Madeline H. McWhinney

Madeline H. McWhinney, Commissioner

Dated: March 16, 1981.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket Number CCC 5106-79
CCC Docket Number 79-EA-156

IN THE MATTER OF THE APPLICATION OF GWEN M. BEDNAR FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE.	:	FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on June 11, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, no exceptions having been filed, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Gwen M. Bednar's application for licensure,

It is on this 23rd day of June, 1980 ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Gwen M. Bednar be and hereby is denied based upon the reasons set forth in the Initial Decision which is incorporated hereby by reference and made a part hereof; and it is further ORDERED that copies of this Order be served upon the Applicant and the Division of

Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: June 23, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

GWEN M. BEDNAR,	:	INITIAL DECISION
	:	
PETITIONER,	:	OAL DKT. NO. CCC 5106-79
	:	AGENCY DKT. NO. 79-EA-156
DIVISION OF GAMING ENFORCEMENT,	:	
	:	
RESPONDENT.	:	

APPEARANCES:

Jack Plackter, Esq., on behalf of the Petitioner

Joseph Mussomeli, Esq., Deputy Attorney General, on behalf of the Division of Gaming Enforcement

WITNESSES:

Gwen M. Bednar
Cecelia Kathleen Updegrove
Rosemarie L. Pisano
Richard A. Rementer

EXHIBITS:

R-1 Packet of documents including Division of Gaming Enforcement request for Fort Lauderdale police records and those police records.

R-2 Letter to Captain Grossi from Investigator for State Attorney in Florida, 6/27/79

R-2B Memo, 2/14/78

R-3 Court form from Florida, 1/27/76

R-4 An information handed up in the State of Florida against Gwen Bednar.

R-5 Letter from Joseph J. Gormley, to DAG Frederic Gushin, 12/27/79

P-1 Letter by Mrs. Betty Jackson, 3/7/80

P-2 Letter by M. Edwin Bi[illegible]kins, 2/29/80

P-3 Letter by Michael Celestino, 3/1/80

P-4 Letter by Ralph E. Bakley, Jr., 3/9/80

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

The petitioner applied for an Alcoholic Beverage Employee License from the Casino Control Commission on March 13, 1979. On October 26, 1979 she was advised by the Casino Control Commission that there was a substantial possibility that her application would be denied and of her right to a hearing. She requested a hearing on October 28, 1979. That hearing was held before the undersigned on March 10, 1980. The record was closed on March 25, 1980, the date of receipt of proposed findings of fact and conclusions of law prepared by the attorney for the petitioner.

The Division's objection to licensure rests on three arrests of the petitioner. The existence of the arrests and the ultimate convictions on two of the arrests are not disputed by the petitioner. Based upon the petitioner's own testimony and the documents offered into evidence by the Division of Gaming Enforcement I find the following facts:

1. On October 25, 1976, Miss Bednar was arrested in Dade County, Florida for two counts of forgery. Her boyfriend showed her a purse which he claimed to have found containing a wallet with several credit cards. She used one of the credit cards to attempt to purchase a camera and case and a leather coat at a Sears and Roebuck store in Fort Lauderdale. When she was confronted by store security she went to the bathroom and attempted to flush the remaining credit cards down the toilet. She was convicted on a guilty plea on February 3, 1977 of forgery, which is comparable to the offense set forth in N.J.S.A. 2A:109-1(a). She was placed on probation for two and one-half years. Miss Bednar claims to have done this solely through the influence of the boyfriend and claims that she learned her lesson at the time she received the probationary sentence. She further states that what she did did not appear to her to be wrong when she did it. However, Miss Bednar was approximately

twenty years old and a college student at the time of this offense. I find her to have committed the offense knowingly with an understanding that she was violating the law when she did it. Her statement of regret is belied by her next arrest.

2. On December 6, 1977 she was arrested in Miami, Florida for burglary and grand theft. The value of the property was in excess of $1,000. She once again entered a guilty plea, this time on advice of counsel, and was placed on probation for three years. The probation is still continuing. Miss Bednar now denies her guilt, but her explanation is simply not believable. She states that a new roommate asked her to help her move her belongings from her former lodging to Miss Bednar's habitation. Unbeknowst to Miss Bednar, the items she was taking from the residence of another couple did not belong to her new roommate and were in fact being stolen by Miss Bednar and her new roommate. It is simply not believable that Miss Bednar was advised by an attorney to plead guilty to grand theft and burglary where a substantial defense existed. It is similarly unbelievable that she entered a guilty plea under some vague notion that it was the best thing to do in order to avoid violating the terms of her probation on her prior conviction. I paid close attention to the appearance and demeanor of Miss Bednar as she testified and I am convinced that her testimony regarding her innocence of these charges is untrue. Burglary is comparable to N.J.S.A. 2A:92-1 and grand theft is comparable to N.J.S.A. 2A:119-2. The latter statute is a specifically enumerated disqualification under N.J.S.A. 5:12-86C.

Testimony concerning a subsequent arrest for loitering which did not produce any charges and a bad check issued by Miss Bednar are not indicative of a lack of good character, honesty and integrity and I am not considering these acts in my decision.

Furthermore, the commission of the second offense, the recent occurrence of both offenses and the patently false testimony at the hearing before me all combine to compel a finding that the petitioner has not demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90h. Petitioner points to the testimony of Rosemarie Pisano, her probation officer, to help establish rehabilitation. However, the letter of recommendation from Mrs. Pisano (R-5) concludes "most cautiously I would indicate that Gwen Bednar has attempted to rehabilitate herself."

Based upon the foregoing finds of fact I CONCLUDE:

1. That the petitioner has committed an automatic disqualifier by virtue of her conviction of grand theft, comparable to N.J.S.A. 2A:119-2, in violation of N.J.S.A. 5:12-86C and N.J.S.A. 5:12-86g.

2. The petitioner has not demonstrated rehabilitation pursuant to N.J.S.A. 5:12-90h.

3. The petitioner has failed to demonstrate by clear and convincing evidence her reputation for good character, honesty and integrity within the requirements of N.J.S.A. 5:12-89B2 as incorporated into N.J.S.A. 5:12-90b.

Therefore, IT IS HEREBY ORDERED that the petitioner's application for licensure be denied.

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

I HEREBY FILE with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

May 5, 1980
DATE

NORMAN D. SMITH ALJ

Receipt Acknowledged

May 8, 1980
DATE

AGENCY HEAD
R. BENJAMIN COHEN

Mailed to Parties

May 9, 1980
DATE

Ronald L. Parker/BH
OFFICE OF ADMINISTRATIVE LAW

mjl

IN THE MATTER OF THE APPLICATION
OF WARREN M. BIDDLE FOR RENEWAL OF
LICENSE AS A CASINO EMPLOYEE
(ALCOHOLIC BEVERAGE EMPLOYEE)

OAL Docket No. ccc 3528-79
Agency Docket No. 79-EA-96

The Initial Decision attached hereto became the Final Decision in this matter on August 15, 1980, by operation of law. See N.J.S.A. 52:14B-10(c).

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

WARREN M. BIDDLE,	:	INITIAL DECISION
	:	
PETITIONER,	:	OAL DKT. NO. CCC 3528-79
	:	
DIVISION OF GAMING ENFORCEMENT,	:	AGENCY DKT. NO. 79-EA-96
	:	
RESPONDENT.	:	

APPEARANCES:

For the Petitioner, Meranze, Katz, Spear & Wilderman (Michael N. Katz, Esq., of Counsel and Warren J. Borish, Esq., of Counsel)

For the Respondent, John J. Degnan, Attorney General (Robert J. Melillo, Esq., Deputy Attorney General and Fredric J. Gushin, Esq., Deputy Attorney General)

WITNESSES:

Warren M. Biddle
Lorraine Weierbach
Steven Shertel
David Blasej
Stephen Lustig
Martin Fitzgerald
Leonard Varvaro
John Nevias
William Fritzinger
Adolph Villafana
Albert Black
Richard Black
David Cummings

EXHIBITS:

P-1 Order of Casino Control Commission
P-2 Police Verification Report
R-1 Procedure
R-2 Personnel History Disclosure Form
R-3 Mr. Villafana's report
R-4 Affidavit of Paula Monreale
J-1 License Renewal

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

The petitioner was initially licensed as a casino employee (alcoholic beverage) on October 16, 1978. He filed an application for renewal of that license on June 1, 1979. That application was objected to by the Division of Gaming Enforcement on July 17, 1979. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearings were held on February 29, March 5 and March 7, 1980. The final legal memorandum of the Division of Gaming Enforcement was received on May 27, 1980 at which time the record was closed.

The Division bases its objection to Mr. Biddle's re-licensure on certain alleged misappropriations of bar receipts. Much of the evidence described general conditions in the lounge in which Mr. Biddle worked. All witnesses agreed substantially on those conditions and I find the following facts with regard to them:

1. Mr. Biddle began working as a bartender for Resorts International in a lounge called the AC Disco Lounge in May, 1978, the first week that Resorts International was open.

2. Resorts installed an IBM 3600 cash register throughout the hotel facility. The register was actually a terminal in a central computer system so that all charges throughout the hotel could be instantly recorded in a centrally located data bank. The terminal sat on an independent cash drawer; i.e., the drawer was manually opened or closed by the bartender without any relationship to the entry made into the terminal.

3. The IBM 3600 register produced two major problems: the slow speed of the machine and the frequent breakdowns. Each transaction in the machine took at least 30 to 45 seconds. This speed was too long to allow the speed of service desired by customers at a crowded disco bar. This delay caused bartenders to shortcut the usual procedures required by the accounting department, much to that department's chagrin.

4. The register broke down frequently, i.e., more than once a week due to mechanical failure or power failure. But more frequently, i.e, several times a night for many minutes at a time, the machine would be unable to record any entry because other terminals throughout the hotel and casino facility were receiving information simultanously, to the capacity of the entire computer system. During these

times, there was no adequate system for recording the number of drinks sold. The officially authorized procedure was to have each bartender write a check by hand for each and every drink. However many bartenders developed the system of using pads with the name of each drink heading a column. They would simply then place a single hash mark with a pen or a pencil in the appropriate column each time a drink of the particular type was sold. This system was known to the assistant manager, Mr. Fritzinger, and tacitly condoned although officially disapproved by him.

5. The auditing procedures were changed weekly on an oral basis. Eventually, written procedural instructions were promulgated (R-1) but not communicated formally until the end of August. (TR. 3/5 - 6 to 7) Word of their content caused a furor among the bartenders. (TR. 3/5 - 76-12,13) It was this furor that convinced management that the procedures were appropriate and led to their formal adoption. (TR. 3/5 - 77-25 to 78-5) All of the findings made to this point are supported by the testimony of William Fritzinger, the assistant manager of the AC Disco during the summer of 1978. His testimony, from page 166 line 16 to page 170 line 25 sets those facts out in detail, as well as the extremely crowded conditions in the disco. David Cummings, who was the manager of the AC Disco during the summer of 1978, confirmed Mr. Fritzinger's testimony with regard to the conditions found herein to have existed in the summer of 1978. While describing the problems engendered by the 3600 computer, Mr. Cummings (a witness for the Division of Gaming Enforcement) wryly observed that "you can't shut down a hotel because of a computer." (TR. 3/7 -180-5).

6. Mr. Cummings also confirmed the inappropriateness of the IBM 3600 register for the disco (TR. 3/7 - 181-19 to 21) and the frequency with which procedural requirements for bartenders were changed (TR. 3/7 - 182-5, 6).

7. In Atlantic City, it is customary for a bartender to buy a round of drinks "every so often for a good customer" (TR. 3/7 - 170-7, 8). The official procedure required that the manager's approval be obtained by the bartender prior to giving any free drinks to customers. However, it could easily occur that such approval might be given sometime prior to the actual giving of the free drink because of the continuing obligations which might sidetrack the bartender between the time of the approval and the time of the pouring of the free drink. (TR. 3/7 - 175 line 20 to T-176 line 1).

It is against the foregoing findings that the Division of Gaming Enforcement presents the testimony of Mr. Richard Black. It is conceded in the summation of both counsel that Mr. Black gave the only testimony of direct observation of alleged wrongdoing by Mr. Biddle.

Richard Black is the son of Albert Black, the founder of The Black Agency. In the summer of 1978 he was eighteen years old and had just graduated from high school. During the summer, he worked part-time for his father as an investigator. He was not a licensed investigator (TR. 3/7 - 94-2 to 7). He never worked as a bartender (TR. 3/7 - 94-11 to 13). His experience in bars must have been limited to the months since his eighteenth birthday, by force of law. He had worked on three or four bar investigations with his father since turning eighteen prior to the investigation in question (TR. 3/7 - 40-9 to 11).

During the undercover operation in the AC Disco in August, 1978, Richard Black worked with two other operatives (TR. 3/7 -99-6 to 10). Every 25 minutes he would leave the disco and meet his father, probably in a bathroom. There, he would tell his father what he had observed as well as what the other two operatives had told him they had observed. These notes were then typed at the end of the evening and also included observations made directly by the other operatives. (TR. 3/7 - 105-1 to 10). The reports that were made from those notes were used by Richard Black prior to testifying in order to refresh his recollection (TR. 3/7 - 156-5 to 15; TR. 3/7 - 92-20 to TR. 3/7 - 93-13). The reports were compilations of observations by Richard Black and the other operatives. (TR. 3/7 - 107-1 to 22).

Richard Black was neither familiar with the problems besetting the use of the IBM 3600 registers nor with the various alternate auditing procedures in use, either authorized or unauthorized (TR. 3/7 - 94-14 to 22; TR. 3/7 - 95-19 to 22).

In addition to the foregoing circumstances which I find hampered the ability of Mr. Black to observe and to understand what he was observing, it appears that he drank as a necessary part of his undercover operation. He drank as many as four drinks on an evening (TR. 3/7 - 79-18 to 24). He testified that he drank "mostly beers" but did not specify what else he might have consumed. (TR. 3/7 - 80-1,2). He observed, "it was at such a slow pace I didn't even feel nothing." (TR. 3/7 -80-1,2).

Richard Black's demeanor was forthright but weak. His testimony did not seem to bear conviction. While I do not feel that he misrepresented anything, I do feel that by virtue of his inadequate experience, training and briefing, in addition to his drinking, he was unable to fully appreciate what he observed or remember those observations with a degree of personal certainty which is likely to induce a finder of fact to reach the urged conclusion.

His observations were as follows:

a. While at the bar on August 15, 1978, Mr. Black observed Mr. Biddle, on two separate occasions, deposit money which Mr. Black himself had tendered in payment for drinks directly into the open cash drawer of an IBM 3600 without entering any information into the terminal element of the machine. Mr. Black also testified that he did not see Mr. Biddle make any recording on any note pad near the machine. These incidents occurred at approximately 9 p.m. and 9:20 p.m. (TR. 3/7 - 58-1 to TR. 3/7 - 59-25). I find that Mr. Biddle did place money in the cash drawer without ringing it up based upon Mr. Black's testimony, however, Mr. Black was not informed of the possibility of a note pad being used and may not have been looking for it. I simply do not have enough evidence to make a finding that Mr. Biddle did or did not use a note pad. However, if the incident happened exactly as testified to by Mr. Black, I do not find this incident to be anything more than a violation of continuously changing auditing requirements, officially disapproved but unofficially condoned by management.

b. On August 24, at 1:10 a.m. Mr. Black placed money for a beer on the counter and observed Mr. Biddle take that money and put it directly into the tip box and not into the register. Mr. Biddle, as with all of these charges, has no specific recollection of the incidents, which is understandable. However, he clearly denies ever appropriating any bar receipts for his own use. He proffers possible explanations for what Mr. Black thought he saw. These include the possibility that he may have had money from other customers in his hand and put that money in the tip box on his way to the register. That occurs many times. Mr. Biddle was frequently waiting on two or three people at one time who were not together and would be moving the money around rather rapidly, depositing tips in the tip box and going to the register with payment for drinks. (TR. 3/7 - 195-13 to TR. 3/7 - 196-6). I am not

inclined to make a finding based solely upon Mr. Black's testimony for the reasons set forth previously. As I will later discuss, Mr. Biddle's credibility is high. It is only natural that he would not remember these specific incidents if in fact he did not commit them. I find as a fact that Mr. Biddle did not take money belonging to Resorts International and place it in a tip box.

c. On the same night Mr. Black observed Mr. Biddle fill an order for two drinks for a couple sitting next to Mr. Black at the bar. He does not know what those drinks were. He saw Mr. Biddle inform the service register cashier of the order and that cashier rang up an amount equal to one drink. Mr. Biddle placed all the change from this transaction, consisting of several bills directly into the tip box. Mr. Biddle explains that Mr. Black may have seen one drink of alcohol and one drink of water ordered. However, Mr. Biddle denies that he ever took the price of one drink and converted it into tips. Again, the testimony of Mr. Black is not forceful enough to convince me that what he says is so. He was not able to observe what the drinks were or what the actual dollar amount was on the register. Based on Mr. Biddle's credible denial I find that Mr. Biddle did not convert money to tips on this occasion.

d. The final allegation against Mr. Biddle concerns the events of August 29, 1978 at approximately 1:10 a.m. Mr. Black stated that on this night Mr. Biddle had provided several other members of his party with free drinks. This is understandable in light of the previous testimony that good customers traditionally received free drinks from bartenders in Atlantic City. Certainly, after conducting this investigation for several nights and spending a lot of money while at it, Mr. Black and his party could have been considered good customers by Mr. Biddle. When Mr. Biddle offered a free drink to Mr. Black, Mr. Black claims that he refused it and placed his money on the bar in payment of the drink. It should be noted that the other operatives with Mr. Black did accept free drinks from Mr. Biddle that evening. Mr. Biddle picked up this money and deposited it into the tip box. Mr. Biddle, while not remembering the specific incident, suggests that he may well have thought Mr. Black accepted the free drink and placed the money as a tip. This was a traditional manner of tipping a bartender when free drinks were given. The fact that the others in Mr. Black's party accepted free drinks, and the lack of precise clarity with regard to the manner in which Mr. Black denied Mr. Biddle's offer of a free drink, together with Mr. Biddle's credible

denial, lead me to find that Mr. Biddle took the money from Mr. Black as a tip and not as a price for a drink. I further find that Mr. Biddle, based on his testimony, obtained authorization sometime during the course of the evening for the free drinks that he gave to the Black party.

Mr. Biddle's demeanor was sincere and strong. His testimony, in short, was credible. He steadfastly denied ever converting money to his own use. His reputation for honesty, good character and integrity was established by Lorraine Weierbach, his former employer; Steven Shertell, Casino Beverage Supervisor for Resorts International and the current direct supervisor of Mr. Biddle; David Blasej, former cashier and currently Cashier Supervisor for Resorts International; Steven Lustig, former bar porter and now bartender for Resorts International; Martin Fitzgerald, Assistant Manager of the AC Disco beginning the last two days of August, 1978, still employed by Resorts International. They all spoke up for Mr. Biddle's honesty, integrity and good character and his competence in his occupation.

I find that Mr. Biddle did, at no time, appropriate monies for his own purposes. From time to time, he may have violated rules of procedure set down by Resorts International, which rules were being violated by all bartenders by necessity with the tacit approval of at least the Assistant Manager of the Disco Lounge and probably the Manager himself. Such violation is a subject of hiring and firing, but does not rise to the level with which licensure concerns itself. I find that Mr. Biddle has shown by clear and convincing evidence that he is a man of good character, honesty and integrity and that he has a reputation for such.

IT IS THEREFORE ORDERED that the license of Warren Biddle be and it is hereby RENEWED as applied for.

This recommended decision may be affirmed, 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 30, 1980
DATE

NORMAN D. SMITH, ALJ

July 1, 1980
DATE

Receipt Acknowledged

AGENCY HEAD

Mailed to Parties

DATE

OFFICE OF ADMINISTRATIVE LAW

mjl

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 80-CL-1

IN THE MATTER OF THE APPLICATIONS:		
OF BOARDWALK REGENCY CORPORATION	:	
AND THE JEMM COMPANY FOR	:	ORDER
CASINO LICENSES.	:	

This matter having been brought before the New Jersey Casino Control Commission upon the applications of Boardwalk Regency Corporation (William R. Glendon, Esq. and Morris Brown, Esq. appearing) and the Jemm Company (James Cooper, Esq. appearing) for casino licenses, in the presence of John J. Degnan, Attorney General (Michael R. Cole, Assistant Attorney General appearing); and the Commission having considered all of the evidence in the record, and the briefs and arguments of counsel; and the Commission having for good cause shown and for the reasons more fully set forth on the record, made the following findings:

1. Clifford Perlman and Stuart Perlman are both persons required by the Casino Control Act to be qualified in order for Boardwalk Regency Corporation to be eligible to hold a casino license.

2. Clifford Perlman and Stuart Perlman are not qualified.

3. Save for these two individual qualifiers, Boardwalk Regency Corporation has satisfied all of the requirements of the Act for casino licensure.

4. The Jemm Company has satisfied all of the requirements of the Act for casino licensure as a landlord.

5. Boardwalk Regency Corporation is presently operating the Boardwalk Regency Hotel and Casino under a temporary casino permit which will expire no later than midnight on Sunday, October 26, 1980.

It is now on this 24th day of October, 1980, ORDERED as follows:

1. Prior to the expiration of that temporary casino permit this Commission will determine the casino license applications of Boardwalk Regency Corporation and the Jemm Company.

2. If, at the time the Commission determines the casino license application of Boardwalk Regency Corporation, Clifford and Stuart Perlman remain in positions as persons required by the Act to be qualified, the casino license application of Boardwalk Regency Corporation will be denied, and a conservator appointed.

3. On the other hand, if at that time Clifford and Stuart Perlman are no longer persons required by the Act to be qualified, the Commission will grant the casino license application of Boardwalk Regency Corporation, subject to such conditions as the Commission may deem appropriate.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-10
OAL DOCKET NO. CCC 3916-80

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. BOARDWALK REGENCY CORP. LINCOLN EBERT, MAXWELL GOLDBERG, JESS LENZ, BERNARD RESNICK, RALPH DELLIGATTI, HOWARD BACHARACH, MARK GELLER, LARRY BERTSCH, Respondents.	ORDER

This matter having been brought before the Commission pursuant to N.J.A.C. 1:1-9.7 for the review of the Order of the Honorable Howard Kestin, Chief Administrative Law Judge dated August 8, 1980 dismissing a portion of the Complaint as amended in the above matter; and the Commission having carefully reviewed the entire record as certified to the Commission by Judge Kestin pursuant to N.J.A.C. 1:1-9.7(c), the briefs on review filed by the parties with the Commission, and supporting documents submitted therewith which were not part of the record before Judge Kestin; and the Commission having heard and considered the oral arguments of counsel for the parties; and the Commission having resolved at its public meeting of

September 17, 1980 to reverse the dismissal Order of August 8, 1980 and to remand this matter to the Office of Administrative Law for a hearing upon the entire Complaint as amended,

It is on this 22nd day of September, 1980, ORDERED that the Order of the Office of Administrative Law of August 8, 1980 in this matter be and hereby is reversed insofar as it mandates dismissal of a portion of the Complaint herein as amended; and

It is further ORDERED that this matter be and hereby is remanded to the Office of Administrative Law for a hearing upon the entire Complaint as amended; and

It is further ORDERED that the Chairman be and hereby is authorized to issue a written Decision on behalf of the Commission forthwith, explaining the reasons for the determination set forth herein, which shall be incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 22, 1980

4. The Commission stands ready to reconvene at any time up until midnight on Sunday, October 26, 1980, to hear from Boardwalk Regency Corporation and to rule upon its casino license application.

5. The actions which will have to be taken on behalf of Boardwalk Regency Corporation prior to the Commission's determination of its casino license application in order to render Clifford and Stuart Perlman persons not required to be qualified are as follows:

(a) With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart Perlman must have been placed on an unpaid leave of absence from any position as:

(i) officer;

(ii) director;

(iii) employee.

(b) With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart Perlman may receive no remuneration in any form for services rendered or otherwise. Nor may Clifford and Stuart Perlman offer to perform any services, directly or indirectly, or exert any influence or control, direct or indirect, with regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc.

(c) With regard to any securities of Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World

held or beneficially owned by Clifford or Stuart Perlman:

(i) neither Clifford nor Stuart Perlman shall be permitted to exercise, directly or through any trustee or nominee, any right conferred by such securities; and

(ii) neither Clifford nor Stuart Perlman shall be permitted to receive any dividends or interest upon any such securities.

And it is further ORDERED that if the actions set forth above are taken on behalf of Boardwalk Regency Corporation, any casino license issued to Boardwalk Regency Corporation by this Commission shall be subject to the following conditions:

By no later than November 26, 1980, Boardwalk Regency Corporation shall advise the Commision:

(a) whether Caesars World, Inc. seeks to continue to operate licensed casino hotels in this jurisdiction. In the event it does, this Commission shall direct Caesars World, Inc. and Caesars New Jersey, Inc. to require both Clifford and Stuart Perlman to dispose of any interest whatsoever which either of them may hold in Caesars World, Inc., Caesars New Jersey, Inc. or in any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct that both Clifford and Stuart Perlman be removed from any position as an officer, director or employee of Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation and any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct that neither Clifford or

Stuart Perlman shall receive any remuneration in any form, whether for services rendered or otherwise, from Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation, or from any other subsidiary company of Caesars World, Inc., in this or any other jurisdiction; and further in that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable fo accomplishing the divestiture of all such securities and remova from all such positions; or

(b) whether Caesars World, Inc. seeks to withdraw from the operation of licensed casino hotels in this jurisdiction. In that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1930, a detailed plan and timetable for withdrawing from the operation of licensed casino hotels in this jurisdiction.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CL-1

IN THE MATTER OF THE APPLICATIONS:
OF BOARDWALK REGENCY CORPORATION :
AND THE JEMM COMPANY FOR :
CASINO LICENSES. :

FINAL ORDER GRANTING
CONDITIONAL CASINO LICENSES

This matter having been brought before the New Jersey Casino Control Commission upon the applications of Boardwalk Regency Corporation (William R. Glendon, Esq. and Morris Brown, Esq. appearing) and the Jemm Company (James Cooper, Esq. appearing) for casino licenses, in the presence of John J. Degnan, Attorney General (Michael R. Cole, Assistant Attorney General appearing); and the Commission having considered all of the evidence in the record, and the briefs and arguments of counsel; and the Commission having for good cause shown and for the reasons more fully set forth on the record, made the following findings:

1. With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford Perlman and Stuart Perlman have been placed on an unpaid leave of

absence from any position as:

(a) officer;

(b) director;

(c) employee.

2. With regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc., Clifford and Stuart Perlman will receive no remuneration in any form for services rendered or otherwise. Nor will Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc. receive from Clifford or Stuart Perlman any services, direct or indirect, or permit them to exert any influence or control, direct or indirect, with regard to Boardwalk Regency Corporation, Caesars New Jersey, Inc. or Caesars World, Inc.

3. With regard to any securities of Boardwalk Regency Corporation, Caesars New Jersey, Inc. and Caesars World, Inc. held or beneficially owned by Clifford or Stuart Perlman:

(a) neither Clifford nor Stuart Perlman shall be permitted to exercise, directly or through any trustee or nominee, any right conferred by such securities; and

(b) neither Clifford nor Stuart Perlman shall be permitted to receive any dividends or interest upon any such securities.

4. In light of paragraphs 1, 2 and 3 above, and subject to the conditions set forth below, Boardwalk Regency Corporation has satisfied all of the requirements of the Act for casino licensure.

5. The Jemm Company has satisfied all of the requirements of the Act for casino licensure as a landlord.

It is now on this 25th day of October, 1980, ORDERED that a casino license be and hereby is issued to Boardwalk Regency Corporation subject to the following conditions:

By no later than November 26, 1980, Boardwalk Regency Corporation shall advise the Commission:

(a) whether Caesars World, Inc. seeks to continue to operate licensed casino hotels in this jurisdiction. In the event it does, this Commission shall direct Caesars World, Inc. and Caesars New Jersey, Inc. to require both Clifford and Stuart Perlman to dispose of any interest whatsoever which either of them may hold in Caesars World, Inc., Caesars New Jersey, Inc. in any and all subsidiary companies of Caesars World, Inc. in this or any other jurisdiction; and shall further direct that both Clifford and Stuart Perlman be removed from any position as an officer, director or employee of Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation and any and all subsidiary companies of Caesars World, Inc. in this or any other jurisiction; and shall further direct that neither Clifford or Stuart Perlman shall receive any remuneration in any form, whether for services rendered or otherwise, from Caesars World, Inc., Caesars New Jersey, Inc., Boardwalk Regency Corporation, or from any other subsidiary company of Caesars World, Inc., in this or any other jurisdiction; and further in that event Caesars World, Inc. shall submit for Commission review and approval by

November 26, 1980, a detailed plan and timetable for accomplishing the divestiture of all such securities and removal from all such positions; or

(b) whether Caesars World, Inc. seeks to withdraw from the operation of licensed casino hotels in this jurisdiction. In that event Caesars World, Inc. shall submit for Commission review and approval by November 26, 1980, a detailed plan and timetable for withdrawing from the operation of licensed casino hotels in this jurisdiction.

And it is further ORDERED that a casino license as a landlord be and hereby is issued to the JEMM Company.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 80-CL-1

IN THE MATTER OF THE APPLICATIONS:

OF BOARDWALK REGENCY CORPORATION :

AND THE JEMM COMPANY FOR CASINO : OPINION

LICENSES. :

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman
Martin B. Danziger, Vice-Chairman
Don M. Thomas, Commissioner
Carl Zeitz, Commissioner
Madeline H. McWhinney, Commissioner

APPEARANCES:

For Boardwalk Regency Corporation:

William R. Glendon, Esq.
Rogers and Wells, Esqs., New York, New York

Morris Brown, Esq.
Wilentz, Goldman & Spitzer, Esqs., Woodbridge, New Jersey

Richard H. Sheehan, Esq., VicePresident-Law
Caesars World, Inc., Los Angeles, California

For the Jemm Company:

James L. Cooper, Esq.
Cooper, Perskie, Katzman, April, Niedelman & Wagenheim, Esqs., Atlantic City, New Jersey

For the Division of Gaming Enforcement:

Michael R. Cole, Assistant Attorney General
Joan Robinson Gross, Deputy Attorney General
Anthony J. Parillo, Deputy Attorney General

For the Casino Control Commission:

R. Benjamin Cohen, General Counsel
Joseph A. Fusco, Special Counsel for Licensing

I.

INTRODUCTION

On September 1, 1978, Boardwalk Regency Corporation ("BRC") applied to the Casino Control Commission for a casino license. In accordance with the Casino Control Act ("the Act"), the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into BRC's qualifications. While the investigation was in progress, BRC proceeded with its reconstruction and expansion of the former Howard Johnson's Regency Hotel. On April 30, 1979, with completion of its facility approaching, BRC formally requested issuance of a temporary casino permit which the Commission is authorized to grant upon the filing of certain corporate information, the institution of an appropriate voting trust agreement and the establishment of the suitability of the proposed casino hotel facilities. See N.J.S.A. 5:12-95.1. After conducting a hearing on this request, the Commission found that, subject to certain conditions, BRC met the requirements for a temporary casino permit. The Commission then issued such a permit which became effective on June 26, 1979. That permit expired at midnight on October 26, 1980. As noted, the statutory requirements for a temporary casino permit were limited to areas which did not concern the suitability of the applicant or other persons required to be qualified for a casino license.

[redacted]

As the landlord and lessor of the casino hotel facility, the Jemm Company ("Jemm") is required by Section 82 of the Act to apply for and obtain a casino license. N.J.S.A. 5:12-82(c)(2). Jemm did apply for such license on or about February 26, 1979. In the usual course, the matter was referred to the Division for investigation.

On January 23, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Boardwalk Regency Corporation" (the "BRC Report"). Along with the BRC Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. On February 1, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Jemm Company, a Partnership." These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. N.J.S.A. 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See N.J.S.A. 5:12-80(a) and -87(a).

[redacted]

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, six (6) pre-hearing conferences were conducted. Those conferences resulted in six (6) pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's reports. Further, the applicants and the Division have entered into extensive stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such matters pose no cause for concern. In this regard, the Commission took notice of the fact that the applicants have to date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing.

Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. N.J.S.A. 5:12-84 and 89(b). The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard

means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. N.J.S.A. 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For BRC, a corporate applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. Under Section 85(c), the following persons connected with BRC must qualify:

(a) each officer;

(b) each director;

(c) each person holding any beneficial interest, direct or indirect, in the securities of the applicant corporation;

[redacted]

(d) any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and

(e) any lender, underwiter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Caesars, New Jersey, Inc. (the intermediary company) and Caesar's World, Inc. (the holding company) must qualify to the standards under Section 89, except residency. However, since both the intermediary company ("CNJ") and the holding company ("CWI") are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities of BRC and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

As to Jemm, the partnership which leases the casino hotel facility to BRC, Section 85(e) of the Act requires the following persons to be qualified to the standards for casino key employees, except for residency:

a) each person who directly or indirectly holds any beneficial interest or ownership in the partnership applicant;



b) any person who in the opinion of the Commission has the ability to control the partnership applicant; and

c) any person whom the Commission considers appropriate for qualification.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified for both BRC and Jemm. The Division also indicated those individuals to whom it interposed an objection and the grounds for such objection. These materials were provided to the Commissioners and the parties. The Commission found that there are thirty persons who must be qualified as part of the BRC application and eight persons who must be qualified as part of the Jemm application. At the conclusion of the hearing, the Division objected to four of the BRC "qualifiers," namely, Clifford S. Perlman, Stuart Z. Perlman, Jay E. Leshaw and William H. McElnea, Jr. No objection was interposed regarding any of the Jemm qualifiers.[1]

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be established by clear and convincing evidence for the applicants and the persons to be qualified.

---

1. Prior to the hearing, the Division stated its opposition to Mark A. Geller, who resigned his position as vice-president for BRC's casino operations and who took a leave of absence from his office in CWI. Mr. Geller's qualifications are the subject of a separate proceeding and will be determined by the Commission apart from the instant matter.



The first affirmative qualification criterion is that of "financial stability, integrity and responsibility." N.J.S.A. 5:12-84(a); N.J.S.A. 5:12-89(b). The second criterion appears in Section 84(c) and Section 89(b)(2). Although the wording varies slightly between these sections, the thrust is the same. A casino licensee applicant or person required to qualify must demonstrate its "reputation for good character, honesty and integrity." N.J.S.A. 5:12-89(b)(2). The third criterion demands that the applicant or qualifying person possess "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a successful, efficient casino operation" or that the qualifying person will achieve "success and efficiency in the particular position involved." N.J.S.A. 5:12-84(d); N.J.S.A. 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project.[2]

---

2. At the hearing, the Chairman distributed to the Commissioners and to the parties a proposed written instruction on the licensing criteria and the decisional process. After considering the exceptions filed by the parties, the Chairman modified the proposal in two respects. The written instruction, as modified, was adopted by the Chairman for the guidance of the Commission and the edification of the parties. It is not necessary to restate the instruction here since it is part of the record. Moreover, the meaning of the pertinent standards and their application to the contested matters in this case are apparent from the opinions of the Commission members herein.

As mentioned earlier, the Division filed investigative reports as to both the BRC application and the Jemm application. In addition, the Division submitted a "Statement of Issues" in which it enumerated 13 areas of concern covered by the BRC report. The Commission received evidence on these areas and considered that evidence in determining whether BRC had met the affirmative qualification criteria. However, certain "issues" as developed on this record simply were not of the same force and importance as others. The matters which truly concerned the Commission were those which are related in the opinions regarding the four challenged BRC qualifiers. With respect to the otherwise unmentioned issues, the Commission found on this record no reasons to seriously question the suitability of the applicants or persons to be qualified. Since the real difficulties with the BRC application concern the persons to be qualified, we now consider those individuals.



II.

PERSONS REQUIRED TO QUALIFY

A. CLIFFORD S. PERLMAN

Clifford S. Perlman who presently resides in Miami, Florida, was born on March 30, 1926, in Philadelphia, Pennsylvania and was educated in the Philadelphia public schools. After attending Temple University for a short time, he completed his undergraduate education at the University of Miami and proceeded to obtain a law degree from the same institution in 1951. He has been a member of the Bar of the State of Florida since 1951.

Caesars World Inc. ("CWI") was formed in 1958 as "Lum's Bar, Inc." by Clifford Perlman and his brother, Stuart, to operate a small restaurant in Miami Beach, Florida which the brothers had purchased in 1956. By 1969, the Perlmans had built the corporation into a publicly-held (over-the-counter) company which operated or franchised approximately 380 fast-food restaurants. The company also acquired in the late 1960's a Florida-based producer and distributor of processed meats (Dirr's Gold Seal Meats) and a chain of more than 100 retail discount stores. (Dade Wholesale Products). On September 30, 1969, Lum's acquired Caesars Palace in Las Vegas, Nevada. Within the next two years, Lum's disposed of Dirr's Gold Seal Meats and Dade Wholesale Products and its fast-food restaurants. In December 1971, the name of the corporation was changed from Lums to Caesars World. Clifford Perlman was the primary catalyst in changing the direction of the company from the fast-food business



to the casino hotel business.

Caesars World Inc. is today a publicly traded corporation, the stock of which is listed on the New York and Pacific stock exchanges. The approximately 26,100,000 shares of the company are owned by about 70,000 shareholders. Through subsidiaries, CWI presently owns and operates Caesars Palace Hotel and Casino in Las Vegas, Nevada, Caesars Tahoe Hotel and Casino in Stateline, Nevada, and Boardwalk Regency Hotel and Casino in Atlantic City, New Jersey. Through other subsidiary companies, CWI owns real estate and operates a country club in southern Florida, operates three honeymoon resorts in the Pocono Mountain area of Pennsylvania, and owns a computer terminal manufacturing company based in New York. In fiscal 1980, the gross revenues of CWI exceeded $500,000,000.

Clifford Perlman is Chairman of the Board of Directors and chief executive officer of both CWI and Caesars New Jersey, Inc. ("CNJ").[3] He is the largest single stockholder of CWI, owning approximate 2.4 million shares, or about 10% of the outstanding stock. In addition, he owns approximately 221,000 shares of CNJ, or about 1.4% of the outstanding stock of that

---

3. Mr. Perlman has been on unpaid leave of absence from his position with CWI and CNJ and has been prohibited from taking any management position with BRC since June 26, 1979, the effective date of the BRC temporary casino permit. Mr. Perlman agreed to this arrangement in response to concerns raised by the Division which was then continuing its investigation of Mr. Perlman's and CWI's dealings with Messrs. Malnik and Cohen.

company. Clifford Perlman clearly is today, and has been since the beginning, the acknowledged leader and prime mover of CWI.

By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Clifford Perlman is a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Boardwalk Regency Corporation ("BRC") to be eligible to hold a casino license. BRC therefore has the affirmative responsibility to establish by clear and convincing evidence Clifford Perlman's "financial stability, integrity and responsibility," his "good character, honesty and integrity," and his "business ability and casino experience."

With regard to Clifford Perlman, the bulk of the evidence presented to the Commission relates to the licensure criteria of "good character, honesty and integrity." To determine an individual's "good character, honesty and integrity," the Act requires the Commission to examine, among other factors, the individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs, and business, professional and personal associates."

In an effort to meet its statutorily imposed burden, BRC produced a great deal of evidence in support of both the good reputation of Clifford Perlman and the good character, honesty and integrity of Clifford Perlman. Several witnesses testified as to Clifford Perlman's good reputation



in the financial community, in the casino hotel industry and in the communities where he lives and works. Most of these witnesses also testified as to his good character, honesty and integrity. Suffice it to say that the Commission has very carefully examined, considered and weighed all of this evidence.

The Division of Gaming Enforcement has recommended that this Commission find Clifford Perlman unsuitable for qualification. In support of its recommendation the Division has adduced evidence which it contends reflects adversely on the good character, honesty and integrity of Clifford Perlman. This evidence may be most conveniently considered in the context of the four major areas which were closely examined at the hearing.

1. ACQUISITION OF CAESARS PALACE

CWI's (then Lum's, Inc.) entry into the casino gaming business was marked by the purchase of Caesars Palace in 1969 for approximately $58 million. The Caesars Palace venture was largely the initiative of Clifford Perlman. It was Clifford Perlman who discovered the deal for the company and who established the purchase price at a multiple of earnings not to exceed $60 million.

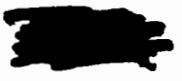
At the time of acquisition, CWI retained prior management to run the casino operation without conducting a background study or investigation of any of the individuals, relying instead on their general reputation in the gaming community. One of these individuals was Jerome Zarowitz, the



Director of Casino Operations, responsible for the day to day operations of the casino. He was then not required by the Nevada authorities to be licensed as a casino key employee. Although not a record owner of the Palace, Mr. Zarowitz received $3.5 million in cash upon the consummation of the acquisition from the former owners and received further monies on a deferred compensation plan, which CWI was obligated to fund.

Mr. Zarowitz had a known criminal record and by the latter part of 1969, was considered by Clifford Perlman unsuitable to operate the casino at Caesars Palace. While Mr. Zarowitz was still in charge of the casino, Clifford Perlman was aware of reports concerning Mr. Zarowitz' attendance at a so-called "little Appalachia" meeting of reputed organized crime members in Palm Springs in 1965. And Clifford Perlman was also aware that the Nevada Gaming Control Board had expressed concerns about Mr. Zarowitz's suitability for licensure and that his employment at Caesars Palace might have to be terminated. Notwithstanding this knowledge, CWI retained Mr. Zarowitz in his same executive capacity after the purchase settlement on September 30, 1969, until his resignation in April, 1970. Moreover, he was allowed to occupy an apartment at Caesars Place on a complimentary basis for a period of time after his termination of employment. And, CWI replaced him with Sanford Waterman, on Mr. Zarowitz' own recommendation.

Between May 1, 1969, shortly after CWI entered into the agreement to purchase Caesars Palace, and September 30, 1969, when that purchase was completed, Caesars Palace



suffered a loss of $932,266 before taxes, while continuing to be operated by the previous owners including Mr. Zarowitz. During the same period in the prior year of 1968, Caesars Palace had a profit before taxes of $2,230,014. Although professing concern over this drop in casino win, CWI accepted, without any independent investigation, the explanation tendered by Mr. Zarowitz and other personnel of the former owners that losses during the settlement period were due to patron win at the baccarat tables and, generally, to the fortunes of gaming. Indeed, CWI did nothing to confirm Zarowitz' explanation. Neither its Board of Directors nor management raised, or even considered, the possibility of an independent, outside audit of the records for the operation of the Caesars Palace casino during the settlement period. To do any such investigation, according to Clifford Perlman, would have disturbed the delicate negotiations then in progress between CWI and the previous owners over restructuring the financing aspects of the deal, occasioned by CWI's inability to adhere to its original plan of financing. In Clifford Perlman's words, "If I had accused them [the prior owners] of stealing, we would not have bought the hotel."

On December 12, 1970, the Federal Bureau of Investigation, acting under the supervision of Harold E. Campbell, Jr., then Special Agent in Charge of the Bureau's Nevada Regional Division, and having cause to believe the existence of an illegal interstate gambling operation, executed search and arrest

[redacted]

warrants at Caesars Palace. In the course of the search, the agents uncovered funds in lockboxes listed to Mr. Zarowitz ($1,100,000), Elliot Price ($325,000) and Sanford Waterman ($135,000). Mr. Waterman and Mr. Price, who were casino executives at Caesars Palace at the time, were arrested as a result. Apparently, neither Clifford Perlman, who took personal charge of the Palace after this occurrence, nor anyone else on behalf of CWI confronted Mr. Zarowitz, Mr. Price or Mr. Waterman regarding this event or made any independent attempt to ascertain the source of these monies.

On January 27, 1971, the Securities and Exchange Commission ("SEC") ordered an examination and investigation into the possibility that CWI did not receive a substantial portion of the results of the casino proceeds of Caesars Palace for the summer of 1969 because the prior operators had been "skimming" the casino revenues during that period. In the course of its hearings in this matter, the SEC subpoenaed, among others, the former principal owners of Caesars Palace and its key casino employees, including: William Weinberger, Sr., who at the time was President of Caesars Palace; Harry Wald, then Secretary-Treasurer of Caesars Palace (now Executive Vice President, Secretary and Director of Desert Palace, Inc., a wholly-owned subsidiary of CWI), Albert Faccinto (now Senior Vice President with Desert Palace, Inc.), Jerry Gordon and Bert Grober. All these individuals refused to testify, most invoking their constitutional privilege against self-incrimination. This

fact came to the attention of Clifford Perlman who, once again, made no attempt to interview any of his employees about their possible knowledge that others may have been sharing in Caesars Palace revenues through skimming.

One of these employees, Jerry Gordon, had been indicted on March 25, 1971, along with Samuel Cohen, Meyer Lansky, Morris Lansburgh and others for income tax evasion arising from an alleged skimming operation at the Flamingo Hotel, a neighboring casino. Although professing shock over the indictment, Clifford Perlman never inquired of Gordon whether he knew of possible skimming at Caesars Palace under its prior ownership. Quite to the contrary, when Nevada gaming authorities sought Gordon's dismissal from Desert Palace, Inc., by reason of his indictment, Clifford Perlman directed William Weinberger (then President of Desert Palace, Inc.) to intervene in the matter. After a series of correspondence between Weinberger and the Nevada Gaming Control Board, Mr. Gordon was allowed to take a temporary leave of absence.

Another employee of Caesars Palace who had pled the Fifth Amendment before the SEC was Joel Snow. Mr. Snow had been rehired at Caesars Palace one year after his termination for a $1,000 shortage in the baccarat pit. He also was never asked about the drastic drop in casino winnings during the 1969 acquisition settlement period.

From the foregoing, certain conclusions are self-evident. Despite an awareness of Mr. Zarowitz' criminal



conviction and his general unsuitability in the eyes of Nevada gaming officials, CWI, through Clifford Perlman, retained him in a position of responsibility and authority within the casino, allowed him to live on the premises rent free after his resignation, accepted without further inquiry his explanation for casino losses and followed his recommendation that he be replaced by Sanford Waterman. Unquestionably, Mr. Zarowitz' record as well as the sensitivities exhibited by Nevada gaming authorities should have disabused Clifford Perlman of any such trust and reliance. In the face of an official SEC investigation into the possibility of skimming at Caesars Palace under its prior owners - a charge which strikes at the heart of the regulatory concerns - CWI's apparent lack of diligence in ascertaining the truth of this allegation is disturbing, especially since individuals with possible relevant knowledge remained in CWI's employ. Two of these employees, Joel Snow and Jerry Gordon, in particular, should have given CWI cause for concern - indeed, Jerry Gordon at this time had just been indicted for an alleged skimming operation at the nearby casino, the Flamingo.

Of course, the nature and relevance of these events must be considered in the context in which they occurred. Clifford Perlman and CWI were new to the casino gaming industry. Nevertheless, <u>at the very least</u>, the facts outlined above relating to the acquisition of Caesars Palace should have raised Clifford Perlman's consciousness concerning the sensitive nature of this industry and concerning the regulatory process under



which it operates.

2. SKY LAKE NORTH

In the late spring of 1971, Alvin I. Malnik, a principal along with Samuel E. Cohen of Comal Corp., approached CWI President Melvyn Chasen about the possibility of CWI purchasing property in Dade County, Florida known as Sky Lake North. A previous overture to this effect had been rejected by Clifford Perlman in 1970. The Sky Lake property consisted of about 623 acres including a country club, lakes and approximately 325 acres of developable land owned by Comal. In the 1971 offer, the price was set by Malnik at $23 million. More specifically, CWI was to assume an existing $10 million mortgage debt to the Central States, Southeast and Southwest Areas Pension Fund (Teamsters Pension Fund) and undertake a $13 million purchase money mortgage to Comal. These terms appeared attractive to Clifford Perlman.

At a July 1971 meeting at Sky Lake, Mr. Malnik along with Samuel Cohen presented their proposal to certain representatives of CWI including Clifford and Stuart Perlman, William McElnea, Jay Leshaw, Bertin Perez and CWI's outside counsel, David Bernstein of Rogers & Wells. Also by this time, Mr. Malnik was proposing to sell the stock of Comal to CWI, rather than having CWI purchase the property outright, and seeking as part of the transaction, to acquire rights to CWI stock.

[redacted]

Sometime later in July 1971, CWI's Board of Directors met and considered the proposed transaction. Certain aspects of the deal were discussed including the reputations of Mr. Malnik and Mr. Samuel Cohen. The Board was told: that Mr. Malnik had been accused, in a book entitled Lansky by one Hank Messick, of being a close associate of Meyer Lansky; that Mr. Malnik denied such association; and that federal law enforcement authorities apparently believed Mr. Malnik was involved in organized crime. They were told that Mr. Malnik had once been indicted for tax fraud, but that he had received a directed verdict of acquittal, and that he had never been convicted of a crime. Board members were also informed of Mr. Cohen's violation of the Commodity Exchange Act.

At this meeting, David Bernstein expressed his concern over entering this transaction, given Mr. Malnik's reputation. As outside counsel, Mr. Bernstein recommended seeking the Justice Department's approval before consummating the deal. The Board rejected this advice, however, as a bad precedent, and as a poor business move. CWI's directors felt that the reputations of Mr. Malnik and Mr. Cohen should not preclude the company from the undertaking at hand and consequently decided to proceed with the transaction. Mr. Bernstein's concerns remained unabated but, he was eventually dissuaded by Clifford Perlman from again addressing the issue before the Board.

All of CWI's outside directors were not made aware of every important aspect of Mr. Cohen's background at the time of the Board's July 1971 approval of the Sky Lake transaction.



In fact, Mr. Cohen had been indicted together with Meyer Lansky and others in March 1971, for income tax evasion arising from an alleged casino skimming operation at the Flamingo Hotel in Las Vegas. Clifford Perlman was aware of Meyer Lansky's reputation. Clifford Perlman also knew of the Flamingo skimming indictment involving Messrs. Cohen, Lansky and others when it was returned in March 1971. Indeed, one of Mr. Perlman's employees, at Caesars Palace, Jerry Gordon, had been charged as a co-defendant in the same indictment. Stuart Perlman knew of the Flamingo skimming indictment at the time of its filing, as did Jay Leshaw, since it was extensively reported in the news media of Miami where both resided. However, Mr. Cohen's then pending indictment with Meyer Lansky and Caesars Palace employee Jerry Gordon was not discussed with William McElnea and the other outside directors of CWI. Clifford Perlman testified that he did not consider it a sensitive issue. Stuart Perlman testified that he "assumed" all directors knew, even though the subject of Mr. Cohen's indictment was never raised or discussed at the same Board meeting in which Mr. Cohen's conviction for a commodities violation was disclosed. Jay Leshaw testified that at the time of the Board meeting he focused on the architectural and land development aspects of the deal rather than on the character and backgrounds of those with whom his company was entering into a business relationship.

Based on the foregoing, the following findings are



inescapable. In 1971, CWI's Board of Directors was faced with the prospect of entering into a major business relationship with two men of admittedly controversial and questionable reputations. This presented sufficient concern to certain directors that the topic was raised and considered at a formal Board meeting. And it was of particular concern to CWI's counsel, David Bernstein. Apparently, however, the Board was satisfied with Mr. Malnik's denial of an association with Meyer Lansky and was unpersuaded by the nature of the allegations. On the basis of the information disclosed at that meeting, the Board approved the deal after weighing the various considerations before it.

The most pertinent piece of information, however -- Mr. Cohen's then pending indictment with Meyer Lansky in a casino skimming scheme -- was not brought to the attention of the outside directors by Clifford Perlman, Stuart Perlman or Jay Leshaw. Just four months earlier, Mr. Cohen had been indicted with Meyer Lansky and others for a crime rooted in an alleged casino skim. Its relevance to the discussion at hand was apparent. Had this fact been disclosed at the meeting it might well have brought the Lansky connection into sharper focus. The media allegations concerning Mr. Malnik and Mr. Cohen, then thought to be baseless, might not have been so readily dismissed. Mr. Bernstein's unheeded admonition might not have been so lightly regarded. Indeed, William McElnea testified that the fact of Mr. Cohen's indictment would have been dispositive of the issue for him if he had known about it.

It was, according to his business ethic, a fact which should have been fully disclosed to the Board for its consideration. It was not; and Mr. Perlman has provided no good reason why.

As the chairman of a publicly held corporation engaged in the heavily regulated business of casino gaming, Clifford Perlman should have approached Sky Lake with caution and circumspection, impelled by a sense of duty to his shareholders and to the regulatory authorities. This sense of duty both demanded, at the very least, full disclosure to the Board of Directors. It should have compelled further inquiry, such as a confrontation with Mr. Cohen himself or communication with law enforcement or regulatory agencies. But apparently none of this was done.



3. CRICKET CLUB

In the early summer of 1972, Clifford Perlman became personally involved in a real estate investment with Alvin Malnik and Samuel Cohen's two sons, Joel and Alan Cohen. This project involved the purchase of the partially completed Cricket Club, a high-rise condominium complex consisting of approximately 220 units in Miami, Florida. Calvin Kovens was chosen to be the general contractor for the completion of the condominium project. Mr. Kovens, along with Teamsters Union President Jimmy Hoffa, had been convicted in 1964 for fraud and conspiracy in using $1 million in Teamsters Pension funds to finance a real estate venture. Although aware of this conviction, Clifford Perlman's only objection to using Mr. Kovens' construction company was based on the personal relationship between Mr. Malnik and Mr. Kovens. When the costs of the condominium project began to exceed the financing made available for it, Samuel Cohen lent the Cricket Club substantial sums in excess of $6 million with which to complete the undertaking. Close to $2 million was also borrowed from Comal Corporation. Clifford Perlman knew that Mr. Cohen was lending money to the Cricket Club.

Clifford Perlman's equity interest in the Cricket Club was $10,000. Although asserting he was to be a passive investor, and this in part due to Mr. Malnik's reputation, all decisions involving the business or property of the corporations formed to undertake the condominium project

required the consent of Clifford Perlman. Moreover, the four partners in this venture were required to indemnify each other against liabilities in excess of the percentage interest of each in the stock of the corporation. Clifford Perlman's interest was one-third.

Clifford Perlman soon became the guarantor of some substantial institutional loans. As a condition to a $13 million loan from the Carner Bank of Miami Beach to the Cricket Club, Clifford Perlman and his partners were required to guarantee (1) completion of the project, (2) payment of all costs thereof and (3) repayment of the construction loan. In October 1972, Mr. Perlman, Mr. Malnik, the Cohen sons and Mr. Kovens executed a performance bond and a labor and material payment bond, each in the amount of $6,100,000. More guarantees would follow.

Sometime in November 1972, Philip Hannifin, then Chairman of the Nevada Gaming Control Board (NGCB), personally approached Clifford Perlman concerning his involvement with Alvin Malnik in the Cricket Club. At this meeting, Mr. Hannifin voiced his concerns over Mr. Perlman's association with an individual of Mr. Malnik's reputation. As a consequence of what Mr. Hannifin had said, Mr. Perlman committed to extricate himself from the Cricket Club if Mr. Malnik would not institute a libel suit against Hank Messick, the author of Lansky.

However, Clifford Perlman remained in the Cricket Club even after Mr. Malnik informed him that he would not file

a libel suit. Citing the fact that he was still committed as a co-guarantor on several substantial loans to the Cricket Club, Clifford Perlman chose to continue his involvement in the project, guaranteeing new loans throughout its construction period and lending sums of money to the corporation.

The Cricket Club project represents yet another and more direct involvement by Clifford Perlman in the business world of Alvin Malnik. Mr. Perlman's partnership with Mr. Malnik and Mr. Cohen's sons in this venture developed into one of long duration, a fact which should have been evident from the outset. His series of guarantees on loans to the Cricket Club bound Mr. Perlman so firmly to the arrangement that even when he later wanted to extricate himself, he found it impossible to do so. To this day, Mr. Perlman remains obligated on $280,000 of these guarantees after paying $386,000 to be relieved of guarantees of $3 million, a telling indication of his once intricate and deep involvement in the matter.

Prior to his entry into the Cricket Club, Clifford Perlman neither consulted with Harold Campbell, CWI's then recently hired Director of Corporate Security, nor inquired as to Mr. Malnik's background nor sought confirmation of the allegations made against him. He was apparently content with Mr. Malnik's denials. Neither did Mr. Perlman notify the Nevada regulatory authorities as to his contemplated venture with Mr. Malnik.

When Mr. Hannifin first approached Mr. Perlman about

this matter in November 1972, Mr. Perlman assumed the defense of Mr. Malnik. This was indeed a curious position given Mr. Perlman's earlier concern that Mr. Malnik was not licensible in Nevada, his awareness of Mr. Malnik's reputation and his desire to become only a passive investor in the Cricket Club partly due to this reputation. But not only did Mr. Perlman defend Mr. Malnik, he proposed an alternative to outright severance which permitted him a means to remain in the project as Mr. Malnik expressly desired. By the time this alternative was no longer viable, Clifford Perlman found himself inextricably tied to the financial health of the project.

Much has been argued as to whether Mr. Perlman's conduct in this regard was violative of an official directive to the contrary. The issue, however, is not so easily defined. The fact that such a violation may not have occurred does not preclude this Commission from viewing Mr. Perlman's conduct negatively. In November 1972, Philip Hannifin, the Chairman of the Nevada Gaming Control Board, communicated his concerns to Clifford Perlman. As a result of this meeting, Mr. Perlman understood that he had made a commitment to Mr. Hannifin. He subsequently, in his own words, "definitely" breached that commitment. These circumstances cause us deep concern about Clifford Perlman's attitude toward the regulatory process.

D. COVE HAVEN

According to Mr. Perlman's testimony, he chanced to

meet Alvin Malnik on an airplane in December 1974. Mr. Malnik inquired whether Clifford Perlman or his company could provide an opportunity to invest a substantial sum of money. Clifford Perlman first suggested that Mr. Malnik pay for improvements to the Sky Lake Country Club and accordingly increase CWI's rent for the country club. Mr. Perlman's proposal would have resulted in an increased cash drain for CWI rather than in the cash relief his company was supposedly then seeking. When Mr. Malnik declined that offer, Mr. Perlman suggested a sale and leaseback of CWI's two honeymoon resorts located in the Poconos.

Mr. Malnik offered to purchase the properties for $15 million and to lease the properties back to CWI at an annual rental of 13% to 15% of the purchase price. Mr. Perlman, in turn, presented the matter to the CWI Board for resolution. There were no negotiations over the price set by Mr. Malnik. CWI's Board of Directors gave conceptual approval to the plan and, because of an apparent conflict of interest occasioned by Clifford Perlman's Cricket Club involvement, assigned CWI President William McElnea to conclude the transaction. His conflict of interest, however, did not bar Clifford Perlman from ultimately voting to approve the transaction.

On February 20, 1975, CWI entered into a sale and leaseback of its Cove Haven and Paradise Stream resorts with Cove Associates, a Florida partnership comprised of Alvin Malnik and Samuel Cohen's sons, Joel and Alan. The assets of these properties were sold for $15 million. Prior to the

consummation of the deal, CWI learned that Cove Associates, through Mr. Malnik, was borrowing the $15 million at 9% interest from the Teamsters Pension Fund. As part of the arrangement, CWI agreed to lease back the two Pocono properties for 20 years at an annual rent of $2,130,000 (14.25% of the purchase price). Each of the leases gave CWI certain options to renew and to purchase, and obligated CWI to make certain improvements.

Three related aspects of the Cove Haven sale and leaseback transaction are worthy of particular note as they reflect on the character of Clifford Perlman. The first aspect concerns his willingness in late 1974 to lead his company into yet another business entanglement with Alvin Malnik and the sons of Samuel Cohen. The second aspect concerns his willingness to do this despite his November 1972, meeting with Philip Hannifin and his commitment to Mr. Hannifin to disassociate from Mr. Malnik and the Cricket Club. The third aspect concerns his failure to disclose all relevant information to the full CWI Board during its consideration of the Cove Haven transaction. Specifically, Clifford Perlman did not advise the full CWI Board of his November 1972, conversation with Philip Hannifin prior to the Cove Haven approval. Clifford Perlman presumed that the independent directors knew of the Hannifin meeting even though the Perlmans and Mr. McElnea made no disclosure and the subject was neither raised nor considered at the Board meeting when the Cove Haven transaction was discussed.

Also noteworthy is the fact that CWI's Corporate Security Chief, Harold Campbell, was not asked to review the Cove Haven transaction as to suitability. At that time company policy was that all significant transactions were, in the discretion of the head of the subsidiary, to be submitted for security review.

In late 1972, Harold Campbell had been asked to investigate Mr. Malnik's background and had reported his results to Clifford Perlman. While Mr. Campbell refused to express an opinion in his testimony before us as to whether Alvin Malnik was associated with organized crime, both Clifford Perlman and William McElnea recalled that Mr. Campbell had previously been of the opinion that Mr. Malnik was so associated.

At about the same time as his investigation of Mr. Malnik (late 1972), Campbell also reported to Clifford Perlman on the subject of honorary memberships at the Skylake Country Club. In response to Mr. Perlman's inquiry, Mr. Campbell advised:

> Many of the other Teamsters officials possessing Honorary Memberships have been in frequent business and social contact with top organized crime figures throughout the country. Whether one agrees or not, the Central States Pension Fund has in recent years been described in the news media as the "bankroll of the Mafia." Rightly or wrongly, many Mafia figures have obtained loans from this fund and even more importantly, many top Mafia figures have been in a position to arrange for loans from the fund for others, sometimes on the basis of friendship and at other times for a substantial fee.

Interestingly enough, both the source of Mr. Malnik's funds for the $15 million purchase price of Cove Haven - namely the Teamsters Pension Fund - and the 9% interest rate at which the money was borrowed were known to CWI in advance of the sale-leaseback agreement.

Once again, in the absence of any credible explanation presented in this record, we are left with a serious question. Why did Clifford Perlman, in late 1974, lead his company into its second (and his third) business entanglement with Alvin Malnik, especially in light of his November 1972 discussion with the Chairman of the Nevada Gaming Control Board?

CONCLUSIONS AS TO CLIFFORD PERLMAN

The facts outlined above simply do not square with the positive testimony adduced as to the good character, honesty and integrity of Clifford Perlman. Stated bluntly, this Commission is unable to declare that Clifford Perlman may be trusted to control a company which seeks licensure to operate a casino in this jurisdiction. This determination flows primarily from three considerations:

(1) the associations with Alvin I. Malnik and Samuel E. Cohen which Clifford Perlman led CWI to engage in or which he engaged in personally;

(2) the attitude of Clifford Perlman with regard to the regulatory process; and

(3) the candor with which Clifford Perlman dealt

with his fellow Directors on the CWI Board.

Based on the substantial credible evidence in the record as a whole, this Commission finds Samuel E. Cohen to be a person of unsuitable character and unsuitable reputation. Following indictment by the federal authorities together with Meyer Lansky and others, he was convicted and incarcerated for filing a false income tax return on facts relating to the skimming of proceeds from the Flamingo casino in Las Vegas, Nevada. Previously he had been fined for violating the Commodity Exchange Act. Mr. Cohen's alleged involvement with Meyer Lansky and others in the Flamingo skimming indictment received widespread publicity in the Miami area in 1971.

Based on the substantial credible evidence in the record as a whole, this Commission finds Alvin I. Malnik to be a person of unsuitable character and unsuitable reputation. As to his character, the evidence establishes that Mr. Malnik associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal. As to his reputation, he has been identified repeatedly in the news media as a close business associate of Meyer Lansky and other reputed organized crime figures. Moreover, federal law enforcement authorities have long believed Mr. Malnik to be involved in organized crime.

Prior to the 1971 Sky Lake transaction, Clifford Perlman knew of Mr. Malnik's unsavory reputation and Mr. Cohen's pending indictment for casino skimming. Yet Mr.

Perlman led his company into a direct, intense, long-lasting association with these men. He himself became personally involved in the 1972 Cricket Club transaction directly and intimately with Mr. Malnik and Mr. Cohen's two sons in a second ongoing association. And, in the late 1974 Cove Haven transaction he led his company into a direct, intensive, continuing association with Mr. Malnik and Mr. Cohen's sons.

Although Samuel Cohen was not a direct participant in either the Cricket Club project or the Cove Haven agreement, the evidence plainly indicates that he was indirectly interested in both. Mr. Cohen lent large sums of money to the Cricket Club and Mr. Perlman knew of those loans. Moreover, as part of the Cove Haven transaction, CWI requested and received a deferral of the payments due on the Sky Lake obligations. Since Mr. Malnik and Samuel Cohen were the principals in the Sky Lake deal, it is possible that some of the Cove Haven proceeds were being channelled to Mr.Cohen. Thus, Mr. Perlman exhibited no great reluctance to continuing involvement, direct or indirect, with the indicted and later convicted Mr. Cohen as well as the suspect Mr. Malnik.

Beyond Mr. Perlman's willingness to engage in repeated and enduring relationships with Messrs. Malnik and Cohen, no reasonable explanation has been provided for the failure of Mr. Perlman to provide the CWI directors with material information regarding those relationships. Specifically, Mr. Perlman chose not to disclose the fact of

Mr. Cohen's pending indictment when the board voted on the Sky Lake proposal. Second, Mr. Perlman made no mention of Mr. Hannifin's disapproval of Mr. Malnik before the board was presented with the Cove Haven offer. These omissions contradict the characterization of Mr. Perlman as a man of candor and forthrightness. Further, they raise disturbing questions as to whether Mr. Perlman was so anxious to consummate the transactions that he refused to jeopardize board approval by full disclosure. These questions have simply not been answered.

BRC contends that these transactions may have been public relations mistakes but that they did not actually jeopardize the integrity of gaming operations. While it may be true that Mr. Malnik and Mr. Cohen were not literally in control of the casino, their financial arrangements provided them with an obvious opportunity to exercise economic leverage against CWI. In point of fact, CWI experienced cash shortages which prompted it to obtain relaxation of its Sky Lake obligation from Mr. Malnik and Mr. Cohen. At the same time, CWI was increasing its indebtedness to Mr. Malnik and the sons of Samuel Cohen. Thus, Mr. Perlman in a very real sense delivered his company into the hands of Mr. Malnik, Samuel Cohen and Mr. Cohen's sons.

From the foregoing and from the entire record, this Commission is not able to find by clear and convincing evidence that Clifford Perlman possesses the good character, honesty and integrity demanded by the Casino Control Act.

Accordingly, Clifford Perlman is not qualified.[4]

---

4. The Division also asserted that Mr. Perlman had supplied false or misleading information as to when he first learned of Mr. Cohen's indictment. In his testimony, Mr. Perlman admitted that he acquired such knowledge before the Sky Lake transaction. It seems that Mr. Perlman's recollection was not as clear in an interview which he gave to the Division in April 1979. In any event, the Commission does not find Mr. Perlman to be disqualified on this basis. See N.J.S.A. 5:12-86(b).

B. STUART Z. PERLMAN

Stuart Z. Perlman, who presently resides in Miami Beach, Florida and maintains a residence in Longport, New Jersey, was born on September 20, 1927, in Philadelphia, Pennsylvania. He was educated in the Philadelphia public schools and attended LaSalle College for one year. In 1956, along with his older brother, Clifford, he purchased the first Lum's restaurant.

Today, Stuart Perlman is Vice Chairman of the Board of Directors of both CWI and CNJ. He is also the second largest stockholder of CWI, owning approximately 1.7 million shares, or about 8% of the outstanding stock. In addition, he owns approximately 153,000 shares of CNJ, or about 1% of the outstanding stock of that company. By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Stuart Perlman is a person who must individually be qualified for approval. The applicant, BRC, and Stuart Perlman have produced evidence in support of the qualification of Stuart Perlman all of which has been carefully examined, considered and weighed. The Division has recommended that this Commission find Stuart Perlman unsuitable for qualification.

Most of the evidence relevant to the suitability of Stuart Perlman has already been stated with regard to Clifford Perlman and is incorporated here by reference. In July 1971, with full knowledge of the pending indictment against Samuel

Cohen, Meyer Lansky and others, with full knowledge of the questionable reputations of Samuel Cohen and Alvin Malnik, without discussing the Cohen indictment with CWI's outside directors, and against the advice of CWI's outside counsel, Stuart Perlman voted in favor of entering the Sky Lake transaction. Moreover, during the period between December, 1974, and February 20, 1975, CWI was considering the Cove Haven sale and leaseback transaction. At that time, Stuart Perlman, who was aware of the substance of the November 1972 conversation between Philip Hannifin and Clifford Perlman, voted to enter into the Cove Haven transaction. Additionally, Stuart Perlman did not discuss or bring to the attention of CWI's outside directors the Hannifin conversation.

By virtue of his own involvement in these events, Stuart Perlman was obliged to answer serious questions about his character, honesty and integrity. More particularly, these questions flow from his associations with Alvin Malnik and Samuel Cohen, his attitude toward the regulatory process, and his apparent lack of candor in dealing with the other CWI directors.

Furthermore, it is clear from the record that Stuart and Clifford Perlman are more than just brothers. Since 1956, when they jointly purchased the first Lum's restaurant, they have been close business associates. They own, respectively, 8% and 10% of the outstanding stock of publicly traded CWI. They participate jointly in several

other business ventures. Indeed, the testimony indicates that for the past several years Stuart Perlman has handled all of Clifford's personal finances, even to the point of signing Clifford's checks and making investments for him. Thus, there is a substantial commonality of economic interests as well as a close blood relationship between the two men.

In light of all of the above considerations, and after carefully weighing these matters and viewing them in the context of the entire record, the Commission finds that BRC has failed to meet the affirmative responsibility of establishing the good character, honesty and integrity of Stuart Perlman. Accordingly, Stuart Perlman is not qualified.

C. JAY E. LESHAW

Jay Leshaw is clearly a qualifier as to the casino license applicant. He is now a senior vice president and a director of Caesars World, Inc., and president and a director of three of its subsidiaries: Sky Lake Development, Inc.; California Club, Inc.; and Corporate Real Estate Equities, Inc. He is also a shareholder in Caesars World, Inc. (owning 30,000 of its approximately 26.3 million shares or 0.001%).

The Division's objection to Mr. Leshaw's qualifications is based primarily upon his role, while a Caesars World, Inc. inside director and vice president, in the 1971 approval of the Sky Lake transaction. At the time of the transaction, Mr. Leshaw knew of Mr. Malnik's reputation and of Mr. Cohen's indictment with Meyer Lansky in Florida less than four months earlier in the Flamingo "skim" prosecution. No open discussion with the outside directors of these facts had occurred at that board meeting. However, when thirty-one months later Caesars World, Inc. voted to restructure the Sky Lake lease, Mr. Leshaw appears to have been unaware of the November 1972 discussions between Philip Hannifin and Clifford Perlman concerning Mr. Hannifin's reservations as to the propriety of Mr. Perlman's personal business dealings with Mr. Malnik in the Cricket Club.

Jay Leshaw was born in 1927, educated at the University of Miami and presently resides in Coral Gables, Florida. About 1963, while in the construction business,

he met Clifford Perlman and began doing work for Lum's, Inc. which was designing, locating, financing, constructing and eventually franchising its fast food restaurants. In 1967 he joined Lum's, Inc. as an executive vice president and became one of its directors. By that date he had assumed a primary responsibility for the company's restaurant business and thereafter maintained it until July 1971 when its restaurant operations were sold. In later 1968, Melvin Chasen joined the company as an executive vice president and, in mid-1970, became its president.

Less than three months after divesting itself of the restaurant operations, Lum's, Inc. closed on its long-term lease of the Sky Lake development property. Mr. Leshaw then became, and has to the present remained as, president of the Caesars World, Inc., subsidiary responsible for this asset. Since then, Mr. Leshaw has maintained his offices at the property. Initially, before the south Florida condominium economy slowed, he actively refined the development program as to the property. In 1977, however, CWI retained California land developer Jerry Snyder to design a more effective sales program for the project. Currently, more than 95% of the units have been sold. It was in 1978 that the name of the country club there was changed to the California Club.

On balance, Mr. Leshaw's activities are not such as to prevent his qualification. His role in Caesars World, Inc., has never been one of setting policy or deciding as to

acquisitions. It rather has been confined to the design and development of South Florida real estate operations, at first the restaurant business and more recently the condominium property. He has always been located in South Florida. Although that locale is admittedly the base for Messrs. Lansky, Malnik and Cohen, Mr. Leshaw's responsibilities to CWI are quite remote from the concerns and sensitivities of Nevada and its casino gaming industry. Mr. Leshaw was not the source of the Malnik or Cohen associations nor were the associations ever personal to him. Plainly, as an employee of Caesars World, Inc., he was subject to the policies set by the Perlmans. It is true that in 1971, he did not discuss with CWI's outside directors the fact of the Samuel Cohen "skim" indictment. Although this failure is hardly praiseworthy, it is understandable in light of the relative positions of the Perlmans and Mr. Leshaw. Were such an omission to occur today under the New Jersey regulatory system, a different result might follow. On this record, though, the Commission is satisfied that Mr. Leshaw has established his "good character, honesty and integrity" by clear and convincing evidence. Accordingly, Jay E. Leshaw is found to qualify as a director, officer and shareholder as to this applicant for a New Jersey casino license.

D. WILLIAM H. McELNEA, JR.[5]

1. Investment Banker and Outside Director

William H. McElnea, Jr., is the president and chief operating officer of the holding company, Caesars World, Inc., and the intermediary company, Caesars New Jersey. He is separately a member of each of the eight-member boards of directors of Caesars World, Inc., Caesars New Jersey, and the Boardwalk Regency Corporation. He is a shareholder of Caesars World, Inc. in which he holds 420,000 shares, or 1.6% of the stock, and a shareholder of Caesars New Jersey, in which he has 58,970 shares, or 0.4% of the 15.98 million outstanding shares. He has been associated with CWI and its predecessor, Lum's, Inc., since 1966, first as a financial advisor, later as an outside director, and since late 1972 as the president of CWI, a position that has produced his current, thorough involvement in the corporation and its subsidiaries. Undoubtedly, Mr. McElnea is a person required to meet the standards, except residency, for a casino key employee license. See N.J.S.A. 5:12-85(c) and (d).

Significant points about Mr. McElnea reside in the evidence concerning two of CWI's associations. The first is with the Central States Southeast and Southwest Teamsters

---

5. Only Commissioners Thomas, Zeitz and McWhinney join in this opinion regarding Mr. McElnea. Chairman Lordi separately concurs in the determination to find Mr. McElnea qualified. Vice-Chairman Danziger dissents from this determination.

Pension Fund of Chicago, Illinois, a relationship that began in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of
in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of
Meyer Lansky, of Miami, Florida, the same city where Mr. Malnik and Mr. Cohen reside and do business. This association remained in place until recent days through the corporation's involvement in the Sky Lake development, and with Cove Associates in the Pocono Mountain properties, and began at least as early as June 1971.[6]

The associations with the Teamsters Pension Fund, and with Malnik and Cohen were active and growing until December 10, 1975. The first, with the Pension Fund, deepened because of the second, that is the association with Mr. Malnik and Mr. Cohen, but particularly with Mr. Malnik. The Nevada Gaming Commission and the Nevada Gaming Control Board made their joint position on the Malnik association clear to Caesars World, Inc. on December 10, 1975, and again on April 13, 1976, when the corporation was ordered not to associate

---

6. At the conclusion of the hearing, BRC presented a plan to create and fund two trusts which would pay when due the continuing obligations of CWI as to the Cove Haven transaction and the Sky Lake acquisition. This plan was accepted by the Commission as adequately insulating the companies from Mr. Malnik and Mr. Cohen.

with persons of unsavory or notorious reputations.

From that point, the expansion of the two associations halted and a corporate effort was begun to sever them. Only a beginning has been made until now, but it is doubtful that beginning could or would have been initiated without the effort of Mr. McElnea. The qualification of Mr. McElnea depends upon his role in these CWI associations, which the Attorney General, through the Division of Gaming Enforcement, finds is such as to prevent his qualification.

The evidence does not raise questions as to the reputation of Mr. McElnea. It does put before the Commission matters concerning Mr. McElnea's treatment of the associations with Mr. Malnik and Mr. Cohen, and the Pension Fund. Of course, it is the applicant who has the burden to establish by clear and convincing evidence the traits of good character, honesty and integrity. The evidence must enable the Commission to believe that the requisite character, honesty and integrity have been demonstrated.

William H. McElnea, Jr., was born in New Jersey in 1922, reared in Connecticut, and educated at Dartmouth College from which he received his bachelor's and masters degrees. In 1955 after having worked for seven years in Wall Street banks, he joined the small New York investment banking firm of Van Alstyne, Noel and Co., where he specialized in corporate financing.

In 1966, shortly after he met Clifford Perlman, Mr. McElnea and the Van Alstyne firm accepted the Florida-based

Lum's, Inc., as a client. When, in 1967, Lum's became a publicly traded company, Mr. McElnea was made an outside director. He remained as a partner in Van Alstyne, Noel and Co. His status as an outside director and investment banker continued for six years. Effective August 31, 1972, Melvin Chasen resigned as president of Caesars World, Inc. Two months later, on November 1, 1972, William McElnea succeeded Mr. Chasen as president of the corporation. Mr. McElnea continued as a director, and relocated to the corporation's headquarters in Los Angeles. He is and since that day has been the chief operating officer of CWI.

In 1966 when Mr. McElnea began his association with Lum's as its investment banker, it was a growing fast food restaurant and franchising firm, based in South Florida. In 1967 through the offices and talents of Mr. McElnea the company undertook and completed its first major financing. This public offering may seem a pittance today when measured against the magnitude of CWI's current financings, but in 1967 it represented a milestone in its corporate development. At the time, Stuart Perlman was president of the corporation and his brother, Clifford Perlman, was its principal executive officer. They had then owned the company for ten years.

In early 1969 Clifford Perlman began discussions which led to the September 30, 1969, acquisition by Lum's of

the then three-year-old, 680-room Caesars Palace Hotel and Casino in Las Vegas, Nevada. As part of the transaction, Lum's assumed an $18.1 million mortgage obligation to the Teamsters Pension Fund.

In December, 1969, Lum's acquired the Pennsylvania honeymoon resort called Cove Haven, and fourteen months later acquired the nearby honeymoon resort called Paradise Stream. In July, 1971, Lum's divested itself of the restaurant and franchising operations, and by then had also divested itself of the Dirr's Meating Processing and Distribution Company, and the chain of Eagle Army-Navy retail outlet stores. In June, 1971, discussions between Mr. Malnik and Lum's President Melvin Chasen led to negotiations in July 1971, which resulted on October 14, 1971 in Lum's closing with the Comal Corporation on the 623-acre condominium development property in North Miami, Florida, known as Sky Lake North. Comal Corporation, which had acquired the property 10 months earlier, was owned equally by Mr. Malnik and Mr. Cohen. The property was then subject to a $10 million Teamsters Pension Fund loan. On December 16, 1971, Lum's Inc. changed its name to Caesars World, Inc.

Mr. McElnea was not the cause of the association of CWI with the Teamsters Pension Fund, a relationship which originated in the 1969 acquisition of Caesars Palace, described on the record as being initiated by Clifford Perlman. Nor did Mr. McElnea bring the corporation into contact with Mr. Malnik and Mr. Cohen, a development

attributed to Melvin Chasen and Clifford Perlman in the 1971 acquisition of Sky Lake. As its investment banker, Mr. McElnea was the servant of the policy and business decisions made by his client, and by its chief executive, Clifford Perlman. Becoming an outside director required Mr. McElnea to take positions and record his votes on matters of corporate policy formulated by the company's executives, most notably the Perlmans.

In the corporate world in the period of 1969 to 1971 the role and obligation of outside directors of publicly traded corporations were not perceived as strictly or as solemnly as in 1980. More deference was given at that time to policy determinations made by corporate executives, such as Clifford and Stuart Perlman.

CWI's associations with Mr. Malnik, Mr. Cohen and the Pension Fund before late 1972 do not reflect on William McElnea's "good character, honesty and integrity," or his fitness to participate now in the New Jersey gaming industry. The associations were not personal as to McElnea. They were business relationships arranged by the corporate lenders who were members of the Miami community. During this time, McElnea worked and resided in New York and Connecticut.

2. President of Caesars World, Inc.

The role of William McElnea changed on November 1, 1972, when he became president of CWI. As president he became, after Clifford Perlman, the corporation's leading executive, but guided heavily by the policies developed by

Clifford Perlman, and transmitted by the corporation chairman to the board of directors.

In his first three years as president, Mr. McElnea led CWI in restructuring the Sky Lake financial arrangement with Comal Corporation from a lease into a purchase. This finally made it possible for CWI to begin undertaking development of the property, which had been delayed three years by the transaction over which Mr. Perlman and Mr. Chasen had presided in 1971. In February, 1975, through a sale and leaseback of the Cove Haven and Paradise Stream resorts with Cove Associates, CWI fell headlong into a new association with Mr. Malnik and the Teamsters Pension Fund. This time, Mr. Cohen's two sons, rather than Mr. Cohen himself, were part of the deal. Again the transaction was brought to CWI by Clifford Perlman. There is also some evidence that CWI considered, at about the time it made the sale and leaseback, a refinancing of its overall corporate debt.

Following the transaction with Cove Associates, the Securities and Exchange Commission ordered a private investigation of CWI's corporate dealings with Mr. Malnik. The SEC examined both the Sky Lake and Cove Associates transactions, and also Clifford Perlman's private dealings with Mr. Malnik in the Cricket Club venture. On November 10, 1975, the Los Angeles Times published a front page story under the headline, "Caesars Palace Firm Under Investigation." As noted, the Nevada gaming authorities

followed swiftly on December 10, 1975, and April 13, 1976, first with an admonition and subsequently with an order directing CWI not to expand its associations with Mr. Malnik, and to refrain from associating again with persons of unsavory or notorious reputation.

It appears from the record that such compliance efforts as CWI began to make then and has made until now flow from William McElnea. After a prolonged--and the Division claims too long--time the corporation was able to sever its insurance ties with the notorious Allen Dorfman, and through him, with United Founders Insurance Corporation. These ties were forged not by Mr. McElnea, by by his predecessor as CWI president, Melvin Chasen. Mr. McElnea, clearly, was the driving force in the severance. If he tempered his drive because of considerations stemming from the ongoing relationships with the Pension Fund, this tempering must be seen against the backdrop of his concerted effort to arrange new, conventional, sound, institutional financing for the corporation. He has succeeded. Where the Perlmans brought Mr. Malnik and the Teamsters Pension Fund to Caesars World, Mr. McElnea has brought the Chemical Bank, the services of E.F. Hutton, and now the Aetna Insurance Company, among others. No evidence suggests new or expanded associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975 by CWI, a bright comparison to the dalliance of Clifford Perlman in his effort to sever himself from the Cricket Club and in his flirtation with that investment even

after Nevada had made its message eminently clear.

The sources of the $138 million committed to date by CWI to the Boardwalk Regency project in Atlantic City demonstrate amply the new kind of financing that Mr. McElnea has sought and found. Those sources include $47 million from major financial institutions, $28 million from obligations undertaken to former owners of realty, and $63 million from such internal financial wellsprings as bank lines, public offerings, and operating revenues.

The November 1975 Los Angeles Times news story alerted two members of CWI's Board of Directors to Mr. Malnik's reputation, and to the fact that Philip Hannifin of the Nevada Gaming Control Board had talked to Clifford Perlman in November 1972 and left him with an understanding that Mr. Perlman was to end his Cricket Club involvement.

It is undisputed that Mr. McElnea knew about Mr. Malnik by the end of 1974 and the beginning of 1975, when the Cove Associates deal was presented and consumated. He also knew by then the substance of the Hannifin-Perlman discussion. He did not share his knowledge with the two uninformed directors, Manuel Yellen and John Polite. That he should have, he knows now, and this Commission knows. But seen against the background of Clifford Perlman's disproportionate influence in the corporation, and the division of labor and interest between Mr. Perlman, the man who decided wxad would happen, and Mr. McElnea, the man Perlman charged with making it happen, it is clear that Mr.

McElnea could rightfully infer that such disclosure was always Mr. Perlman's responsibility.

There is no doubt that sometime in 1975, after the Cove Associates deal, but before the November 10 Los Angeles Times story, both Mr. Perlman and Mr. McElnea discussed with Mr. Malnik a sale and leaseback of Caesars Palace Hotel. The weight of the record is clear and convincing that when Alvin Malnik had deals to propose to Caesars World, Inc., he went to Clifford Perlman. Whatever the extent of those discussions with Mr. Malnik, and in the testimony there was only one, Mr. Perlman would have been the source.

Caesars World, Inc. in this hearing has brought before this Commission a group of young, able, honest management professionals, and new outside directors of measurable business experience and probity, who have been attracted to the company under the presidency of Mr. McElnea, and who serve on his management team. Their presence is further testimony to his business ability. It also underscores the increasing tenacity of his commitment to put not only time but distance between his corporation and the questionable beginnings of Nevada gaming.

3. Finding as to William H. McElnea, Jr.

In judging the good character, honesty and integrity of William McElnea, as in making such judgment upon any applicant, the Commission must examine the whole man, and the entire circumstances in which he performed. As in all areas of human endeavor, there is in the regulatory process

never a situation absent some scintilla, some particle of doubt. But on the basis of the whole record, on his accomplishments at Caesars World, the performance of the corporation in New Jersey under his leadership since May 30, 1979, and the sureness of his understanding of the regulatory process for five years, the Commission can and does find clearly and convincingly that Mr. McElnea is a man of good character, honesty, and integrity and one suitable to hold a license, and to conduct gaming affairs in the State of New Jersey. He is thus found to qualify as an officer, director, and shareholder as to this casino applicant.

The finding that Mr. McElnea is qualified and suitable for licensure puts a heavy responsibility upon him. Placed in the persepective of the Commission's other findings as to the unsuitability of the chairman and vice chairman, the leadership of Caesars World, Inc., right now, and as a practical matter, appears to fall squarely upon Mr. McElnea. It will be for him to decipher the meaning of that leadership, and to demonstrate it. In making this decision as to Mr. McElnea the Commission reposes a trust in him. It is fully mindful of the circumstances and expects he will be too.

E. OTHER PERSONS REQUIRED TO QUALIFY

In accordance with Sections 85(c) and 85(d) of the Act (N.J.S.A. 5:12-85(c) and (d)), the Commission and the Division agreed that there were 30 persons required to qualify as part of the BRC application. The 26 individuals

who were not the subject of a Division challenge and about whom no grounds for rejection appear are the following:

1. HOWARD B. BACHARACH, a resident of Ventnor, New Jersey is 39 years of age and employed by BRC as Vice-President of Administration.

2. HAROLD B. BERKOWITZ, a resident of Los Angeles, California, 61 years of age, is an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

3. LARRY L. BERTSCH, a resident of Somers Point, New Jersey, is 41 years of age and employed by BRC as Treasurer and Vice President of Finance.

4. PETER G. BOYNTON, a resident of Linwood, New Jersey, is 36 years of age, a Director of BRC and, a Senior Vice President of BRC.

5. ALFRED J. CADE, a resident of Linwood, New Jersey, is 49 years of age, a Director of BRC and a Senior Vice President of BRC.

6. HOWARD E. CAMPBELL, JR., a resident of Las Vegas, Nevada, is 59 years of age and employed by Caesars World, Inc., as Vice President of Security.

7. JOHN H. CONNORS, a resident of Glen Ridge, New Jersey, is 56 years of age and employed by Caesars World, Inc., as Assistant Vice-President of Security.

8. DUANE M. EBERLEIN, a resident of Tarzana, California, is 40 years of age and is employed by Caesars World, Inc., as Controller and Chief Accounting Officer and

by Caesars New Jersey, Inc., as Controller and Vice President.

9. MAXWELL J. GOLDBERG, a resident of Margate, New Jersey, is 55 years of age, an employee of BRC in the Office of the President and a Director of BRC.

10. WILLIAM E. HAINES, a California resident, is 58 years of age and is employed by both Caesars World, Inc., and Caesars New Jersey, Inc., as Vice President of Finance.

11. DAVID P. HANLON, a resident of San Juan Capistrano, California, is 34 years of age and is employed by Caesars World, Inc., and by Caesars New Jersey, Inc., as Vice President of Operations.

12. STEPHEN F. HYDE, a resident of Linwood, New Jersey, is 34 years of age, is an Executive Vice President and Chief Operating Officer of BRC and a Director of BRC.

13. J. TERRANCE LANNI, a resident of Margate, New Jersey and California, is 37 years of age. Although he recently resigned as Director and Chief Executive Office of BRC, Mr. Lanni still is employed as Executive Vice President of both Caesars World, Inc. and Caesars New Jersey, Inc.

14. JAMES A. LENZ, a resident of Longport, New Jersey, is 45 years of age and is employed by BRC as the Casino Manager.

15. CYRIL PATRICK McCOY, a resident of Parsippany and Absecon Highlands, New Jersey, is employed by BRC as Corporate Controller.

16. JAMES J. NEEDHAM, a resident of Bronxville, New York, serves as an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

17. MILTON NEUSTADTER, a resident of Margate, New Jersey, 55 years of age, is an employee of BRC in the Office of the President and is a Director of BRC.

18. BERTIN J. PEREZ, a resident of Encino, California, although recently resigned as Group Vice President of Caesars World, Inc., continues to serve as a consultant to Caesars World, Inc.

19. CARL A. PROPES, a resident of Beverly Hills, California, is 52 years of age and is employed as Vice President of Administration by both Caesars World, Inc., and Caesars New Jersey, Inc.

20. BERNARD W. RESNICK, a resident of New Jersey, is 55 years of age and is employed by BRC as the Assistant Casino Manager. It should be noted that the Commission previously licensed Mr. Resnick as a casino key employee.

21. DONALD D. ROBERTSON, a resident of Burbank, California, is 43 years of age and is employed as Treasurer of both Caesars World, Inc. and Caesars New Jersey, Inc., in addition to being employed as Assistant Treasurer of BRC.

22. MEYER P. SCHWEITZER, a resident of New York, New York, is 69 years of age and serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc.

23. RICHARD H. SHEEHAN, JR., a resident of Encino, California, is 35 years of age and is employed by both Caesars World, Inc. and Caesars New Jersey, Inc., as Secretary and Vice President of Law, in addition to being employed by BRC as Corporate Secretary.

24. WILLIAM P. WEIDNER, a resident of Atlantic City, New Jersey, is 35 years of age and is employed by BRC as Vice President of Marketing.

25. LARRY J. WOOLF, a resident of Brigantine, New Jersey, is 35 years of age and is employed by BRC as Assistant Vice President of Casino Operations. It should be noted that the Commission previously licensed Mr. Woolf as a casino key employee.

26. MANUEL YELLEN, a resident of Pacific Palisades, California, serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc., in addition to being employed as a consultant to Caesars World, Inc.

In addition to considering the qualifiers for the Boardwalk Regency Corporation application for a casino license, the Commission has also considered the qualifiers for the Jemm Company based upon its application for a casino license to be the owner and lessor of the casino hotel facility. See N.J.S.A. 5:12-82(b). The Jemm Company is a New Jersey general partnership consisting of five partners all of whom are the legal owners of a partnership interest and thereby required to be considered as qualifiers pursuant to N.J.S.A. 5:12-85(e). Additionally, three of the five

partners hold their respective partnership interest in trust for their wives. Accordingly, the wives of these three partners hold a beneficial interest in the Jemm Company and thereby are also required to be considered as qualifiers pursuant to N.J.S.A. 5:12-85(e).

It should be noted that the Division did not interpose an objection to the suitability of any of the eight qualifiers of the Jemm Company. Those eight qualifiers are the following:

1. ALBERT A. TOLL, a resident of Pennsylvania and Florida, holds as trustee for his wife, Sylvia S. Toll, a 29.16% partnership interest in the Jemm Company.

2. SYLVIA S. TOLL, the wife of Albert A. Toll, is the beneficiary of the 29.16% partnership interest indicated immediately above.

3. JOSEPH TOLL, a resident of Margate, New Jersey, holds, as trustee for his wife, Evelyn Toll, an 18.75% partnership interest in the Jemm Company.

4. EVELYN TOLL, the wife of Joseph Toll, is the beneficiary of the 18.75% partnership interest indicated immediately above.

5. EDWARD BERON, a resident of Margate, New Jersey, holds, as trustee for his wife, Enda Beron, an 18.75% partnership interest in the Jemm Company.

6. EDNA BERON, the wife of Edward Bernon, is the beneficiary of the 18.75% partnership interest indicated immediately above.

7. MILTON NEUSTATDER, a resident of Margate, New Jersey, holds a 16.67% partnership intrest in the Jemm Company. As previously indicated, Mr. Neustatder is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

8. MAXWELL GOLDBERG, a resident of Margate, New Jersey, holds a 16.67% partnership interest in the Jemm Company. As previously indicated, Mr. Goldberg is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

Having considered all of the information supplied by each of the qualifiers and by the Division of Gaming Enforcement, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license application.

III.

FINDINGS AS TO COMPLIANCE WITH OTHER LICENSING REQUIREMENTS

In addition to those areas discussed above, the Commission was required to make other findings in order to issue a casino license, even though these areas were not the subject of a dispute between the parties. The Commission accordingly made the following findings with reference to these remaining areas:

1. That the applicants have established to the satisfaction of the Commission that the facility and its location are suitable and that neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive or natural resource conditions will be adversely affected by the facility, as required by N.J.S.A. 5:12-84(e); provided, however, that the conditions attached to the temporary casino permit relating to the facilities (nos. 2 through 13) remain in effect until further order of the Commission.

2. That Boardwalk Regency Corporation and the Jemm Company together own in fee all the land on which the approved hotel is situated; that the Jemm Company as landlord leases the entire approved hotel facility and land thereunder directly to Boardwalk Regency Corporation as tenant; that both Boardwalk Regency Corporation and the Jemm Company are eligible and required to hold separate casino licenses in accordance with N.J.S.A. 5:12-82(a), (b) and (c).

3. That the lease agreement entered into by Boardwalk Regency Corporation and the Jemm Company is in writing and has been filed with the Commission; that the term thereof exceeds 30 years; that it concerns the entire approved hotel building and the land thereunder; that it contains a fixed-sum buy-out provision conferring upon Boardwalk Regency Corporation as lessee the right to acquire the entire interest of the lessor in the event said lessor is found to be unsuitable; that it contains a provision for the payment to the Jemm Company of a percentage of casino revenues; and that said lease is approved as conforming to the requirements of N.J.S.A. 5:12-82(c)(5) and (6).

4. That Boardwalk Regency Corporation and the Jemm Company shall be jointly and severally liable for all acts, omissions or violations of the Casino Control Act by either Boardwalk Regency Corporation or the Jemm Company as required by N.J.S.A. 5:12-82(c)(9).

5. That the approved hotel contains a total of 130,714 square feet of qualifying public space including 77,781 square feet of dining, entertainment and sports space and 27,052 square feet of kitchen support facilities and thereby exceeds the minimum qualified public space requirements set forth in N.J.S.A. 5:12-83.

6. That the approved hotel contains 503 qualifying sleeping units of an average size of 400 square feet and thereby exceeds the minimum qualifying sleeping units requirements set forth in N.J.S.A. 5:12-27 and 83(a).

7. That the approved hotel contains a single casino room of 48,630 square fet which conforms to the limitation set forth in N.J.S.A. 5:12-6 and 83(d).

8. That Boardwalk Regency Corporation has agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the Commission and consonant with the provisions of the "Law Against Discrimination" as required by N.J.S.A. 5:12-134(b); it is to be noted, however, that the applicant did not in a timely and diligent fashion insure that its construction contractors would offer equal employment opportunity to all persons employed in the construction of the Boardwalk Regency Hotel and Casino.

9. That the applicants, except as otherwise previously found herein with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence the integrity and reputation of, as well as the adequacy of, all financial sources which bear any relation to the casino proposal, as required by N.J.S.A. 5:12-84(b).

10. That both applicants have established by clear and convincing evidence their financial stability, integrity and responsibility as required by the provisions of N.J.S.A. 5:12-84(a).

11. That the applicants, except as otherwise previously found with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence their good reputation for honesty and integrity as required by the provisions of N.J.S.A. 5:12-84(c).

12. That Boardwalk Regency Corporation has established by clear and convincing evidence that it has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation as required by the provisions of N.J.S.A. 5:12-84(d).

13. That Boardwalk Regency Corporation is a wholly-owned subsidiary both of the intermediary publicly-traded holding company, Caesars New Jersey, Inc., which is, in turn, approximately 86% owned by the parent publicly-traded holding company, Caesars World, Inc., and that both said companies have registered with the Commission as required by N.J.S.A. 5:12-85(b)(2).

14. That Boardwalk Regency Corporation has complied with the corporate filing and securities ownership transfer requirements set forth in N.J.S.A. 5:12-82 and 85.

IV.

CONCLUSION

The Commission has reviewed the entire record in light of the policies, standards and requirements of the Casino Control Act. As to the Jemm Company, the Commission is satisfied that the entity and the eight individual qualifiers have met the statutory criteria for Jemm to receive a casino license as the owner-lessor of the Boardwalk Regency Hotel and Casino. Accordingly, an appropriately limited casino license will issue to the Jemm Company.

As to the Boardwalk Regency Corporation, the Commission finds that, subject to any conditions expressed herein, the entity itself meets the applicable statutory requirements. With regard to the persons who must each qualify as part of the BRC application, all but two of the 30 named individuals have demonstrated their suitability and are qualified. For the reasons stated above, however, Stuart Perlman and Clifford Perlman have failed to establish by clear and convincing evidence that they each possess the good character, honesty and integrity demanded by the Act. See N.J.S.A. 5:12-85(d) and -89(b)(2).

Section 85(d) of the Act clearly states that "no corporation which is a subsidiary shall be eligible to receive or hold a casino license unless each holding or intermediary company" separately would meet certain requirements applicable to the applicant corporation. (N.J.S.A. 5:12-85(d) (emphasis added). Under the referenced

requirements, each officer, each director, each holder of beneficial interest in corporate securities, each person able to control the corporation or elect a majority of the board of directors, and every "other person whom the commission may consider appropriate for approval or qualification" must meet the standards, except residency, for a casino key employee license. N.J.S.A. 5:12-85(c). Since Stuart Perlman and Clifford Perlman do not meet those standards, the Act mandates denial of the license if the Perlmans continue to be persons required to qualify. Moreover, since BRC has been operating a casino under a temporary casino permit, the Act unequivocally directs that upon denial of the license "and notwithstanding the pendency of any appeal therefrom, the commission shall appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the temporary casino permittee relating to the casino and the approved hotel." N.J.S.A. 5:12-130.1(b).

While the Commission recognizes its obligation to fulfill these statutory dictates, the question arises whether any alternative to denial of the license and imposition of the conservatorship would be lawful and appropriate. Quite obviously, no alternative is viable if either of the Perlmans continues to be a person required to qualify. Thus, the question becomes whether the Commission can fashion conditions precedent and subsequent to remove the licensing impediment.

Anticipating this question, the Commission requested both the applicant and the Division to address the legal issues involved. This request was made following summations on October 15, 1980. Subsequently, both parties submitted legal memoranda. Although their positions differ as to the type and extent of the conditions which the Commission could impose, both sides agree that the Commission possesses the authority to issue a casino license appropriately conditioned so as to eliminate the obstacle otherwise created by the existence of unacceptable qualifiers. This Commission concludes that such authority does exist. See N.J.S.A. 5:12-75 and -105.

Use of this authority to condition casino licenses with respect to unsuitable persons must be sparing and exceedingly cautious. It must be certain that such conditions will truly avoid the evils perceived by the Legislature and will provide a fully adequate substitute for the statutorily preferred procedure of denying the license and, in cases such as the present one, appointing a conservator. Of course, the conditions must remove the unacceptable individual from any of the categories of persons required to be qualified. N.J.S.A. 5:12-85(c). In particular, the conditions must warrant the conclusion that the individual is no longer a person "whom the commission may consider appropriate for approval or qualification." Id. Even then, there should appear good reasons why the public interest would be better served through conditional licensure

then through license denial and appointment of a conservator.

In the instant matter, acceptable conditions have been formulated which both satisfy the policies of the Act and advance the public interest. By its choice of the conditional licensure alternative, the applicant agrees to the Commission's findings and further agrees either: (1) to irrevocably and completely separate the Perlmans from the corporate family or (2) to withdraw from casino operations in New Jersey. However, this Commission realizes that these results could not have been achieved between October 23, 1980, when the Commission announced its findings and offered the conditional licensure alternative, and midnight October 26, 1980, when the BRC temporary casino permit was to expire. This realization prompts us to consider a short, definite interim period during which the applicant and the Perlmans may decide which of the two alternatives will be chosen and how the chosen alternative will be implemented. Of course, the Perlmans' control over CWI, CNJ and BRC must be minimized during the interim. Thus, as a component of the conditional license, the applicant must agree that the Perlmans take an unpaid leave of absence from any positions with the three companies, refrain from exerting any influence over the corporations' activities and neither vote their stock nor receive any dividends therefrom. These preliminary requirements were also announced to the applicant on October 23, 1980.

Since we now find these preliminary measures have been timely taken and since the applicant has now committed itself to choose one of the two permanent alternatives during the 30 day interim period, the Perlmans will not be deemed qualifiers during such period.

It is on the commitment of the applicant to comply with the stated conditions that our extraordinary decision is founded. Through this pledge, the State of New Jersey and its casino industry are spared the uncertainty of protracted challenges to the Commission's decision. Of course, the applicant gains the advantage of retaining control of the casino and of making the determination as to what course of action it will pursue in response to the Commission's findings. Derivatively, the State is spared the trouble and expense of directing a conservatorship. Moreover, by virtue of the applicant's decision to accept the Commission's findings and to elect between two clearly defined options, the applicant is far less likely to be influenced by the interests of its unqualified founders. Once the decision is made, the Perlmans will either be segregated from the corporate group in a permanent fashion or the corporate group will begin to disengage from New Jersey. If necessary, the Commission will then demand further safeguards as part of the implementation plan. Thus, the proposal is an acceptable alternative to the denial of the license with the attendant conservatorship and an order granting to Boardwalk Regency

Corporation an appropriately conditioned license will be entered.

NEW JERSEY CASINO CONTROL COMMISSION

JOSEPH P. LORDI, CHAIRMAN
(except as to Part II D)

MARTIN B. DANZIGER, VICE CHAIRMAN
(except as to Part II D)

DON M. THOMAS, COMMISSIONER

CARL ZEITZ, COMMISSIONER

MADELINE H. MCWHINNEY, COMMISSIONER

Dated: November 13, 1980

Chairman Lordi, concurring:

I join in all aspects of the Commission's decision in this matter. I take this opportunity only to discuss certain facts bearing upon the qualification of William H. McElnea, Jr. (See Part II D of the Commission's opinion). Rather than repeat the biographical and background information contained in the Commission's opinion, I will focus on those areas which I believe are important to a consideration of Mr. McElnea's suitability.

I.

In order to understand the role played by William McElnea in the development of Caesars World, Inc., over the years, it is important to emphasize the fact that, from late 1968 to 1972, Melvin Chasen served as a principal corporate executive. In 1967, in addition to adding Mr. McElnea to its Board of Directors, Lum's, Inc., also added Melvin Chasen as an outside director. In October 1968, Mr. Chasen became its executive vice president and, on April 23, 1970, its president. On August 31, 1972, Mr. Chasen resigned as president and left Caesars World, Inc.

After eight years in the cigarette vending business in New York, Mr. Chasen in 1963 relocated to Miami and began operating a similar business there. At about that time he came to know Alvin Malnik. In late 1970, Mr. Malnik asked Mr. Chasen if he was interested in the Sky Lake North property, which was owned by Comal Corporation whose principals were Mr. Malnik and Samuel E. Cohen. After

discussing the matter with Clifford Perlman, they both decided that Lum's, Inc., was not interested. Seven or eight months later, however, when Mr. Malnik renewed Comal's offer, Mr. Chasen and Clifford Perlman had changed their minds. It was during this period that, after golfing with Teamsters Pension Fund officials, Frank Fitzsimmons, Allen Dorfman and Alvin Baron at Sky Lake, Mr. Chasen learned that the Fund which held a $10 million mortgage on the property would not object to Lum's, Inc., as "tenants" of Comal Corporation.

On October 14, 1971, Lum's, Inc., "closed" on the property. Following the closing, Mr. Chasen requested that Lum's, Inc., financial officer Bertin Perez review its group health insurance plan and give Mr. Dorfman's Chicago based insurance brokerage firm an opportunity to make a proposal for the insurance business. Seven months later, on June 1, 1972, Caesars World, Inc.'s group insurance was placed through Mr. Dorfman's Amalgamated Insurance Agency Services with the United Founders Insurance Company, replacing Massachusetts General as its carrier. Almost six years later, February 1, 1978, United Founders was replaced as CWI's carrier by the Equitable Life Insurance Company.

On December 10, 1971, also shortly after the Sky Lake closing, Mr. Dorfman wrote to Mr. Chasen requesting that Fund officials be given honorary memberships by Caesars World, Inc. at the Sky Lake Country Club. This request also was accomodated by Mr. Chasen.

Several months later an application dated June 1, 1972, was prepared on behalf of Caesars World, Inc., for an $18.7 million loan from the Teamsters Pension Fund. The application recited the purpose of the loan as development of the Sky Lake property and the construction of a "fantasy tower" at Caesars Palace. The loan application, however, apparently was never actually submitted to the Fund.

During the first six years (1966 to 1972) of his fourteen year association with the company, while Mr. Chasen was in charge of administration, Mr. McElnea was its investment banker and an outside director. During Mr. Chasen's tenure, Caesars World, Inc. underwent a dramatic change in its corporate "personality." Prior to 1969, it was a publicly traded over-the-counter Florida based fast-food restaurant and franchising company with a meat packing subsidiary and a discount chain store subsidiary. Between 1969 and 1972, however, it completely divested itself of these Florida holdings and acquired two Nevada casino hotels, two Pennsylvania honeymoon resorts and a large Florida condominium development property. It also, in 1969, shortly after the acquisition of Caesars Palace, became listed on the New York Stock Exchange.

The role of William McElnea also significantly changed from this initial 1966-1972 period as its investment banker and "outside" director to the more recent 1972-1980 period of his presidency. Judgments as to his suitability as

a qualifier must give consideration to this fact. As the Commission's opinion observes, Mr. McElnea was not the source of the company's associations with either the Teamsters Pension Fund (which Clifford Perlman initiated through the 1969 acquisition of Caesars Palace) or with Messrs. Malnik and Cohen (which Melvin Chasen originated through the 1971 acquisition of Sky Lake). It is also important to recognize that as its investment banker, he was subject to the policy and business decisions made by his corporate client and its chief executive Clifford Perlman. In sum, at the time that the associations between the corporation and Mr. Malnik, Mr. Cohen and the Fund were made firm, Mr. McElnea was not an executive of the company.

It is noteworthy that the transactions with Messrs. Malnik, Cohen and the Fund between 1969 and the present, do not, when separately examined, appear to have been illegal in either a civil or criminal sense. Nor, standing alone, do they seem to have been unethical. Neither the associations nor the transactions seem to have technically or expressly violated any Nevada Gaming Commission or Gaming Control Board regulation or directive, although express suggestions of concern by Nevada regulators did appear as early as October 1972. Similarly, neither the associations nor the transactions appear to have been disapproved by the Securities and Exchange Commission prior to its private order of investigation into the association with Mr. Malnik filed

in September 1975. Consequently, it must be concluded that prior to his assuming its presidency, the associations previously commenced by CWI cannot be fairly said to suggest in William McElnea a lack of "good character, honesty and integrity" or his unfitness to participate in the New Jersey gaming industry.

Eight years ago, in November 1972, Mr. McElnea became president of Caesars World, Inc., and assumed major executive authority and responsibility. During his first three years as president, Mr. McElnea and CWI engaged in three transactions which demand our attention. The nature and degree of Mr. McElnea's participation in these events must be examined to determine whether they indicate any lack of character or integrity. Then, Mr. McElnea's entire tenure as CWI president should be reviewed to ascertain whether we can say with confidence that he is fit to participate in New Jersey's casino industry.

II.

1. Sky Lake Transaction Restructuring

Twenty-eight months after CWI entered into its initial long-term lease of Sky Lake from Comal Corporation and following an almost eighteen month negotiation period, CWI on February 11, 1974, purchased the Sky Lake property from Comal Corporation outright in a financial restructuring of the transaction. As part of the agreement, CWI, as owner, assumed the then $10.7 million mortgage obligation to the

Teamsters Pension Fund. Comal Corporation continued to be owned equally by Mr. Malnik and Mr. Cohen; and, only one year before the transaction, Mr. Cohen had pled guilty to charges related to the Flamingo "skim" prosecution. Nevertheless, in light of the lease between the parties which had existed since 1971, this 1974 purchase cannot be fairly said to represent a new association or transaction with Mr. Malnik, Mr. Cohen or the Fund and thus cannot be said to adversely reflect upon the suitability of Mr. McElnea.

2. Corporate Debt Refinancing

Documents in evidence produced from the files of CWI's insurance consultant and corporate attorney suggest that, at least as of January 1975, and prior to the Cove Associates transaction with Mr. Malnik, Mr. McElnea was considering the development of a comprehensive program to refinance CWI's overall corporate debt. In February, the Cove Associates deal was closed. On July 16, 1975, in its offices in Los Angeles and at Mr. McElnea's request, CWI's corporate security officer interrogated Mr. Malnik for a full day as to his reputed association with Meyer Lansky. Mr. Malnik flatly denied any such link.

On a date apparently following this session and also apparently prior to the September 18, 1975 Securities and Exchange Commission investigation of the Cove Associates transaction, Mr. Malnik approached Mr. McElnea and Clifford Perlman in Las Vegas and inquired whether CWI would consider

a $75 million sale and leaseback of its Caesars Palace property. Both executives rejected this proposal. Whatever may have been in the mind of Mr. Malnik, the serious question presented is whether Mr. McElnea's thoughts on refinancing the overall corporate debt in 1975 included or would have included any consideration whatsoever of any participation therein by either Mr. Malnik or the Teamsters Pension Fund. No evidence establishes that he did consider Mr. Malnik or the Fund as a potential source for any such financing. As a matter of fact, CWI obtained no further financing from either.

3. Cove Associates Sale-Leaseback

On February 20, 1975, following initial discussions three months earlier between Mr. Malnik and Clifford Perlman and following Board approval on February 5, CWI sold the Cove Haven and Paradise Stream Pennsylvania honeymoon resort properties, which it had owned for four or five years, to a Florida partnership named Cove Associates. The partners in Cove Associates are Mr. Malnik (69%) and Samuel Cohen's two sons (31%). As part of the transaction, Cove Associates leased the properties back to CWI under terms requiring CWI, as tenant, to operate and improve the two resort complexes. On the date of the transaction, the Teamsters Pension Fund granted Comal Corporation a $15.0 million loan which was secured by a mortgage from Cove Associates on the two Pennsylvania properties and which was

guaranteed by Comal Corporation. The loan further required that CWI guarantee payment of the lease rental obligations to Cove Associates.

By this sale and leaseback, the Teamsters Pension Fund, Mr. Malnik and Samuel Cohen's sons were for the first time able to establish an association with CWI's Pennsylvania honeymoon resort properties and thus were able to increase and expand their financial relationship with CWI and its assets. Samuel Cohen by this time had pled guilty to criminal charges related to the Flamingo "skim" two years earlier. Thus, nearly six years after having entered the gaming industry, CWI in early 1975 was still, in part, relying upon the Teamsters Pension Fund for its financial needs.

It is this corporate transaction and Mr. McElnea's relationship to it which causes the greatest difficulty in determining his present fitness to participate in the New Jersey gaming industry. Although not the source of the proposal, Mr. McElnea did vote his approval as a director and, as CWI's president, assisted in structuring the agreement. The transaction, by its terms, does not appear to have been illegal. The arrangement expanded already long existing asociations with Mr. Malnik, Mr. Cohen (through his sons) and the Teamsters Pension Fund. It did not create those associations. Nevada gaming authorities had been aware of

and did not disapprove similar associations originating in the 1971 Sky Lake acquisition. Obviously, no personal association with Mr. McElnea was involved here. Most significantly, Clifford Perlman, the corporate chief executive officer and chairman of the board, supported and voted for approval of the Cove Associates agreements.

Mr. McElnea's conduct on behalf of his employer with respect to these agreements occurred almost six years ago. It would appear that in failing to oppose the Cove Associates proposal, Mr. McElnea made a significant misjudgment. Indeed, prior to the end of 1975 that fact was made clear by the reactions of the Securities and Exchange Commission and the Nevada gaming authorities. However, in judging Mr. McElnea's "good character, honesty and integrity," we must consider the entire man and the circumstances in which he acted.

III.

As noted, the Securities and Exchange Commission on September 18, 1975, ordered a private investigation into CWI's corporate dealings with Mr. Malnik in both the Comal Corporation and Cove Associates transactions and into Clifford Perlman's personal dealings with him in the Cricket Club. Shortly thereafter, the Los Angeles Times (on November 10, 1975) published a negative front page article under the headline "Caesars Palace Firm Under Investigation." Finally, the Nevada Gaming Commission and Gaming Control Board, on December 10, 1975, and April 13, 1976, directed that Caesars

World, Inc. not expand its association with Mr. Malnik and not associate with persons of unsavory or notorious repute.

No evidence suggests any expanded or new associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975, almost six years ago. More specifically, no such associations seem to have attended the corporate acquisitions of the Ontel Corporation in New York in January 1976; the Pocono Palace in Pennsylvania in November 1976; the Traymore site in Atlantic City in August 1977; the Regency project in Atlantic City in June 1978; or, the Caesars Tahoe complex in Nevada in November 1979. Notably, of the $138 million so far committed by CWI to the Boardwalk Regency project, $47 million was derived from large institutional sources, $28 million from obligations undertaken to former owners of the realty and $63 million from internal corporate funds (bank lines, public offerings and operating revenues).

In February 1978, CWI freed itself of its association with Teamster Pension Fund official Allen Dorfman. CWI changed the broker for its employee health insurance from Mr. Dorfman's agency and transferred the coverage from United Founders Insurance Company to Equitable Life Insurance Company. The decision, admittedly, took the corporation more than three years to reach. It must be recognized, however, that it was Melvin Chasen who initiated the corporation's relationship with Mr. Dorfman and that it was Mr. McElnea who, in June 1974, brought in John Ames Associates to

reexamine the company's insurance portfolio. It was Mr. McElnea who finally caused Dorfman's agency and its carrier to be replaced.

Mr. McElnea's contribution in obtaining conventional financing for Caesars World, Inc. has been significant. In October 1978, principally through his efforts, CWI was able to obtain financing in an amount of $60 million from the Aetna Life Insurance Company. Until that point, the gaming industry company had been unable to obtain significant funding from such a major national institutional lender. In addition, through Mr. McElnea, CWI has been able to repeatedly obtain substantial lines of credit from major national banks such as Chemical, Security Pacific, First Chicago and others. It has been successful in its public offerings of both stocks and debentures. Its annual financial conferences, which Mr. McElnea initiated, have substantially enhanced its own as well as the industry's credibility with the financial community. Again, it was Mr. McElnea who was instrumental in 1969 in CWI's being listed on the prestigious New York Stock Exchange and who, during his presidency, did much to attract such substantial outside directors as: James Needham, the former chairman of the New York Stock Exchange (1972-1976); M. Peter Schweitzer, who for seventeen years had been vice-chairman of the board of the Kimberly Clark Corporation; and, Manuel Yellen, who at the time of his retirement from P. Lorillard and Company

occupied the position of its chairman and chief executive officer.

Credit, it is true, must be given to Clifford Perlman as the chief executive officer who set the corporate policy with such vision. It was William McElnea, however, who so effectively implemented those policies and made them live. He gradually over the years gained CWI access to respected conventional institutional lenders. He has served as a major catalyst in attracting its impressive and very professional management group. He has, as chief operating officer, efficiently managed its constantly expanding operations. Without William McElnea, CWI would not have attained its present status as one of the leading companies within the gaming industry.

IV.

It would appear that in 1969 obtaining conventional financing from respected institutional sources for a gaming industry was a tougher problem than CWI and Mr. McElnea originally anticipated. In fact, it was not until more than three years after the Cove Associates agreements that CWI, through the efforts of Mr. McElnea, obtained the precedent setting loan from the Aetna Insurance Company. The danger in the Cove Associates transaction of six years ago was that, even though Nevada authorities had not prohibited such corporate dealings with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund, the sale-leaseback agreement could

have provided them with extensive enough loan obligations from CWI to potentially exercise some degree of control over CWI or its casino operations. This is the danger against which New Jersey, with its toughest possible regulatory scheme, has committed strong and unyielding vigilance.

In the licensing process, there can never be a total absence of doubt. Plainly, Mr. McElnea made a serious misjudgment in not trying to prevent CWI from engaging in the Cove Associates transaction. But, in the entirety of the evidence before this Commission, it cannot be said that the applicant has failed in its burden to produce a firm belief and conviction as to William McElnea's suitability and fitness for New Jersey's casino gaming industry and to demonstrate clearly and convincingly his good character, honesty and integrity. He accordingly ought to be found to qualify as an officer, director and shareholder as to this casino license applicant.

Although I find Mr. McElnea qualified, I stress that my decision has not been an easy one. If BRC chooses to remain in New Jersey and to sever all relations to the Perlmans, Mr. McElnea's stature and importance will increase proportionately. He must understand that his performance will be closely scrutinized in the hope that we have decided correctly. I trust that he will be aware of this fact and will discharge his responsibilities in an exemplary manner.

JOSEPH P. LORDI, CHAIRMAN

DATED: NOVEMBER 13, 1980

Vice-Chairman Danziger, concurring and dissenting:

In reaching my decision in this serious and important matter, I have carefully evaluated the testimony of the witnesses who appeared before us and the reliability of the documentary materials which were introduced into evidence. Moreover, I have conscientiously endeavored to assess the suitability of the applicants and the persons to be qualified in accordance with the pertinent licensing criteria. As a result of this process, I find that Clifford S. Perlman, the Chairman of the Board of Caesars World, Inc. ("CWI") and its largest stockholder with approximately 10% of the outstanding shares, has failed to meet his heavy burden of establishing his good character, honesty and integrity by clear and convincing evidence. I further find that Stuart Z. Perlman, Vice-Chairman of the CWI board and second largest stockholder with approximately 8% of its stock, has likewise failed. In contrast, I find that Jay E. Leshaw, a CWI director and officer in charge of the Florida properties, does qualify. My reasons for these three determinations are essentially contained in the Commission's Decision and I will not lengthen this opinion by elaborating upon them. However, I must address myself to the suitability of William H. McElnea, Jr., the President and Chief Operating Officer and a director of CWI.

Preliminarily, there is no question that Mr. McElnea is a person required to qualify as a condition of Boardwalk

Regency Corporation's casino license application. In addition to his positions with the parent company, CWI, Mr. McElnea serves as president and a director of the intermediary company, Caesars New Jersey ("CNJ"). Further, Mr. McElnea owns the third largest block of shares in both CWI, approximately 1.6%, and CNJ, approximately 0.4%. Thus, Section 85(d) of the Casino Control Act (N.J.S.A. 5:12-85(d)) classifies Mr. McElnea as a so-called "qualifier."

Yet, Mr. McElnea's importance to these companies runs deeper even than his high posts and large holdings would indicate. He has been associated with CWI or its predecessor, Lum's Inc., since 1966. In the ensuing years, it was Mr. McElnea who directed the Company's financing and who made it possible for the Company to move from a closely held fast-food restaurant firm to a publicly owned gaming giant. According to the applicant, it is Mr. McElnea who deserves much of the credit for the success of CWI in leading the way for publicly owned corporations into gaming and in breaking down the traditional resistance of respected institutional lenders against extending loans to casino operators. In fact, Mr. McElnea's contribution and value to the company are considered by CWI itself to be, in many ways, on par with those of Clifford Perlman. If Mr. Perlman's creative insights set the goals for the company, Mr. McElnea's financial arrangements powered the company toward those goals. Of course, with the rejection of Clifford Perlman by this Commission, Mr. McElnea's importance to the company increases

even more.

In assessing Mr. McElnea's suitability under the licensing standards, his value, even indispensability, to CWI and CNJ must be considered. However, it would be a grievous error to conclude that such consideration warrants a lowering of the statutory criteria in order to protect the economic well-being of the company. Quite the contrary is mandated. The greater an individual qualifier's authority and responsibility, the greater the harm which that individual can bring to both legalized gaming operations in this State and public confidence in the regulatory process. Hence, this Commission is bound to exercise an extra measure of care and scrutiny in such instances. While financial stability and business competence are criteria for casino licensure, those criteria must not be allowed to subsume the separate requirement of good character. Economic strength cannot substitute for integrity.

As to the licensing criteria themselves, the operative requirement is that Mr. McElnea must demonstrate by clear and convincing evidence his good character, honesty and integrity. This requirement is purposely stringent. It is Mr. McElnea's obligation to respond to any questions raised by this record and to induce in the mind of this Commission a firm belief that he indeed possesses the positive attributes necessary for qualification. In deciding whether such a belief is engendered, each Commissioner must consider all the relevant events and Mr. McElnea's conduct in

each circumstance. Business and professional associations must be examined to ascertain whether such associations bear adversely on Mr. McElnea. Of course, I am mindful that such events, conduct and associations must be viewed in the context of then existing circumstances. Subsequent revelations and developments which were neither foreseen nor reasonably foreseeable are of little value in this process. With these concepts, I now turn to the record.

As noted, Mr. McElnea's forte is his competence and expertise in financial matters. Born in 1922, Mr. McElnea attended Dartmouth College where he obtained both a bachelors degree and a masters degree in business administration. Following graduation, he spent seven years working for New York City commercial banking houses before joining the investment banking firm of Van Alstyne, Noel and Co. in 1955. As a specialist in corporate financing, Mr. McElnea met Clifford Perlman in 1966 when Lum's, Inc., became a client of VanAlstyne. The following year, Lum's became an over-the-counter, publicly traded company and Mr. McElnea accepted a position as an "outside" director for Lum's. Naturally, Mr. McElnea continued to serve as the financial adviser and architect for the company.

It is clear that, when Mr. McElnea first joined Lum's, he was a sophisticated, experienced and mature businessman and banker. Although technically an "outside" director until November 1972, Mr. McElnea's deep involvement with the financial arrangements of the company brought him into a much

closer relationship with the company and its management. In fact, the post-hearing memorandum submitted by the applicants states on page 99 that Mr. McElnea enjoyed a "close, intimate, professional relationship with [Clifford] Perlman" from the time he first became a Lum's director. It is in this framework, rather than the more typical outside director context, that Mr. McElnea's participation in the events before November 1972 must be considered.

In the late 1960's, Clifford Perlman sought to move the company into new fields. In 1969, Mr. Perlman was introduced, through a person acting as a broker, to the owners of Caesars Palace who were then seeking a buyer for the casino hotel. Mr. Perlman contacted Mr. McElnea and asked him to study the proposal for the purpose of arranging the financing. Prior to the acquisition, Mr. McElnea was well aware that gaming companies were generally thought to be connected with underworld figures and that this tawdry image was a primary reason for the unavailability of major institutional financing to such companies. Mr. McElnea was also aware that, to obtain Caesars Palace, Lum's would have to assume a preexisting $18.1 million mortgage to the Teamsters Pension Fund.

On April 24, 1969, Lum's entered into an agreement for the sale of the Palace but the actual closing did not occur until September 30, 1969. In the interim period, the casino experienced a loss of $932,266 before taxes while it was still being operated by the sellers. In the comparable period for 1968, the casino had a pre-tax profit of $2,230,014. Under

the terms of the acquisition agreement, Lum's was entitled to any profits realized during the settlement period. Thus, if this precipitous drop in profits was the result of embezzlement or skimming, Lum's, Inc., was deprived of a substantial sum of money at a time when the company was in a cash poor position. Although Mr. McElnea may not have been knowledgeable about reasonable fluctuations in gaming win, his failure to suggest even a consultation with independent experts or auditors cannot be ignored. This failure is underscored by the fact that Lum's, Inc., was first listed on the New York Stock Exchange on October 14, 1969, and that Mr. McElnea was both the acknowledged financial expert and an outside director. Failure to investigate such circumstances in this State under our law, I submit, would cause this Commission serious concern. However, there is much more.

The applicant and Mr. McElnea argue that, in the years following acquisition of the Palace, they were in a new industry and they were not far progressed on the so-called "learning curve." This argument cannot withstand scrutiny. Mr. McElnea's sophistication and accomplishment in business and finance has already been demonstrated. Even assuming that he was relatively naive about the gaming industry, the events which occurred in rapid fashion during and after the acquisition of the Palace must have accelerated his education. Beyond the casino's loss during the settlement period, a search of the casino by the Federal Bureau of Investigation in December 1970, must have been a further awakening. The

F.B.I.'s discovery of large sums of money in certain lockboxes led to an investigation by the Securities and Exchange Commission in early 1971. In the course of the investigation, many employees whom Lum's had retained from the prior owners invoked their Fifth Amendment right to avoid self-incrimination when questioned about the casino loss during the settlement period. Such occurrences should have alarmed Mr. McElnea if he truly hoped to upgrade the image of casino gaming and to attract major lenders. New Jersey requires, at a minimum, more caution and concern than exhibited by Mr. McElnea in this case.

It was against this background that the Sky Lake transactions commenced. Mr. McElnea testified that the proposal was first brought to the attention of Clifford Perlman in 1970 by Mel Chasen, then president of Lum's, Inc. Mr. McElnea knew that the owner of the property was the Comal Corporation which was owned by Alvin I. Malnik and Samuel Cohen. Although Mr. Perlman initially rejected the proposal, Mr. Chasen again offered it on behalf of Comal in 1971. This time Mr. Perlman agreed to consider it. A meeting was held in early July, 1971. According to Mr. McElnea, the meeting was attended by Mr.McElnea, other corporate officers and Messrs. Malnik and Cohen.

A few weeks prior to the meeting, Mr. McElnea received a telephone call from Mr. Chasen who advised that Messrs. Malnik and Cohen had "controversial" reputations. At the meeting, Mr. Malnik presented the Sky Lake proposal. However,

Mr. McElnea has no recollection of questioning Mr. Malnik or Mr. Cohen about their reputations at that time. In any event, Mr. McElnea was told by Mr. Chasen that Mr. Cohen had been convicted of a Commodity Exchange Act violation and that Mr. Malnik was the subject of disturbing allegations in Hank Messick's book, Lansky. Mr. McElnea denies knowing or being told of Mr. Cohen's pending indictment with Meyer Lansky for skimming from the Flamingo hotel casino in Las Vegas. That indictment was returned in March 1971 by a federal grand jury sitting in Florida.

The Comal proposal was presented to the Lum's board of directors later in July 1971. By that time, the offer had been changed from a simple sale of the land to a lease with an option to purchase the stock of Comal after three years and an option to purchase portions of the land for development. These modifications were the result of Lum's efforts to accomodate Comal's tax problems. The board decided to proceed with the transaction subject to a feasibility study and an appraisal.

Of more significance is the fact that the board was apprised of Mr. Cohen's commodity violation and Mr. Malnik's notoriety. Specifically, the book Lansky was discussed. In that book, Mr. Malnik was accused of organized crime activities and association with Meyer Lansky. Moreover, the book recited the fact that electronic surveillance had been conducted on Mr. Malnik in 1963 and damaging conversations were recorded. Further, the board knew that Mr. Malnik was

suspected by several government agencies of being involved in criminal activities. Indeed, the corporation's own counsel, David Bernstein of Rogers and Wells, implored the board not to take any action until the Malnik allegations were discussed with the Justice Department. To be sure, the board was told by Mr. Chasen that Mr. Malnik denied the allegations, that he was indicted but never convicted, and that he was a member of the Florida bar.

In the face of the serious questions raised regarding both Mr. Malnik and Mr. Cohen, Mr. McElnea joined with other board members in voting for the Sky Lake proposal and in ignoring the entreaties of the company's own counsel. Mr. McElnea argues that it would have been futile to ask a government agency for its opinion in this matter and that such an inquiry would have set a bad precedent. These lame excuses are not acceptable now and were not acceptable then. If Mr. McElnea really intended to raise his company above the suspicions surrounding the gaming industry, then he would not acquiesce in Sky Lake without so much as an inquiry into the truth or falsity of the allegations. If that inquiry brought no response, then nothing was lost. As to setting a bad precedent, Mr. McElnea would have this Commission believe that he then expected Lum's, Inc., the parent corporation of a licensed Nevada gaming company, to routinely enter into multimillion dollar real estate transactions with persons of Mr. Malnik's reputation. Unfortunately, subsequent events give reason to believe that the company may have anticipated

just such repeated transactions. Mr. McElnea's support for this transaction, considering his importance to the corporation, his sophistication and expertise call into issue his ability to adequately perform under the strict regulatory controls of this State.

The nature of the Sky Lake transaction is of great importance. Mr. McElnea would characterize it as hardly more than an ordinary, arms-length real estate transfer. The record does not support that characterization. As noted, the proposal had already undergone substantial revisions before it was presented to the board in July 1971. These changes were readily accepted by Lum's management in order to protect Comal from adverse tax consequences. While some adjustments to accomodate the other party in a transaction may not be unusual, the drastic alterations involved here actually prevented Lum's from developing the property for a substantial period of time, a period during which the Florida land market collapsed.

In October 1971, the Sky Lake agreement called for Lum's to include, as part of the sale price, warrants to purchase up to 600,000 shares of Lum's stock at various prices. Upon hearing of this, Nevada gaming authorities indicated that such stock warrants might require approval of Messrs. Malnik and Cohen. Although the warrant provision was deleted in 1972, Lum's knew that Malnik and Cohen might not be approved by the Nevada authorities. Nevertheless, the

interminable negotiations and revisions of the Sky Lake transaction dragged on. In my view the warrants were ultimately not part of the transaction because of regulatory agency pressure not any reaction by Mr. McElnea to the nature of his business associates. This lack of concern in my view is unacceptable under the Casino Control Act and the public policy of this State.

At no point did Mr. McElnea voice any opposition. Even after he assumed the presidency of the company in November, 1972, he did not press to take advantage of opportunities to disengage from Sky Lake. More disturbing still, he uttered no objection when he finally learned of Samuel Cohen's indictment with Meyer Lansky for skimming from the Flamingo. His failure to recall when and how he learned of this devastating information castes serious doubt about his candor before this Commission. In fact, Mr. McElnea testified here that he would have probably changed his opinion about entering the transaction if he had known of Mr. Cohen's indictment.

Upon discovery that not only Mr. Malnik but Mr. Cohen was alleged to be associated illegally with the notorious Lansky, Mr. McElnea should have taken immediate steps to reexamine the company's involvement with Comal. Moreover, Mr. McElnea could have readily ascertained that the Cohen indictment pre-dated the initial Sky Lake proposal by nearly three months. Given Mr. McElnea's assertion that the CWI board of directors were a closely knit group, he would have had cause to wonder why he was not told of the indictment by

Clifford Perlman and the other directors who were aware of it prior to Sky Lake. Furthermore, Mr. McElnea knew from the outset that the Sky Lake proposal required the company to assume a $10 million dollar Teamsters Pension Fund mortgage. This too did not prompt a reaction.

Two additional matters involving the Sky Lake transaction deserve mention. First, on the issue of the $164,000 sewer bond that was prepaid by Comal, I find that Caesar's World was not required to make the repayment to Alvin Malnik. The reason they were not required to repay these monies was that they purchased the assets of Comal (a corporation) and since one of the assets was the prepaid sewer bond, that asset should have been transferred for the benefit of the stockholders of Caesars World, Inc. However, William McElnea, the financial expert, disregarded the concerns and needs of his own company and stockholders to benefit Alvin Malnik and Comal. Secondly, the eagerness displayed by the corporate executives, including Mr. McElnea, in permitting Alvin Malnik to secure a $375,000 yacht to the detriment of the corporation and its stockholders and their willingness to maintain the pleasure vessel, on behalf of Alvin Malnik, refute any assertion that Sky Lake was an arms-length real estate transaction. These dealings are the type which can be employed to skim money from the corporate till. Unfortunately, Mr. McElnea, the person with the most sophisticated financial acumen of those who have appeared before this Commission, consented to these transactions at

substantial cost and detriment to the stockholders he represented.

In short, the Sky Lake transaction belies Mr. McElnea's contention that he was concerned about the reputation and business associates of CWI. The mere fact that the Nevada authorities did not issue any instruction to terminate the Sky Lake transaction will not absolve Mr. McElnea. An apparent eagerness to associate with disreputable individuals and a reluctance to sever the relationship even if one of the individuals is convicted of casino-related crimes argue powerfully against his character and integrity. New Jersey need not allow persons to hold positions of authority in casino companies unless such persons can be trusted to act properly without being constantly threatened or coerced by the regulatory authorities.

As previously mentioned, Mr. McElnea succeeded Mel Chasen as president and chief operating officer of CWI in November 1972. (Lum's, Inc., changed its name to Caesars World, Inc., in December 1971). At about the same time, Mr. McElnea was informed by Clifford Perlman that Philip Hannifin, the Chairman of the Nevada Gaming Control Board, had expressed concern about Mr. Perlman's involvement in the Cricket Club, a condominium project in Florida. Mr. Hannifin's concern was caused by the fact that Mr. Perlman's chief partner in the Cricket Club was Alvin Malnik. Mr. McElnea assumed that Mr. Hannifin was only distressed because Mr. Perlman's interest was a personal one and that Mr. Hannifin would not react

similarly to future dealings between CWI and Mr. Malnik. It does not appear that Mr. McElnea made any effort to verify the accuracy of his assumption prior to the Cove Haven sale and lease back with Mr. Malnik in early 1975. The arrogance of Mr. McElnea in relying on this faulty assumption evinces a callousness to the Nevada regulatory system which, if it occurred in New Jersey, would be clearly unacceptable.

Before addressing the Cove Haven transaction, it is appropriate to consider Mr. McElnea's conduct as CWI's president in the two intervening years. More particularly, his interactions with the Teamsters Pension Fund, Allen M. Dorfman, the Amalgamated Insurance Agency ("Amalgamated") and United Founders Life Insurance Company ("United Founders") must be examined.

In 1972, CWI had a number of financial relationships to the Teamsters Pension Fund, principally the mortgages on Sky Lake and Caesars Palace. At the direction of then President, Mel Chasen, CWI transferred its employee group health insurance from Massachusetts General to United Founders on June 1, 1972. At the same time, CWI retained Amalgamated, Dorfman's agency, as its broker for this coverage. From the documents produced by John Ames and from the transcript of Mel Chasen's testimony before the Securities and Exchange Commission, it is quite evident: (1) that Allen Dorfman was a principle in Amalgamated; (2) that Mr. Dorfman was apparently able to manipulate Teamsters Pension Fund loans and mortgages; and

(3) that the CWI group insurance was placed with United Founders through Mr. Dorfman's agency for the purpose of obtaining favorable treatment for CWI by the fund.

The applicant responds to these facts by arguing that the costs and benefits of the United Founders policy were fair and competitive and that Amalgamated's fees were not unreasonable. Further, as to Mr. McElnea, the applicant emphasizes that these arrangements were made before he became president and chief operating officer. Even if these contentions were accepted, later events place responsibility squarely on Mr.McElnea. As early as 1974, CWI management was advised by its independent consultants to replace United Founders as underwriter and Amalgamated as broker for the group health plans. These suggestions became more frequent and urgent until the insurance was finally transferred in February 1978.

Evidence is uncontroverted that United Founders Life Insurance of Oklahoma and Illinois were unrated by Bests Insurance, the prestigious rating service for the insurance industry. John Ames, CWI's consultant, knew of this and testified that he would never place a client's insurance coverage with such companies because of their financial instability.

According to a memorandum of John Ames, he talked with Mr. McElnea as chief operating officer and Bertin Perez, the former financial head and now a consultant of CWI, on January

23, 24 and 25, 1975. At that time, it was indicated that CWI could prepay a Teamsters Pension Fund mortgage for $11 million and "until that is done, the climate for moving the United Founders group case is still not great." The memorandum continues in the next and concluding sentence: "On the other hand, Bill has done a lot of study on a possible sale and lease back of the Palace and if it should take place, this would change the whole picture." The "Bill" is obviously Mr. McElnea.

Standing alone, the excerpts from this memorandum do not indicate whether Mr. McElnea had any specific party in mind for a sale and lease back of the Palace nor whether the changed picture would mean retention or quicker severance of Amalgamated and United Founders. However, it is evident that Mr. McElnea was fully cognizant of the connection between the insurance placement and any negotiations with the Teamsters Pension Fund. Neither the applicant nor Mr. McElnea have contested this relationship and their awareness of it. Even more distressing is the fact that, during this period, Allen Dorfman was convicted of a federal offense for taking kickbacks to arrange loans from the pension fund. He served a prison sentence from March to December 1973. This must be combined with Mr. McElnea's admission that he knew in 1975 of the Teamsters Pension Fund's widespread reputation for "having done such things as paid illegal finders fees and paid kickbacks and a lot of very nasty business transactions."

The applicant and Mr. McElnea contend that CWI could

not extricate itself from Amalgamated and United Founders any sooner than they ultimately did. This was allegedly due to the problems created by United Founders' precarious financial status, so precarious, in fact, that withdrawal of the CWI account would probably have broken the carrier. Again, even if this contention were accepted, the Ames consultants advised that CWI had sufficiently aided United Founders' recovery by the end of 1976 to allow the transfer. Despite the fact that he agreed with the position of the Ames group, Mr. McElnea told Bertin Perez on November 23, 1976, to do nothing for one month.

Mr. Ames spoke to Mr. McElnea the same day. In his memorandum of this conversation, Mr. Ames states Mr. McElnea's reason for the delay as being that "they are still finalizing negotiations with the teamsters pension fund on extending maturities on some of those Florida properties and Bill [McElnea] didn't want to do anything which would rock any boats or make any waves." This statement unequivocally refutes the applicant's assertion that any delay was the result of the carrier's solvency problems and not an effort to appease and accomodate Dorfman. Moreover, the argument that the delay was inconsequential utterly misses the point. Mr. McElnea did not want the transaction completed at that time. Obviously, he was not willing to assume that it would be delayed in the ordinary course.

In any event, the delay was hardly one month. A June 15, 1977, memorandum from V. Paul Ricken to John Ames reveals

that seven months later Ricken was still waiting for the "green light" from Mr. McElnea. The only conclusion which can be drawn is that Mr. McElnea was thoroughly versed in the rules of the Teamsters Pension Fund and that he was quite willing to follow those rules. It is not important whether he did so purposely to aid the nefarious schemes of others or whether he aided those schemes to achieve his and CWI's own economic ends. The Casino Control Act does not require or permit this Commission to draw such distinctions. These practices establish Mr. McElnea's unsuitability to participate in New Jersey's gaming industry. Negative implications also must be drawn from the applicant's failure to produce Bertin Perez an obviously important witness to the transaction with Alan Dorfman. This failure, I infer, was because his testimony would support the negative inferences about Mr. McElnea drawn from the Ames' record and testimony.

Added to all the foregoing, the Cove Haven transaction and its aftermath demand that the Commission exclude Mr. McElnea. As mentioned above, Mr. McElnea knew of the Hannifin conversation with Clifford Perlman in November 1972. Of course, he knew of Mr Malnik's reputation and he also knew before the deal was closed on February 20, 1975, that the $15 million was obtained by Mr. Malnik from the Teamsters Pension Fund at 9% interest. The offer from Mr. Malnik was to charge roughly 15% of the purchase price to CWI as rent. It has already been demonstrated that Mr. McElnea was then aware of the reputation of the fund and, from personal experience, the

manner in which it did business.

Despite all of these factors, Mr. McElnea tendered no objection when the offer was presented to the board by Clifford Perlman. Nor did Mr. McElnea share with his fellow board members the fact of the Hannifin conversations with Mr. Perlman. Further, Mr. McElnea chose not to call in the CWI Director of Security, former FBI agent Harold Campbell, to determine prior to the transaction whether any new information was available on Mr. Malnik. Instead, Mr. McElnea requested Mr. Campbell to conduct such an investigation, including an interview of Mr. Malnik, in July 1975 well after the transaction was completed. And even then, Mr. McElnea acted only upon learning that the Nevada authorities were investigating Mr. Malnik and Cove Haven. Although steadfastly maintaining that no hard evidence was ever produced against Mr. Malnik, Mr. McElnea acknowledges that Harold Campbell believed Mr. Malnik to be an organized crime figure.

There are yet other serious questions regarding the Cove Haven transaction. The sale and lease back was conducted between a CWI subsidiary and a Florida partnership called Cove Associates. The partners were Mr. Malnik and his wife, and the two sons of Samuel Cohen. Mr. McElnea concedes that no business should have been conducted by CWI with the convicted Samuel Cohen. Yet, Mr. McElnea becomes oddly myopic in this respect.

Before final approval of the transaction, Harold Berkowitz, one of CWI's outside directors, suggested a condition

be imposed to the effect that CWI would be granted a deferment of payments on its Sky Lake obligations. This condition was accepted and, in July 1975, a substantial deferment was obtained. Of course, as Mr. McElnea well knew, the Sky Lake obligations ran to Comal Corporation not to Cove Associates. Comal was Mr. Malnik and Samuel Cohen. Despite his admission that Samuel Cohen was unacceptable as a business associate and despite his admission that he then knew of Mr. Cohen's conviction for skimming from a Las Vegas casino, Mr. McElnea agreed to do business with Mr. Cohen through Alvin Malnik. In addition, the deferred Sky Lake payments were, in large part, a Teamsters Pension Fund obligation. Mr. McElnea, with his redoubtable business acumen, chose not to dwell on the obvious implication that Samuel Cohen would received a direct benefit from the Cove Haven proceeds and that the disreputable Mr. Malnik would have to intercede with the Teamsters Pension Fund on behalf of CWI. Naturally, too, any hope of separating CWI from the Teamsters Pension Fund in the near future was snuffed by the Cove Haven commitment. In this act, Mr. McElnea was no idle observer. He was instrumental. Again, actions that would be more than enough to deny qualifier status in this State.

The closing of the Cove Haven deal, in February 1975, and the grant of a deferment from Comal in July 1975, did not mark the end of Mr. McElnea's association with Mr. Malnik. Although the exact date is in dispute, in early 1975, Mr. Malnik approached Mr. Clifford Perlman and Mr. McElnea with one more proposition. This time he proposed no less than a

$75 million sale and lease back of the Palace itself. As usual, the source of Mr. Malnik's funds was to be the Teamsters Pension Fund. Notwithstanding all that had gone before, Mr. McElnea admits that "we listened."

As to the seriousness of Mr. Malnik's last proposition, Mr. Fritsch of Rogers and Wells observed in a January 17, 1975, memorandum that the proposed Cove Haven transaction appeared "atypical" and "very costly" but it should proceed because it was only the "first step" in the refinancing of CWI's debt. The clear implication is that the benefits accruing to the other party, Cove Associates, would be inducement to further, perhaps more favorable financing. It should be recalled that Mr. Ames' memorandum of January 1975 recites that Mr. McElnea was then thinking seriously of a sale and lease back of the Palace. Although this proposal never came to fruition, it is quite clear that Mr. McElnea did not say: "No, we'll not do business with Mr. Malnik again." To the contrary, only the publication of a damaging article in the Los Angeles Times and subsequent inquiries by regulatory authorities finally terminated consideration of Mr. Malnik's proposition. These events provide a chilling insight into the financial

activities being conducted by Mr. McElnea in 1975. Although the applicant argues that this adverse inference should not be drawn, it is appropriate to note that Mr. McElnea himself did not resume the stand at this hearing to address these matters after Mr. Ames' testimony.

CONCLUSION

The Casino Control Act intended, among other things, to insure that organized crime does not infiltrate the resort casino industry in Atlantic City or the service industries interacting with those resort casinos. This Commission has an awesome responsibility in controlling the infiltration of organized crime into legitimate business as well as assisting in stopping the corrupting influence of criminal cartels and their acquisition and expansion of political and social influence.

The potential of infiltration and domination of legitimate business by organized crime has been incontrovertably revealed by a series of investigations and congressional probes over the last 25 years. The attempts to conceal criminal activities in a mantle of respectability is dramatically presented by the evidence in this case. It appears Mr. McElnea contributed to the efforts of persons with reputations as high-ranking racketeers to invest large sums of money in legitimate enterprises. Moreover, through these arrangements, Mr. McElnea granted those persons the economic leverage to exercise very real control over a

licensed gaming company. We should not license such an individual.

It is clear from the present record that William McElnea traveled two different roads. Were he to have remained solely on the path composed of Paul Bagley from E. F. Hutton and Robert VanBuren and Robert R. Ferguson from the Midlantic Bank and the First National State Bank Corporation respectively, the world of which he was a part as an investment banker, I would probably have found he had met the standards of honesty and integrity of the Casino Control Act by clear and convincing evidence. However, he chose another course. Whatever his motivation, he traveled another road simultaneously. This alternative road was composed of Allen Dorfman, Alvin Malnik, Samuel Cohen, the Central and Southwestern States Teamster Pension Funds, the Amalgamated Insurance Agency and the United Founders Life Insurance Companies of Oklahoma and Illinois. He traveled the road with mendacity and with disregard for the regulatory process. Fortunately, the legislative wisdom of New Jersey does not permit this dual personality. I find I have no choice but to vote to deny Mr. McElnea's status as a qualifier. I find him unsuitable. New Jersey public policy demands that he be made of sterner stuff than he exhibited in this case. This state need not allow persons to do business within this state who choose to operate on several occasions with persons of such obvious bad reputations.

Section 84(c) requires "each applicant" to produce

such "information, documentation and assurances of good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and integrity." Such information shall include business activities and professional associates.

Mr. McElnea's business associations reflect upon his present character and fitness. The duration of these associations, their purpose and intensity, and the reputation and character of the associates preclude his being found qualified under N.J.S.A. 5:12-89(b)(2). In furtherance of this finding, Mr. McElnea's knowledge of the "bad" reputation and character of the associates is compelling. He did not exercise efforts to determine the suitability of these associates prior to engaging in business relations with them, nor did he terminate or attempt to terminate the relationships in a timely fashion once aware of their reputations and character. Even a brief association with a person, pension fund, or business known to be of such questionable character as the persons and business referred to herein, would be a powerful negative proof of honesty and integrity. It is clear that the greater notoriety the more negative the reflection on the applicant. The persons and businesses Mr. McElnea chose to associate with are notorious and clearly unacceptable today as they were for the last decade.

A business and its leadership must be alert to persons or other related businesses who compromise their concern for integrity. CWI and Mr. McElnea, as the Chief

Operating Officer and Director, should have been concerned with those with whom the company did business and with whom it entered into professional relationships. The fact that he permitted his company, without objection, to knowingly deal with persons known or reputed to be linked with organized crime, corruption, kickbacks and the like, permits adverse and fatal inferences pertaining to his honesty and integrity to ensue. Here, where the course of conduct reveals a series of transactions over a course of more than a decade, such inferences are unavoidable. Moreover, the sources of Mr. McElnea's knowledge regarding these unsavory associates are significant. He had been placed on notice by his own outside counsel, Dave Bernstein, by the Securities and Exchange Commission, by numerous newspaper and other media material, by the Nevada Gaming Board and Commission, and by his own shareholders and corporate security officer. These notices from government and the private sector coupled with his willful disregard for this advice indicate a wreckless indifference to the opinion of the public, government, his shareholders and advisors to the detriment of his own character, his company's reputation, the requirements and needs of his stockholders and the regulatory process. The adverse reflection on Mr. McElnea's character is severe and conclusive. Deliberate initiation, cultivation and maintenance of the relationships with Alvin Malnik, Sam Cohen, the Teamster Pension Fund, Allen Dorfman and his insurance agency, in the face of this widespread

official disapproval is evidence of a lack of good character.

As the Chief Operating Officer and Director, and one of the most important if not the most important person in the parent corporation, to maintain these associations with disreputable individuals is an indication of not only past behavior but an important predictor of future conduct. I find that his conduct is such that I have grave reservations that cannot be overcome about his willingness and ability to operate within the strict regulatory guidelines of the State of New Jersey.

For all the foregoing reasons, William H. McElnea, Jr., is not qualified.

Martin B. Danziger, Vice-Chairman

Dated: NOVEMBER 13, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3916-80
CCC DOCKET NO. 80-10

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	
v.	:	INTERIM COMMISSION DECISION
BOARDWALK REGENCY CORPORATION, LINCOLN EBERT, MAXWELL GOLDBERG, JESS LENZ, BERNARD RESNICK, RALPH DELLIGATTI, HOWARD BACHARACH, MARK GELLER, AND LARRY BERTSCH,	:	
Respondents.	:	

James L. Cooper, Esq.,and Kenneth D. Wolfe, Esq., appeared for the Respondents.

Robert J. Melillo, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

I. BACKGROUND

This matter is before the Commission pursuant to N.J.A.C. 1:1-9.7 for the purpose of the Commission's review of the substantive Order of the Honorable Howard Kestin, Chief Administrative Law Judge, issued on August 8, 1980, dismissing the major part of the Division of Gaming Enforcement's Complaint in the above matter.

The contested case in this matter was initiated before the Commission by the filing of the Division's original Complaint against Boardwalk Regency Corporation [hereinafter: BRC] and several individuals associated with BRC pursuant to N.J.S.A. 5:12-108.

In that Complaint, the Division alleged in pertinent part that on numerous occasions between June 26, 1979 and August 27, 1979, BRC, through the individual Respondents and others, cashed the personal checks of patrons for gaming purposes, in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.24. The Division subsequently filed an Amendment to its Complaint on June 3, 1979.

On or about June 12, 1980, all of the Respondents, with the exception of Mark Geller, filed an Answer to the Amended Complaint. On or about June 17, 1980, Respondent Geller filed his Answer to said Amended Complaint.

A Prehearing Conference was held in this matter on July 7, 1980 before Judge Kestin, and a Prehearing Order was issued on July 18, 1980. However, on or about July 23, 1980, Respondents filed an Amended Answer to the Amended Complaint, adding several affirmative defenses not previously stated.

On the same date, and in concert with the newly stated affirmative defenses, Respondents filed a motion with Judge

Kestin, requesting permission to file the Amended Answer and also requesting, among other relief, dismissal of that portion of the Complaint addressing events which occurred before August 23, 1979. Thereafter, the Division filed a responding brief and the Respondents later filed a reply thereto. On July 31, 1980, oral arguments were presented before Judge Kestin, at the conclusion of which he announced orally his determination to grant the motion to dismiss as to that portion of the Complaint relating to events occurring on or before August 22, 1979.

Judge Kestin thereafter issued a written Order, dated August 8, 1980, embodying his oral determination, as well as a memorandum explaining the basis of his Order. By letter dated August 12, 1980, the Commission staff advised Judge Kestin in accordance with N.J.A.C. 1:1-9.7(a) that the Commission would review his Order. On the same date, by separate letter to the parties, the Commission staff acknowledged receipt of the Division's Motion to review and vacate the Order, and set a schedule for further briefing. These briefs properly address only that portion of Judge Kestin's Order of August 8, 1980 dismissing a portion of the Complaint, which is the only part of that Order before the Commission at this time.

For the reasons which follow, the Commission resolves that the part of Judge Kestin's Order dismissing a portion of the Complaint be reversed and that this matter thereafter be caused to proceed to a hearing upon the merits of the entire Complaint.

II. DISCUSSION

The basis for Respondents' Motion resulting in the dismissal under review here was a typographical error in paragraph (e) of N.J.A.C. 19:45-1.24 which, if read in isolation, appears to authorize the outright cashing of patrons' personal checks for gaming purposes. This is the very activity which the Complaint alleged to be violative of the Casino Control Act and pertinent regulations. The Respondents' argument was twofold. While continuing to deny that they had ever cashed checks for gaming purposes as alleged, Respondents in part demurred to these allegations. That is, they argued that even if the allegations were true, the cashing of checks for gaming purposes was authorized and permissible under paragraph (e) of N.J.A.C. 19:45-1.24. The second component of Respondents' argument was that even assuming the seeming authorization of such cashing by paragraph (e) to have been the result of an error, it would violate principles of due process to prosecute Respondents therefore since the error deprived them of notice of what activities were prohibited.

In his memorandum in support of his Order, Judge Kestin espoused the view that the error in N.J.A.C. 19:45-1.24(e) was not an obvious typographical error, that the paragraph appeared to be quite clear in spite of the error, and that the paragraph thus served to create a rule inconsistent with

N.J.S.A. 5:12-101(a) with regard to the exchange of patrons' personal checks. Thus, he concluded, the error in the paragraph created a confused situation under which it would be fundamentally unfair for the State to proceed against Respondents with regard to activities governed by N.J.A.C. 19:45-1.24(e).

At all times, pertinent to this decision, N.J.A.C. 19:45-1.24(e) provided as follows:

> (e). For checks exchanged at the cashiers' cage, the following procedures and requirements shall be observed:
>
> 1. Such checks shall:
>
> i. Be immediately exchanged for currency and coin in an amount, equal to the amount for which the check is drawn if such check is exchanged for the purpose of gaming; or
>
> ii. Be immediately exchanged for a Check Credit(s) in an amount equal to the amount for which the check is drawn if such check is exchanged for the purpose of gaming; and
>
> iii. Have recorded thereon by the accepting cage cashier the serial number of the Check Credit(s) exchanged for such check.
> (Emphasis added)

The typographical error in the above paragraph is the inadvertent omission of the prefix "non" from the word "gaming" in subparagraph (i) thereof. Thus, read literally, subparagraphs (i) and (ii) appear to permit both the cashing of checks, i.e., their exchange for "currency and coin" for gaming purposes (subparagraph (i)) as well as the exchange of such checks for

"check credits", again for purposes of gaming (subparagraph (ii).) This typographical error was contained in the draft of N.J.A.C. 19:45-1.24 submitted by the Commission to the then existing Division of Administrative Procedure, the duties of which have now been transferred to the Office of Administrative Law by N.J.S.A. 52:14F-2, together with a Certificate of Filing and Adoption with regard thereto dated July 24, 1978.* The error was corrected in the course of a substantial revision of the Commission regulations relating to internal accounting controls filed with the Office of Administrative Law together with a Certificate of Filing and Adoption dated August 22, 1979. This revision and correction became effective upon filing pursuant to N.J.S.A. 52:14B-5(b).**

While the typographical error described above obviously altered the literal import of N.J.A.C. 19:45-1.24(e), it is the view of the Commission that this error nevertheless provides no basis for dismissal of any portion of the Complaint on the grounds of principles of due process or otherwise.

---

* In that draft, the pertinent regulation was numbered N.J.A.C. 19:45-23. The Office of Administrative Law assigned the number 19:45-1.24 to the codified version.

** The New Jersey Administrative Code was supplemented to reflect the correction on January 17, 1980.

First, it is the opinion of the Commission that the typographical error did not serve to place upon licensees the burden of choosing from among inconsistent legal standards. On the contrary, we believe that a reading of the entire regulatory scheme in this area renders it obvious that there exists a prohibition against the cashing of checks for gaming purposes and that, prior to August 22, 1979, N.J.A.C. 19:45-1.24(e)(1)(i) contained a typographical error. In other words, a reading of all of the regulations and statutes in this area in light of traditional principles of statutory construction gives adequate notice of the behavior which is prohibited.

In this regard, several portions of N.J.A.C. 19:45-1.24, including the erroneous paragraph (e), are instructive.

Those portions, by way of example, are codified as follows:

19:45-1.24 Procedure for exchange of checks submitted by gaming patrons

(a) Except as otherwise provided in this section, no casino licensee or any person licensed under the Casino Control Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Casino Control Act, shall:

1. Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which presents value to enable any person to take part in gaming activity as a player; or

. . . .

(b) No casino licensee or any person licensed under the Casino Control Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Casino Control Act, may accept a check, other than a recognized traveler's check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of sections 25 through 28 of this subchapter concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. For purposes of this regulation, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the person verbally acknowledges to the cage cashier that the cash will not be used for gaming purposes.

. . . .

> (e) For checks exchanged at the cashiers' cage, the following procedures and requirements shall be observed:
>
> 1. Such check shall:
>
> i. Be immediately exchanged for currency and coin in an amount equal to the amount for which the check is drawn if such check is exchanged for the purpose of gaming; or
>
> ii. Be immediately exchanged for a Check Credit(s) in an amount equal to the amount for which the check is drawn if such check is exchanged for the purpose of gaming; and
>
> iii. Have recorded thereon by the accepting cage cashier the serial number of the Check Credit(s) exchanged for such check.
>
> . . . .
>
> (h) Check Credits shall be serially pre-numbered forms and shall include a twenty-four hour or less expiration notice imprinted thereon; each series of Check Credits shall be used in sequential order, and the series numbers of all Check Credits received by a casino shall be accounted for by employees with no incompatible functions. All original and duplicate void Check Credits shall be marked "VOID" and shall require the signature of the preparer.
>
> . . . .
>
> (v) Under no circumstances shall any patron receive gaming chips or plaques in exchange for a check prior to receipt and presentation of a Check Credit.

In the view of the Commission, the erroneous version of N.J.A.C. 19:45-1.24(e), when read together with those other paragraphs of the regulation quoted above, rather than in isolation, cannot reasonably be read to authorize the simple "cashing" of checks for gaming purposes.

It is, of course, settled that administrative regulations are subject to the same canons of construction as are statutes. Essex County Welfare Board v. Klein, 149 N.J.Super. 241 (App. Div. 1977). The goal of the process of construction is to determine the intent of the legislative body. State v. Provenzano, 34 N.J. 318, 322 (1961). But the legislative intent is not contained in the mere words of a statute or regulation. It is the fundamental purpose and internal sense of the regulatory scheme which controls the particular literal terms. State v. Carter, 64 N.J. 382, 390-91 (1974). The Supreme Court in State v. Brown, 22 N.J. 405 (1956), stated:

> The sense of a law is to be gathered from its object and the nature of the subject matter, the contextual setting, and the statutes in pari materia. Hackensack Water Co. v. Ruta, 3 N.J. 139 (1949). A statute is to be construed as a whole with reference to the system of which it is a part. Maritime Petroleum Corporation v. City of Jersey City, 1 N.J. 287 (1949). And statutes upon cognate subjects may be considered in arriving at the legislative intention, though not strictly in pari materia. This principle is essential to give unity to the laws, and to connect them in a symmetrical system. Modern Industrial Bank v. Taub, 134 N.J.L. 260 (E.& A. 1946). The import of any word or phrase is to be gleaned from the context and statutes in pari materia. Public Service Electric & Gas Co. v. City of Camden, 118 N.J.L. 245 (Sup. Ct. 1937).
> [22 N.J. at 416]

As noted above, and in accordance with the principles of interpretation stated by our Supreme Court in State v. Brown, supra, the "internal sense" of N.J.A.C. 19:45-1.24 read as a whole leaves no room for the view that paragraph (e) thereof authorizes the cashing of checks for gaming purposes.

Instead, a reading of paragraph (e) in context makes it obvious that the intended scheme for the exchange of personal checks for gaming purposes provides only for the exchange of such checks for "Check Credits" which are documents which may thereafter be exchanged for "gaming chips and plaques" and not for coin or currency. Accordingly, there is no genuine contradiction when the entirety of N.J.A.C. 19:45-1.24 is read without isolating out paragraph (e) thereof.

Moreover, a reading of N.J.A.C. 19:45-1.24(e) in the context of the surrounding regulations relating to the exchange, redemption, consolidation, deposit and collection of patron checks reveals similar results. A conspicuous example is N.J.A.C. 19:45-1.26(d) which provides as follows:

> 19:45-1.26 Procedure for recording checks exchanged, redeemed, or consolidated.
>
> . . . .
>
> (d) A credit file for each patron shall be prepared manually or by computer, prior to acceptance of a check from a patron by cage cashiers, and such file shall include, at a minimum, the following:
>
> 1. The name of the patron accompanied by the initials of the cage cashier indicating examination of identification credentials;
>
> 2. The address of the patron;
>
> 3. The name of the patron's bank;
>
> 4. The number of the patron's bank account;
>
> 5. Credit references accompanied by the initials of the cage cashier indicating verification with either a recognized credit bureau, the patron's bank or another legal casino.

6. The patron's signature.

7. The credit limit, and any changes thereto, approved in writing by the casino manager, assistant casino manager, or shift manager;

8. The patron credit rating based on a continuing evaluation of his amount and frequency of play subsequent to the patrons initial receipt of credit.

9. The date and amount of each check initially accepted from the patron;

10. The date and amount of each consolidation check accepted from the patron;

11. The date and amount of each redemption transaction;

12. The date and amount of each check deposited; and

13. The details relating to returned checks.

. . . .

Clearly then, checks may not be accepted from patrons for any sort of exchange at all, cash or otherwise, without the establishment of a credit account and file with regard to that patron. In this light, N.J.A.C. 19:45-1.24(e)(1)(i), even with its error, cannot be reasonably read to authorize the outright cashing of checks for gaming patrons on a first time basis.

Furthermore, when this regulation is read together with N.J.S.A. 5:12-101, the statute governing this area, the conclusion we draw is even further buttressed. Section 101 of the Act provides, in pertinent part:

5:12-101. Credit

a. Except as otherwise provided in this section, no casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall:

> (1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or
>
> (2) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in gaming activity without maintaining a written record thereof in accordance with the rules of the Commission.
>
> b. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, may accept a check, other than a recognized traveler's check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless:
>
> (1) The check is made payable to the casino licensee;
>
> (2) The check is dated, but not post-dated;
>
> (3) The check is presented to the cashier or his representative and is exchanged only for a credit slip or slips which total an amount equal to the amount for which the check is drawn, which slip or slips may be presented for chips at a gaming table; and
>
> (4) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents.
>
> . . . .

Paragraph (a)(1) of section 101 above states the general prohibition against the outright cashing of checks for gaming purposes which is restated in paragraphs (a) and (b) of N.J.A.C. 19:45-1.24. Similarly, paragraph (b) of section 101 restates the general prohibition, but goes on to state the conditions

under which checks may be "exchanged" for gaming purposes. These conditions are cumulative. Each must be satisfied for the transaction to be lawful. Section 101(b)(3) clearly requires that only a "credit slip or slips" may be given in exchange for a check when gaming is the purpose of the transaction. These "credit slips" are the "check credits" referred to throughout N.J.A.C. 19:45-1.24, and in particular in paragraphs (e)(1)(ii),(h) and (v) thereof . Thus, the statutory command is clear. The outright cashing of checks for gaming purposes is strictly prohibited. The Commission lacks the power to regulate inconsistently with section 101 of the Act, even if N.J.A.C. 19:45-1.24 (e)(1)(i) could be read as inconsistent therewith. See New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544,561 (1978); Elizabeth Federal Savings & Loan Ass'n. v. Howell, 24 N.J. 488, 499 (1957); Abelson's, Inc. v. N.J. State Bd. of Optometrists, 5 N.J. 412, 423-24 (1950).

In light of the foregoing, the "internal sense" of the regulatory scheme relating to credit is clear and controls the meaning of the particular terms thereof. State v. Carter, supra at 390-91. Outright check cashing for patrons for the purpose of gaming is clearly prohibited even considering the typographical error in N.J.A.C. 19:45-1.24(e)(1)(i). Such checks may only be exchanged for "check credits" and ultimately gaming chips or plaques, and then only after a credit account for the patron has been established. This complex scheme

for the regulation of gaming credit, established for the purpose of insuring a controlling audit trail for each transaction ought not be overridden by an isolated typographical error. Cf. State v. Costagliola, 144 N.J. Super. 589 (Cty. Ct. 1976). We hold that the error in N.J.A.C. 19:45-1.24(e)(1)(i) did not create a standard of conduct inconsistent with N.J.S.A. 5:12-101(a) and (b).

Nor is it unreasonable or unfair to expect a casino applicant and temporary permittee such as Boardwalk Regency Corporation to be familiar enough with the statutory and regulatory scheme relating to internal accounting controls so as to detect minor typographical errors. Such a comprehensive understanding is veritably mandated by statute through the device of a written submission describing casino internal accounting and administrative controls which must be approved by the Commission prior to the commencement of gaming operations. N.J.S.A. 5:12-99 provides, in pertinent part:

> 5:12-99. Internal Controls
>
> a. Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in previously submitted control plans are to become effective, unless otherwise

> directed by the commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:
>
> . . . .
>
> (13) Procedures for the cashing and recordation of checks exchanged by casino patrons:
>
> . . . .
>
> b. The commission shall review each submission required by subsection a. hereof, and shall determine whether it conforms to the requirements of this act and to the regulations promulgated thereunder and whether the system submitted provides adequate and effective controls for the operations of the particular casino submitting it. If the commission finds any insufficiencies, it shall specify same in writing to the casino licensee, who shall make appropriate alterations. When the commission determines a submission to be adequate in all respects, it shall notify the casino licensee of same. No casino licensee shall commence gaming operations, or alter in fact its internal controls, unless and until such system of controls is approved by the commission.

Similarly, N.J.A.C. 19:45-1.3 repeats the foregoing statutory commands, and further, requires the corporate licensee or applicant to engage an independent certified public accountant to review its "Section 99 submission" and submit therewith a statement such that the system described conforms to the Act and regulations and specifying the areas in which it does not. In light of these requirements, it can hardly be termed "unfair" to require a corporate applicant such as Boardwalk Regency Corporation to be familiar with the actual import of the Commission's regulatory scheme. Boardwalk Regency Corporation is assuredly not to be treated, in terms of its knowledge of

the law, as if it were an ordinary layman. And even the ordinary layman in New Jersey is conclusivly presumed to know the law. Widmer v. Mahwah Tp., 151 N.J.Super. 79, 83 (App. Div. 1977).

The foregoing discussion of the "Section 99 submission" leads us to the facts of this case as exposed in the pleadings before the Commission. The Amended Complaint alleges that the employees of Respondent who performed the proscribed check cashing did so at the hotel front desk. Respondents apparently do not dispute the location at which the transactions occurred, but nonetheless assert that the error in N.J.A.C. 19:45-1.24(e)(1) (i) shields them from liability. The introductory language of this section begins: "For checks exchanged at the cashier's cage". All cashier cages are within the physical perimeter of the casino itself. They are entirely separate and could not be confused with the hotel front desk. Therefore, even if the clear prohibition against check cashing is ignored, it cannot possibly be thought that the error in the regulation permits check cashing for gaming purposes at the hotel desk. At that location, the general statutory prohibition of section 101 (a) against check cashing for gaming purposes is alone applicable and the permissive conditions of section 101 (b) are simply not implicated. All regulations relating to the exchange of checks are designed as part of a comprehensive scheme to govern gaming transactions in the casino and are specifically directed thereto. Under any reading of the regulatory scheme, typographical errors or not, the

cashing of checks for the purpose of gaming at the hotel front desk is strictly prohibited and a blatant evasion of this scheme.

Furthermore, the Respondents nowhere allege that they were actually misled by the typographical error in N.J.A.C.19:45-1.24 (e)(1)(i). Indeed they could not do so in light of the actual "Section 99 submission" of BRC which was in effect at the time during which the events addressed in the Complaint are alleged to have occurred. The pertinent portion of BRC's "Section 99 submission" describing its system for the exchange of patron checks is dated May 24, 1979 and refers to N.J.A.C. 19:45-23, which is numbered according to the Commission's in-house numbering system at the time, and became N.J.A.C. 19:45-1.24 when codified. This portion of the submission indicates no misunderstanding of the pertinent regulation and incorporates the prohibition against the cashing of checks for gaming purposes as follows:

> The Company does not cash any check, make any loan or otherwise provide or allow to any patron any credit or advance of anything of value to enable any patron to take part in gaming activities as a player other than through the issuance of a Counter Check issued only at a gaming table.
>
> Personal checks for which the cash or cash equivalents are intended for gaming will not be accepted at either the cashiers' cage or at any gaming table. Personal checks will be accepted at the cashiers' cage only if the patron presenting the check indicates verbally that the cash will not be used for gaming purposes or if the personal check is for redemption or consolidation of Counter Checks...
>
> . . . .

The first paragraph quoted above clearly indicates that personal checks will not be exchanged for the purpose of gaming at all at any location. Only counter checks will be used, and then at gaming tables. The second paragraph further indicates that personal checks will only be accepted at the cage where the patron indicates that the exchange is not for gaming or where the check is presented for redemption or consolidation. See, N.J.A.C. 19:45-1.25 and 1.26. Thus, it is undeniable that BRC had actual notice of the true import of the regulatory scheme in this regard, notwithstanding the typographical error in the pre-August 1979 version of N.J.A.C. 19:45-1.24(e)(1)(i).

Due process, of course, requires that a statute give a person of ordinary intelligence fair notice of what conduct is forbidden. United States v. Harris, 347 U.S. 612 (1954). In other words, the provision must be sufficiently explicit to inform those who are subject to the proscription what conduct on their part will render them liable to its penalties. Connally v. General Construction Company, 269 U.S. 385 (1926). As we have demonstrated above, a reading of the statutory and regulatory scheme as a whole relating to the exchange of patron checks certainly gives fair notice that the outright cashing of patron checks for gaming purposes is prohibited. And even were this not the case, there is no doubt that BRC had actual notice of this prohibition.

For this latter reason, it is the opinion of the Commission that BRC lacks standing to raise the notice issue with regard to the typographical error in N.J.A.C. 19:45-1.24(e)(1)(i). In addition, for all of the reasons set forth above, there is no unfairness whatsoever in permitting litigation of the entire Amended Complaint herein. Accordingly, the Administrative Law Judge's Order is reversed and this matter remanded to the Office of Administrative Law for a hearing on the entire Amended Complaint.

MARTIN B. DANZIGER,
ACTING CHAIRMAN

DON M. THOMAS,
COMMISSIONER

CARL ZEITZ,
COMMISSIONER

MADELINE H. MCWHINNEY,
COMMISSIONER

DATED: July 9, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5729-79
CCC DOCKET NO. 79-EA-176

IN THE MATTER OF THE APPLICATION	:	
OF GERALD O. BROWN FOR LICENSURE	:	FINAL ORDER
AS A CASINO EMPLOYEE (DEALER)	:	

A hearing having been conducted on March 21, 1980 and concluded on March 28, 1980 in the above-captioned matter before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed thereto by either the Applicant or the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of September 4, 1980 to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 23rd day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted in its entirety by the Commission; and

IT IS FURTHER ORDERED that the application of Gerald O. Brown for licensure as a casino employee (dealer) be and hereby is denied for the reasons stated in the Initial Decision:

specifically, the Applicant's failure to disclose his arrest record (N.J.S.A. 5:12-86(b)), the finding that the Applicant's conviction for obstructing and retarding the passage of mail in violation of 18 U.S.C. 1701 is an offense that would render his licensure inimical to the policies of the Act and casino operations (N.J.S.A. 5:12-86(c)(4)), and his failure to clearly and convincingly establish his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2), 90(b), which Initial Decision is incorporated herein by reference and made a part hereof.

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

NEW JERSEY CASINO CONTROL COMMISSI

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 23, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:
THE APPLICATION OF
GERALD O. BROWN
FOR LICENSURE AS A CASINO
EMPLOYEE (DEALER)

INITIAL DECISION

OAL DKT. NO. CCC 5729-79
Agency Dkt. No. 79-EA-176

APPEARANCES:

Jack E. Granzow, Esq. and
Leonard E. Newman, Esq., pro haec vice
American Civil Liberties Union
for the Applicant, Gerald O. Brown

John J. Degnan, Attorney General of New Jersey
By: Patricia J. Arons, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Gerald O. Brown to the Casino Control Commission for licensure to work in a casino as a dealer. His application, including Personal History Disclosure Form No. 2, was filed with the Commission on May 24, 1979. Applicant was advised by letter from the Casino Control Commission, dated November 19, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated October 26, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 February 14, 1980, and the hearing was held on March 21 and 28, 1980, in Atlantic City, New Jersey. The final post-hearing brief of the parties was received on May 14, 1980, which is deemed to be the concluding date of the hearing.

New Jersey Is An Equal Opportunity Employer

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

(1) Whether Applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

(2) Whether the Applicant, with specific reference to questions number 29, 46 and 49 of his Personal History Disclosure Form, concerning respectively his military disciplinary history, his arrest and conviction record and his possible use or possession of marijuana, has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of N.J.S.A. 5:12-86b.

(3) Whether Applicant, with specific reference to his conviction upon a plea of guilty to 18 U.S.C. 1701, has been convicted of or has committed an offense which is an enumerated statutory disqualifier within the meaning of section 86c of the Casino Control Act, or which would indicate under section 86c that licensure of the Applicant 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 this State, within the meaning of N.J.S.A. 5:12-86g.

N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any Applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying information which is false or misleading as to a material fact pertaining to the qualification criteria. The possibility of disqualification from licensure pursuant to section 86b of the Act arises from Applicant's arrest on July 8, 1968 for rape, and on November 17, 1973 for possession of marijuana. These charges were "no billed" and dismissed, respectively. Applicant admitted his omission of any mention of these arrests in his answer to question number 46 of his Personal History Disclosure Form, which requires complete disclosure of an Applicant's criminal and disorderly persons arrest and conviction record. The Applicant explained that his omission was due to having rushed through the preparation of the disclosure form, and having misunderstood what information was required by question number 46, thinking that the question just referred to convictions. However, Applicant testified on cross examination that he was told he did not have an arrest record at the time he was hired as a postal employee, and that therefore he did not think it necessary to put down his arrests on the Personal History Disclosure Form. Applicant's testimony on cross examination reveals that thoughtful consideration was given to the Applicant's decision that it was not

necessary to list his arrests, and contradicts his testimony on direct examination that his failures to disclose resulted from having rushed through the disclosure form.

The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b also arises from the Applicant's responses to questions number 29 and number 49, which require respectively disclosure of an Applicant's military disciplinary history and disclosure of an Applicant's use, distribution or possession of marijuana or other substances listed in Schedule I through V of N.J.S.A. 24:21-20. Both in his answer to question number 29 and in his testimony during the hearing, Applicant denied that he had been the subject of an Article 15 disciplinary action during his military service. However, both the Applicant's wife, Maria Brown, and Detective Richard Rementer of the Division of Gaming Enforcement testified that the Applicant had told Detective Rementer that he had received an Article 15 as a result of being absent without leave. In his answer to question number 49, the Applicant did not reveal that he had ever used marijuana, but during his testimony, he stated that he had tried marijuana while in the service, but that he had not been a user then nor since. However, it was Detective Rementer's testimony that the Applicant had advised the Detective that he had not used marijuana since his arrest in 1973.

Detective Rementer also testified at the hearing concerning the Applicant's aforementioned failure to disclose his entire arrest and conviction record. According to the Detective, he read question number 46 to the Applicant during the course of a phone interview, and after stating that he understood the question, the Applicant acknowledged that he had been arrested for a postal violation in 1975. Information concerning this arrest was erroneously disclosed by the Applicant in response to question number 47. After offering an explanation of his arrest and subsequent plea of guilty, the Applicant did not volunteer the existence of his undisclosed arrests. Detective Rementer testified that he then asked the Applicant if he had ever been arrested any other time and the Applicant twice responded that he had not. It was the Detective's testimony that the Applicant did not acknowledge his 1968 and 1973 arrests until confronted with their existence by the Detective. Detective Rementer's testimony was straightforward and sincere, and entirely worthy of credit.

Applicant disclosed on his Personal History Disclosure Form his 1975 conviction upon a plea of guilty of the offense of obstructing and retarding the passage of mail in violation of Title 18 U.S.C., section 1701, for which he was given a six month suspended sentence and placed on probation for a period of one year. The offense for which the Applicant had been arrested was knowingly and willfully, being a Postal Service employee, embezzling a piece of jewelry which was contained in a package and which came into the Applicant's possession intended to be conveyed by mail, in violation of Title 18 U.S.C., section 1709. A conviction for this offense could have

resulted in a fine of not more than $2,000.00 or imprisonment not more than 5 years, or both. The testimony adduced at the hearing established without material dispute that the Applicant had been employed at the time of his arrest by the United States Postal Service as a Mail Handler, and that the Applicant had opened a package in the mail and removed a piece of jewelry which appeared to be a diamond brooch, with the intention of keeping the jewelry for himself. Subsequently, it was determined that the brooch was actually costume jewelry of unspecified value.

Pursuant to section 86c(4) of the Casino Control Act, the Commission shall deny a Casino License to any Applicant who is disqualified from licensure on the basis of a conviction for any offense which indicates that licensure of the Applicant would be inimical to the policy of the Act and to casino operations. Pursuant to section 86g of the Act, licensure shall be denied on the basis of the commission by the Applicant of any Act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. The undisputed conduct of the Applicant established his commission of the offense of embezzlement of mail by a postal employee, in violation of Title 18 U.S.C. 1709. The offense committed by the Applicant, albeit not prosecuted, demonstrates a serious breach of duty by the Applicant contrasting sharply with the honesty and integrity which must be required of a casino employee. Licensure of the Applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Licensure would therefore be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c of the Act.

Pursuant to section 90h of the Act, Applicant shall not be denied a casino employee license on the basis of his commission of a disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation. Although section 90h lists 8 factors to be considered in determining whether the Applicant has affirmatively demonstrated his rehabilitation, the analysis in the instant matter need proceed no further than the Applicant's recent failure to disclose in his Personal History Disclosure Form facts material to his qualification criteria. The Applicant's denial of his undisclosed arrest record until persistenly confronted with the information by the Division's Detective evidences an intentional, disqualifying failure to disclose material facts which demonstrates a lack of rehabilitation. Consequently, the Applicant cannot overcome his commission of a disqualifying offense under section 86c(4) and 86g of the Act.

Having reviewed the testimony and other evidence offered in this matter (see Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

(1) Applicant has applied for a license to permit him to work in a casino as a dealer.

(2) Applicant possesses the requisite experience for licensure pursuant to section 90b of the Act.

(3) Applicant failed to disclose on his Personal History Disclosure Form any information concerning his 1968 arrest for rape, which charge was "no billed" by the Grand Jury.

(4) Applicant failed to disclose on his Personal History Disclosure Form any information concerning his 1973 arrest for possession of marijuana, which charge was dismissed.

(5) The arrest information which Applicant failed to disclose on his Personal History Disclosure Form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

(6) Applicant's failure to disclose any information concerning the aforementioned 1968 and 1973 arrests was intentional, rather than inadvertent.

(7) On May 1, 1975, while a mail handler in the Atlantic City Post Office, Applicant removed the jewelry contents of a parcel of mail and placed the jewelry in his pocket with the intention of keeping it.

(8) The aforementioned acts committed by the Applicant on May 1, 1975, constitute the offense of embezzlement of mail by a Postal Service employee, and indicate that licensure of Applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Licensure of the Applicant would therefore be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of the disqualification criteria of N.J.S.A. 5:12-86c.

(9) Applicant has failed to overcome his disqualification from licensure pursuant to section 86c(4) of the Act by failing to demonstrate his rehabilitation pursuant to section 90h of the Act by clear and convincing evidence.

(10) Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

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

"An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided."

Pursuant to the express public policy of the Casino Control Act and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has failed to demonstrate by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino employee license due to his commission of an offense which indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4). I FURTHER CONCLUDE that Applicant is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A 5:12-86a. It is therefore, ORDERED that the application of Gerald O. Brown 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 agency decision in this matter. However, if the Casino Control Commission does no so act in forth-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 27, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

June 30, 1980
DATE

Receipt Acknowledged:
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

esk

INVENTORY OF EXHIBITS

For the Applicant:

P-1 Personal History Disclosure Form of Gerald O. Brown

P-2 United States District Court Judgment

For the Division of Gaming Enforcement:

R-1 Investigator's Memo dated May 5, 1979

R-2 Investigator's Interview Report dated May 6, 1979

R-3 FBI Criminal History Sheet

R-4 Military Record

R-5 Rape Disposition

R-6 Postal Service Employment Record

R-7 May 1975 Complaint and Judgment

IN THE MATTER OF

JOSEPH J. CARLACCI

ORDER OF DISMISSAL

OAL Docket No. ccc 3600-79

Agency Docket No. 79-EA-88

The Initial Decision attached hereto became the Final Decision in this matter on December 8, 1980, by operation of law. N.J.S.A. 52:14B-10(c).

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:	:	INITIAL DECISION
	:	
Joseph J. Carlacci	:	ORDER OF DISMISSAL
3817 Ventnor Avenue	:	
Atlantic City, New Jersey	:	OAL DKT. NO. CCC 3600-79
	:	AGENCY DKT. NO. 79-EA-88
	:	

APPEARANCES:

Daniel G. Targan, Esq., attorney for the applicant, Joseph J. Carlacci

John J. Degnan, Attorney General of the State of New Jersey by Joseph A. Mussomeli, Deputy Attorney General for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

The applicant requested a hearing concerning his application for licensure as a casino employee (assistant pit boss).

After notice to all parties, a prehearing conference was held on Friday, October 12, 1979, at which time the issues at the hearing were identified.

The matter was set down for a hearing on Monday, January 21, 1980 at the Northfield Municipal Court, Northfield, New Jersey. Prior to that hearing a settlement conference was held by the parties and an agreement was reached.

The terms of that settlement are set forth in the record. Having reviewed the entire record, and for good cause shown it is found that:

New Jersey Is An Equal Opportunity Employer

1. The terms of the settlement were incorporated into a Stipulation of Settlement Order and Order of Dismissal which is attached to this initial decision and is incorporated herein as if set forth at length.

2. The parties of this action have agreed to the Consent Order in the form and substance as evidenced by their having signed said Order.

3. The settlement as reflected by the Consent Order is a fair one and fully disposes of all issues and controversy.

THEREFORE, IT IS ORDERED, that the parties comply with the terms of the settlement as set forth in the attached Consent Order and it is FURTHER ORDERED that the proceedings in this matter be and are hereby dismissed with prejudice.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lordi, who, by law, is empowered to make a final decision in this matter. However, if the Chairperson of 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 with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

June 19, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

June 24, 1980
DATE

J P L
AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

jrp

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

By: Joseph A. Mussomeli
Deputy Attorney General
(609) 292-9204

In the matter of the Application of Joseph J. Carlacci for Licensure as a Casino Key Employee JOSEPH J. CARLACCI, Petitioner vs. STATE OF NEW JERSEY, Respondent.	STATE OF NEW JERSEY CASINO CONTROL COMMISSION DOCKET NO. STIPULATION OF SETTLEMENT ORDER

This matter having been opened to the Commission, acting by and through the Office of Administrative Law, the Honorable R. Jackson Dwyer presiding, by John J. Degnan, Attorney General of New Jersey and attorney for Respondent, Joseph A. Mussomeli, Deputy Attorney General, appearing, in the presence of Donald G. Targan, Esquire, Attorney for

Petitioner, and both counsel having consented to the entry of this Stipulation of Settlement Order, the Honorable R. Jackson Dwyer being otherwise duly advised in the premises and for good cause shown, it is, therefore,

STIPULATED AND ORDERED on this day of , 1980 as follows:

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

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

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

4. Immediately thereafter, Julian requested orally that Petitioner produce for Julian's inspection his casino employee license, whereupon Petitioner, having heard and understood this request, failed and refused to produce the said license in a timely manner.

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

6. Subsequent to the arrival at blackjack table number five of another Commission inspector and a New Jersey State Police detective, Petitioner threw said license upon the table and exclaimed, "Here is the ... license," or words to that effect. Petitioner also ultimately complied with Inspector Julian's original request to allow inspection of the gaming cards.

7. On May 5, 1979 Petitioner entered the Dealer's Lounge, adjacent to the casino floor, where several dealers were standing in line awaiting their paychecks. Petitioner walked to the front of the line and demanded that he, as a pit boss, be given priority treatment.

8. A roulette dealer, Rick Smith, attempted to intervene on behalf of the payroll clerk, Mary Menequale.

Petitioner began to holler at Mr. Smith and a physical altercation ensued, resulting in Mr. Smith's striking of Petitioner.

9. Petitioner admits that his behavior was improper in both instances and gives assurances that similar incidents will not occur in the future.

10. The parties have amicably disposed of all issues and agree that an Order is to be entered pursuant to the provisions of the Stipulation of Settlement provided herein.

11. The parties agree, in consideration of the Stipulation of Settlement, that action on the casino key employee license application of Joseph J. Carlacci shall be delayed for eight months from agreement to this Stipulation of Settlement on January 20, 1980. During this eight month period, Mr. Carlacci will refrain from serving in any position for which he is not licensed.

12. The parties further agree that should Joseph A. Carlacci demonstrate to the reasonable satisfaction of the Division of Gaming that he has not during this eight month period been involved in any further incidents of wrongdoing, and should Mr. Carlacci qualify for casino key

employee licensure in all other respects, the Division will interpose no objection to his licensure as a casino key employee and will recommend to the Commission that he be licensed accordingly.

R. Jackson Dwyer
Administrative Law Judge

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

Donald G. Targan, P.A.
Attorney for Defendant

By: _____
Donald G. Targan

Dated: Atlantic City, New Jersey 1980

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

By: _____
Joseph A. Mussomeli
Deputy Attorney General

Dated: Trenton, New Jersey 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-2

IN THE MATTER OF THE APPLICATION :
OF DEBORAH L. COHN FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted in the above-captioned matter before the Honorable Eugene D. Ginley, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, the brief filed by the Division of Gaming Enforcement in opposition to admission of any evidence regarding Polygraphic Examinations, and the exceptions and objections filed on behalf of the Division of Gaming Enforcement and the Applicant, and the Commission having resolved at its public meeting of July 24, 1980 to adopt the Initial Decision and to grant the application for licensure;

It is on this 1st day of Aug. 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is adopted by the Commission, except that portion of the decision which expresses reliance upon certain polygraph evidence admitted at the hearings; and

IT IS FURTHER ORDERED that the application of Deborah L. Cohn licensure as a casino employee (dealer) be and is hereby granted for the reasons stated in the Initial Decision except as herein modified.

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: August 1, 1980

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF THE APPLICATION OF DEBORAH C. COHN FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)	)))	INITIAL DECISION OAL DKT NO. CCC 37-79

Donald G. Targan, Esq., Atlantic City, New Jersey
for petitioner

Frederic E. Gushin, Esq., Deputy Attorney General,
for the Division of Gaming Enforcement, Department
of Law and Public Safety

Denise Cobham, Esq. and Walter Koprowski, Esq.
for the Casino Control Commission

BEFORE THE HONORABLE **EUGENE D. GINLEY**, A.L.J.:

The petitioner, Ms. Deborah L. Cohn, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a dealer. The petitioner received a letter dated January 5, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, dated December 18, 1978, the "Commission intends to deny your application for licensure as a casino employee (dealer)". Based upon that letter, the petitioner exercised her right to request a hearing on her application.

The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Public hearings were held in the Atlantic City area on June 27th, August 16th and 17th, September 25th and 26th, 1979. The record was closed upon receipt of petitioner's proposed findings of fact and conclusions of law received on February 21, 1980.

New Jersey Is An Equal Opportunity Employer

The standards to be employed by the Commission in the licensing of applicants are set forth in the "Casino Control Act", N.J.S.A. 5:12-1 et seq. Specifically, the Division of Gaming Enforcement (Division) objects to petitioner's licensure for the reasons as set forth in its letter of December 18, 1978:

> "The Division of Gaming Enforcement objects to Ms. Cohn's licensure because of lack of personal integrity. The applicant is currently employed as a bartender and waitress in the disco lounge at Resorts International Hotel. From August 29, 1978 until October 12, 1978, applicant, along with two other lounge employees, was suspended from work. Applicant was accused by Resorts of not properly and/or fully ringing up bar sales; working out of cash register with the drawer being kept open; and, activities relating to bar receipts being improperly placed into the tip box instead of the cash register...
>
> All individuals involved in the above-described incident received a formal reprimand from Resorts and were allowed to return to work in the lounge."

During the summer of 1978, shortly after Resorts had commenced operations, Resort's security subsidiary, Intertel, initiated security checks in the bars throughout the hotel and casino. Intertel contracted with the Albert R. Black Detective Agency for that agency to make undercover surveillance checks of the procedures being utilized in the various bars. From July 30, 1978 through August 28, 1978, that agency sent operatives into the AC Disco on six different occasions. The AC Disco is the hotel bar in which petitioner is employed as a barmaid.

Based upon the reports that were filed by the detective agency, a raid by personnel of Resorts and Intertel was made on the disco during the evening of August 29, 1979. This raid occurred at approximately 1:35 a.m. and consisted of sealing of the cash registers and tip box and the taking of statements of several employees, including the petitioner. At the time of the raid, petitioner was on her break and had gone to the ladies room. A female security officer, Ms. Pat Dixon,

approached petitioner and asked her to come and speak with Mr. Paul Mahon of Intertel. Mr. Mahon asked petitioner to come with him and Mr. Fen Richards of Resorts to a room upstairs so that they could talk. She agreed and the three of them went upstairs along with Ms. Dixon. This interview began at 1:45 a.m. and lasted until approximately 3:15 a.m. In a memorandum prepared by Mr. Mahon, (Exhibit DG-6), he states that:

> "Ms. Cohn was visibly shaken up, and during the course of the entire interview, rambled on in a fumbling manner, at times to the point of incoherence."

The interview focused on subjects raised in the reports filed by the Black Detective Agency, viz., the ringing up of checks on the cash register, the depositing of money into the tip box, the leaving open of the cash drawer, balancing of the register, etc. The petitioner was re-interviewed the following day from approximately 4:00 to 5:00 p.m. The same subjects were discussed and a memorandum of this interview was also prepared by Mr. Mahon, (Exhibit DG-7). One of the results of this investigation was that the petitioner was suspended by Resorts for a period of six weeks.

Mr. Albert R. Black testified on behalf of the Division. He explained the terms of his contract with Intertel and how he sent three operatives, under his supervision, into the AC Disco on six nights in the summer of 1978. These three operatives consisted of his son, Richard Black, who is 18 years old, his son's 19 year old friend, and his ex-wife. After each of these visits, the operatives would report to him what they had allegedly seen, and he would prepare a report and forward it to Intertel. Three such reports were introduced into evidence (Exhibits DG-1,2,and 3). On one of the occasions, at which time he was also present, he states that he saw the petitioner acting as a waitress in the disco. The reports filed by Mr. Black referred to various alleged improprieties that were taking place in the disco. These include the placing of money into the tip box instead of the register, not ringing up the proper charges, giving out of free drinks, etc.

Mr. Richard Black, the son of Albert Black, testified that he was one of the three operatives employed in this investigation. He stated that he was

18 years old and had just graduated from high school. His testimony included references to the various improprieties which he had claimed to have witnessed and reported to his father, which eventually went into the reports forwarded to Resorts. He admitted that during these investigations he would sometimes drink three or four drinks even though he often ordered more drinks as part of the investigation. While his testimony refers to the amounts of money rung up on the register by some of the bartenders, he admitted that the normal position of the bartender would place him between the register and the witness. Photographs submitted by the petitioner, especially Exhibits P-5(b) and 5(g), show that observance of the register would be extremely difficult for a patron sitting at the bar due to the location and position of the register which is indented into an alcove in the wall. In fact, the witness stated that the cash drawer would open when a charge was rung up on the register. This is clearly incorrect as indicated by the testimony of all of the other witnesses.

Mr. Paul G. Mahon, an investigative accountant for Intertel, testified for the Division. He explained that on the night of the raid, or "audit", August 27th, 1978, he was forewarned of such by Mr. Richards of Resorts and was asked to participate. He explained that Resorts was concerned about bar sales not being rung up on the register. It was his job to interview the petitioner regarding these concerns. He testified that during the interview the petitioner was surprised and shocked despite the fact that no accusations were made.

Mr. Mahon indicated that petitioner had admitted that not all of the sales had been rung up, but explained that such was necessary in order to expedite bar sales. He also indicated that petitioner did not have an explanation as to how some marked $1.00 bills were in the tip box at the time of the raid. It should be noted that, at the time of the raid, the receipts in the register were only $2.00 different in amount from the sales recorded on the register, which has been admitted by the Division's witnesses as being within the range of reasonable difference. Also, money was often transferred between the tip box and cash register when tips were included on credit sales (charges) and when change was needed in the register.

The petitioner and seven other witnesses testified on her behalf.

Four of these witnesses were character witnesses who all testified favorably as to the petitioner's character and integrity. These witnesses included Mr. Harry Bachen, the manager of Little John's Restaurant where the petitioner had previously been employed; Mr. William Mosca, the principal of the grammar school attended by the petitioner; Mr. John Torcasio, the instructor who taught her Blackjack; and, Ms. Ellen Mauk, a friend and school teacher.

Mr. William Fritzinger testified about the procedures employed in the AC Disco from management's standpoint. This witness was, at the time of his testimony, the manager of the disco and was the assistant manager at the time of the raid. He testified that the petitioner was hired in May, 1978, as a cocktail waitress, but was changed to the position of bartender after the first two days of operation. He added that after those first two days she never again acted as a waitress. He stated that the petitioner was an excellent worker about whom he had no question of her honesty and integrity.

Mr. Fritzinger explained that there were two factors which, when combined, caused problems with the cash accounting in the AC Disco during the summer of 1978. One factor was that the disco was besieged by overwhelming crowds beyond anyone's expectations. The other factor was the utilization by Resorts of a cash register known as an IBM 3600. This register, which was utilized by the bartenders, was part of a computerized system which recorded into the computer a substantial amount of information each time a drink was rung up on it. Unlike the conventional cash register, the cash drawer did not open and close each time a sale was rung up. The problem with the register was that is was cumbersome to operate for the bartenders in that proper procedure required a substantial consumption of time each time a drink was sold. This apparently did not sit well with the crowds of customers demanding drinks. Also, it had a tendency to break down on a frequent basis which resulted in the bartenders having to account for the sales by recording them on a pad of paper located next to the register. It was a combination of these factors which resulted in the problems centering around the use of these registers and may possibly have resulted in the appearance of improprieties as witnessed by the operatives of the detective agency.

Mr. Fritzinger further explained that the busier it got in the disco the more frequent the occurrence of breakdowns in the computerized register. He

explained that eventually the bartenders came up with their own system to cope with the problems which speeded up the operation by instead of ringing up each drink separately, many drinks were rung up a single check. He added that he was aware of this system and permitted its use by the bartenders. Eventually, however, the Accounting Department at Resorts said that such system was not satisfactory, and that its use could not be continued. Apparently, some of the bartenders continued to utilize this system on busy occasions due to their alleged belief that it was the only way to cope with the situation. It should be noted that since this incident, Resorts has replaced the type of register used by the bartenders in the AC Disco.

Mr. Warren Biddle, one of the bartenders who worked with the petitioner, testified on her behalf. He began at the same time as petitioner, in May 1978, and stated that petitioner had worked solely as a bartender after the first two days of her employment. This witness explained the problems that the cash register caused when the disco was crowded, and the methods that the bartenders utilized as a short cut operation. In this regard, he added that after they were instructed not to continue utilizing the short cut method, he and the other bartenders followed the new policy except on some of the most crowded nights. Also, he added that neither he nor the petitioner were engaging in any dishonest acts when bartending at the AC Disco.

Petitioner testified that she was hired by Resorts in May 1978 to act as a cocktail waitress in the AC Disco. After two days, she was transferred to the position of bartender which was the only position she acted in during the periods of time in question. Petitioner insists now that she is innocent of any wrongdoing and testified that she insisted on her innocence during the interviews conducted after the raid of August 29, 1979. She stated that when she realized that she was being accused of wrongdoing at the interview she insisted on taking a lie detector test which opportunity was refused to her. Petitioner further explained that she discussed the matter with her union which negotiated the matter with Resorts and from which resulted the six-week suspension for petitioner from her employment at Resorts. She added that this is the first instance in her lifetime that her integrity and honesty has ever been called into question.

Mr. Earl F. Kane, of Earl F. Kane Associates, Inc., consultants in

scientific lie detection and personnel evaluation, testified on behalf of petitioner. Mr. Kane explained that Ms. Cohn was administered a polygraph examination by himself upon request by her attorney at his office on May 31, 1979. This examination was administered to determine if she was involved in stealing money from the AC Disco in Resorts Hotel.

Mr. Kane's qualifications to administer this examination and to render an opinion upon it as a form of expert testimony, were elaborated upon in the record. His resume was introduced into evidence (Exhibit P-3) and shows that he is well educated and experienced in the field of polygraph examinations. Among many of his credentials, is the fact that Mr. Kane was the first New Jersey State Police polygrapher. In his testimony, he explained the procedures used and the questions asked of the petitioner during the examination. He further elaborated upon the relevancy of the questions and his conclusions drawn therefrom. His conclusions are stated in a letter dated June 6, 1979 from himself to Mr. Targan, petitioner's attorney, (Exhibit P-4). These conclusions include that:

> "It is the opinion of the polygrapher that Deborah Cohn did not steal any money from the cash register at the disco bar from unrung sales or overages in the register. It is further the opinion of the polygrapher that Deborah Cohn did not put money into the tip box to build up her reserve."

This witness further explained that he utilized a numerical evaluation system in analyzing the likeliness of truthfulness regarding the answers being given by the person being examined. The numerical evaluation system ranges from a negative five (-5) rating to a positive five (5) rating. A zero rating indicates inconclusive results from the tests. A positive five (5) rating is the highest rating as to likelihood that the examinee is telling the truth. In this instance, the witness indicated that the evaluation of the petitioner's answers during the examination merited a positive five (5) rating. Accordingly, it was the witness' opinion that the petitioner was telling the truth during his examination of her.

The burden of proof is clearly upon the applicant in this type of proceeding. However, the only objection lodged against the applicant concerns the

question of whether she has committed any acts which indicate that her licensure would be inimical to the policy of the Casino Act and to casino operations (Section 86c), and proof of such would have to come from the Division. There is unrebutted testimony in the record which shows in a clear and convincing manner that the applicant has a reputation for good character, honesty and integrity (Section 89b (2)). Further, there is no issue about the applicant having successfully completed a course of study at a licensed school with an approved curriculum.

The only issue is whether or not the applicant was engaging in conduct designed to defraud her employer, Resorts International Hotel, of money belonging to it when she was acting in the position as bartender in the AC Disco in the summer of 1978. In arriving at a decision on this question, I have not considered the six-week suspension from employment as an admission of guilt. Rather, that suspension appears to have been the result of an agreement among the parties in order to settle the matter without having to go through any form of litigation necessary to reach a dispositive result. As to the two memos prepared by Mr. Mahon reflecting his version of what took place at the interviews with the applicant, I have taken into account the circumstances under which those interviews were conducted. In fact, it appears that the term "interview" may be a misnomer. A more accurate description might be that the petitioner was escorted to a private room by three members of the Resorts - Intertel team and grilled for one and one half hours in the middle of the night (2:45 a.m. - 3:15 a.m.).

At the second interview on the following day, the first question posed to the applicant, was whether or not she was "wired". This reflects a certain atmosphere of intimidation. Furthermore, it appears that the applicant was never advised of any rights prior to the questions being asked of her and she never has agreed to any of the alleged admissions made by her at those interviews. In fact, a reading of those two memos (Exhibits DG-6 and7) indicates much ambiguity as to what, if anything, Mr. Mahon though the applicant was admitting to.

I have also considered the results of the polygraph examination administered to the applicant, although I am certainly not bound to find those results as conclusive. Further, I have considered certain discrepancies in some of the witnesses' testimonies. For example, when Mr. Albert Black stated that he saw the petitioner acting as a waitress in the disco, and the statement by Mr. Richard

Black that he observed the cash drawer in the register open when a sale was rung up on the register. Both of these statements were contrary to the weight of the credible evidence in the record.

Specifically, based upon the entire record, I **FIND** that:

1. Petitioner has applied for a license permitting her to work as a dealer in a casino.
2. Petitioner has a reputation for good character, honesty and integrity.
3. Petitioner has successfully completed a course of study at a licensed school and an approved curriculum.
4. Petitioner has been employed by Resorts, as a bartender, since May, 1978, during which time she has conducted herself in a proper manner, as attested to by her superior, Mr. Fitzinger.
5. The procedures, for which the petitioner was suspended by Resorts, were customary practices and were on occassion condoned by management.
6. Petitioner has neither been convicted for nor committed any offense which would automatically disqualify her licensure or be otherwise inimical to the policy of the Casino Act and to casino operations.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I **CONCLUDE** that applicant should not be disqualified from receiving a casino employee license to work as a dealer based upon the issues which were litigated during this proceeding.

I, **THEREFORE, ORDER** that the casino employee license (dealer) be granted to petitioner.

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

I **HEREBY FILE** with the **Commission of Casino Control Joseph P. Lordi,** my Initial Decision on this matter on the record in these proceedings.

April 3, 1980
DATE

Eugene D. Ginley
EUGENE D. GINLEY, A.L.J. C/B

Receipt Acknowledged:

April 9, 1980
DATE

Joseph P. Lordi
AGENCY HEAD

Mailed to Parties:

April 10, 1980
DATE

Elizabeth J. Keegan, Es
OFFICE OF ADMINISTRATIVE LAW

tf

EXHIBITS

Petitioner

P-1	Sample cash register check
P-2	List of petitioner's tips
P-3	Mr. Kane's resume
P-4	Letter of Mr. Kane - test results
P-5 (A to H)	Photographs of bar
P-6	Petitioner's college transcript
P-7	List of petitioner's tips
P-8 (A to E)	Photographs of cash register
P-9	Memo of Mr. Mullin - 8/30/78

Division of Gaming Enforcement

DG-1	Report of Mr. Black - 7/31/78
DG-2	Report of Mr. Black - 8/24/78
DG-3	Report of Mr. Black - 8/29/78
DG-4	List of marked money
DG-5	Report of Mr. Black - 8/24 and 25/78
DG-6	Memo of Mr. Mahon - 8/29/78
DG-7	Second memo of Mr. Mahon - 8/29/78
DG-8	Memo of Mr. Mahon - 8/16/79

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-CSI-1
80-CSI-2
(Consolida[illegible])
OAL DOCKET NO. CCC 2508-[illegible]

STATE OF NEW JERSEY	:
v.	:
COMDATA NETWORK, INC.;	:
RESORTS INTERNATIONAL HOTEL, INC.;	:
BOARDWALK REGENCY CORPORATION;	:
BALLY'S PARK PLACE, INC.;	:

FINAL ORDER

STATE OF NEW JERSEY	:
v.	:
WESTERN UNION TELEGRAPH COMPANY;	:
RESORTS INTERNATIONAL HOTEL, INC.;	:
BOARDWALK REGENCY CORPORATION;	:
BALLY'S PARK PLACE, INC.;	:

A hearing having been conducted in these consolidated matters before the Honorable Richard L. Voliva, A.L.J., and the Commission having considered the Initial Decision filed with it on September 22, 1980, the entire record of the proceedings herein, and the written exceptions to the Initial Decision filed by the parties; and the Commission, at its public meeting of November 5, 1980, having heard the arguments of counsel for the parties, and having resolved at that meeting to adopt the Initial Decision in part and to reject it in part;

It is on this 12th day of November 1980, ORDERED th the Initial Decision herein be and is hereby adopted in part a rejected in part as specified in the public record of November 5, 1980, to be more fully set forth in the Final Commission Decision, to be issued forthwith by the Chairman; and

ORDERED that the terms and conditions of the Commission's Emergency Order which was entered on April 15, 1980, and which was modified by the letter of Chairman Lordi dated April 18, 198 shall remain in full force and effect until such time as the Commission adopts appropriate internal and accounting control regulations and until further Order of this Commission; and it is further

ORDERED that copies of this Order shall be served upon parties.

NEW JERSEY CASINO CONTROL COMMISSION

BY _____

Joseph P. Lordi
Chairman

Dated November 12 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS.
80-CSI-1
80-CSI-2
(Consolidated)

IN THE MATTER OF:

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Petitioner :
v. :
COMDATA NETWORK, INC. T/A COMCHEK; :
RESORTS INTERNATIONAL HOTEL, INC.; :
BOARDWALK REGENCY CORPORATION; :
BALLY'S PARK PLACE, INC., :
Respondents :
AND :
STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Petitioner :
v. :
WESTERN UNION TELEGRAPH COMPANY: :
RESORTS INTERNATIONAL HOTEL, INC.; :
BOARDWALK REGENCY CORPORATION; :
BALLY'S PARK PLACE, INC. :
Respondents. :

FINAL COMMISSION DECISION

This matter involves a declaratory judgment proceeding instituted by the Division of Gaming Enforcement (Division) by verified petitions filed on March 26, 1980, and April 3, 1980 with the Casino Control Commission (Commission) against Comdata Network, Inc., t/a Comchek (Comchek), the Western Union Telegraph Company (Western Union), Resorts International Hotel, Inc. (Resorts), the Boardwalk Regency Corporation (BRC) and Bally's Park Place, Inc. (Park Place). On April 15, 1980, the Commission entered an Emergency Order limiting the transactions that could be conducted within the various casino hotels by Comchek and Western Union. (A copy of this Emergency Order is appended hereto as A-1 to A-4.) This Emergency Order was modified by Chairman Joseph P. Lordi by letter dated April 18, 1980, a copy of which is appended hereto as A-5 to A-6. The terms of the Emergency Order have remained in effect pending the outcome of the petitions. A hearing in this consolidated matter was ultimately conducted before Administrative Law Judge Richard Voliva.

The Division's petitions sought a declaratory judgment regarding whether Comchek and Western Union were casino service industries subject to licensure under N.J.S.A. 5:12-92 and whether the financial transactions conducted by and among Comchek and Western Union and the three operating casino hotels were prohibited by the provisions of N.J.S.A. 5:12-101.[1]

---

1. Only three casinos had been issued operation certificates at the time the Division's petitions were filed.

On September 19, 1980, the Administrative Law Judge filed an Initial Decision with the Commission wherein he concluded that the service of electronically transferring funds by Comchek and Western Union to patrons of casino hotel facilities to enable them to participate in gaming as a player required licensure pursuant to N.J.S.A. 5:12-92(c). He further found, however, that such activity was prohibited by N.J.S.A. 5:12-101. (The Initial Decision is appended hereto as A-7 to A-17).

The Initial Decision was transmitted to counsel for the parties who were afforded the opportunity to file written exceptions or objections thereto. By letters dated September 30 and October 7, 1980, Western Union filed exceptions to the Initial Decision. Comchek filed exceptions by letter dated October 3, 1980, while Park Place filed exceptions by letter dated October 8, 1980. Neither Resorts, BRC, or the Division filed exceptions.

Upon review and consideration of the Initial Decision in this case, the entire record of the proceedings, the written exceptions of the parties, and the arguments of counsel, the Commission at its public meeting of November 5, 1980, determined to affirm the factual findings of the Administrative Law Judge which had been stipulated to by the parties as well as his conclusion that Comchek and Western Union were subject to licensure pursuant to N.J.S.A. 5:12-92(c). The Administrative Law Judge's conclusion, however, that N.J.S.A. 5:12-101 prohibited the activities of Comchek and Western Union was

rejected for the reasons set forth below. Hence the Initial Decision of the Administrative Law Judge was adopted in all respects except for his conclusions relating to N.J.S.A. 5:12-101.

Section 101 of the Casino Control Act (N.J.S.A. 5:12-101) provides that:

> Credit: a. Except as otherwise provided in this section, no casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall:
> (1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or
> (2) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in gaming activity without maintaining a written record thereof in accordance with the rules of the commission.
> b. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, may accept a check, other than a recognized traveler's check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such checks unless:
> (1) The check is made payable to the casino licensee;
> (2) The check is dated, but not postdated;
> (3) The check is presented to the cashier or his representative and is exchanged only for a credit slip or slips which total an amount equal to the amount for which the check is drawn, which slip or slips may be presented for chips at a gaming table; and
> (4) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents.

Nothing in this subsection shall be deemed to preclude the establishment of an account by any person with a casino licensee by a deposit of cash or recognized traveler's check or other cash equivalent, or to preclude the withdrawal either in whole or in part, of any amount contained in such account.

c. When a casino licensee or other person licensed under this act, or any person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, cashes a check in conformity with the requirements of subsection b. of this section, the casino licensee shall cause the deposit of such check in a bank for collection or payment within (1) seven banking days of the date of the transaction for a check in an amount less than $1,000.00; (2) fourteen banking days of the date of the transaction for a check of at least $1,000.00 but less than $2,500.00; or (3) ninety banking days of the date of the transaction for a check of $2,500.00 or more. Notwithstanding the foregoing, the drawer of the check may redeem the check by exchanging cash or chips in an amount equal to the amount for which the check is drawn;or he may redeem the check in part by exchanging cash or chips and another check which meets the requirements of subsection b. of this section for the difference between the original check and the cash or chips tendered; or he may issue one check which meets the requirements of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee. If there has been a partial redemption or a consolidation in conformity with the provisions of this subsection, the newly issued check shall be delivered to a bank for collection or payment within the period herein specified. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act shall accept any check or series of checks in accordance with this subsection for the purpose of avoiding or delaying the deposit of a check in a bank for collection or payment within the time period prescribed by this subsection.

d. No casino licensee or any other person licensed under this act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall transfer, convey, or give, with or without consideration, a check cashed in conformity with the requirements of this section to any person other than:

(1) The drawer of the check upon redemption or consolidation in accordance with subsection c. of this section;

(2) A bank for collection or payment of the check; or

(3) A purchaser of the casino license as approved by the commission.

The limitation on transferability of checks imposed herein shall apply to checks returned by any bank to the casino licensee without full and final payment.

e. No person other than one licensed as a casino key employee or as a casino employee may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney-at-law representing a casino licensee may bring action for such collection.

f. Notwithstanding the provisions of any law to the contrary, checks cashed in conformity with the requirements of this act shall be valid instruments, enforceable at law in the courts of this State. Any check cashed, transferred, conveyed or given in violation of this act shall be invalid and unenforceable. [Emphasis Added].

Comchek and Western Union operated, prior to the entry of the Emergency Order, under an arrangement with casino hotel facilities that enabled them, Visa and Mastercharge, and the casinos to place cash in the hands of patrons for gaming purposes. Comchek and Western Union money orders were part of the system. The actual process is fully described by the Administrative Law Judge in his Initial Decision and is incorporated herein.

In essence, however, the procedure utilized is as follows:

A transfer of funds would occur at the cashier's cage located in the casino room of a casino hotel. A holder of a credit card from either Visa or Mastercharge would use a telephone in the vicinity of the cage to contact either Western Union or Comchek via a toll free 800 number. The patron would advise Western Union or Comchek of his name, the name and account number of his credit card, and the amount he desired. Visa or Mastercharge would verify the status of the patron's account with its member bank, approve the transaction, and issue an authorization number.

Subsequently, Western Union or Comchek would telex a money order or Comchek draft, as the case may be, to the cashier's cage. The patron would execute the draft and receive the amount advanced. Funds received by the patron by this means were used, at least in part, for participation in casino gaming.

Both Western Union and Comchek assessed the patron a service fee which would be charged to his account with the Mastercharge or Visa bank. The patron would pay the service charge along with the amount advanced pursuant to his contract with the member bank.

Additionally, Western Union and Comchek paid a per transaction fee to the casino hotel. This fee was either paid to the cage employees on a pro rata basis or included in the general revenues of the casino hotel.

There are minor differences between the operations of Western Union and Comchek. For example, Western Union transfers funds by means of a money order as opposed to a Comchek draft. On the whole, however, the overall nature of the services are the same, i.e., that there is an electronic transfer of cash advances from Visa and Mastercharge to patrons of the casino hotels.

Although the transfer of funds transaction is multi-tiered, the essence of such transaction is that of a cash advance charged against a credit card. Indeed, if permitted by a credit card company and the Commission the same result can be obtained by a patron submitting his credit card directly to the casino in exchange for cash or chips, or a credit slip. The insertion of the intermediary Comchek or Western Union money order does not alter the fact that a patron is being advanced funds on a loan basis which must ultimately be paid back to the credit card company.

Without question, Section 101 of the Act (N.J.S.A. 5:12-101) is implicated because the casinos, Comchek, Western Union and the credit card companies are involved in a system whereby funds are extended to a patron to enable him to game. Indeed, Comchek and Western Union might also be viewed as alter egos of the casinos, and thus, the casino may be considered as directly accepting the credit card.

Section 101(a) of the Act (N.J.S.A. 5:12-101(a)) contains a broad prohibition relating to the extension of credit and check cashing. It is prefaced, however, with the clause,

"Except as otherwise provided in this section." The Administrative Law Judge overlooked this language in his discussion of Section 101 on pages 7 and 8 of the Initial Decision. In fact, his comment on page 8 of the Initial Decision that: "Section 101 does not contain any exceptions to the prohibition against the making of a loan or otherwise providing credit to a person for participation in gaming activity" is unquestionably inaccurate.

Section 101 contains several exceptions to the general prohibition against extensions of credit. The foremost exception, N.J.S.A. 5:12-101(b), allows casinos to cash checks and hold those checks for certain specified periods of time if certain conditions are met. A second exception arises because of a clause in Section 101(b) allowing casinos to cash "recognized traveler's check[s] or other cash equivalent[s]" without complying with the conditions set out in Section 101(b). A third exception also appears in Section 101(b). It provides that:

> Nothing in this subsection shall be deemed to preclude the establishment of an account by any person with a casino licensee by a deposit of cash or recognized traveler's check or other cash equivalent, or to preclude the withdrawal, either in whole or in part, of any amount contained in such account.

The transfer of funds in question does not seem to come within the restrictive check cashing provisions of subsection (b) of Section 101. Whether the transation falls within the second or third exception depends on whether a credit card transaction may be deemed a "cash equivalent."

The structure of Section 101 is of assistance in determining the meaning of "cash equivalent." Subsection (a) prohibits the extension of credit while subsections (b) and (c) allow check cashing and the extension of credit when certain conditions are met. Traveler's checks or other cash equivalents are specifically exempted from the check cashing and credit restrictions of subsections (a) and (b).

An explanation as to why these two items are exempted appear to be that the drafters of this language believed that the phrase "cash equivalent" included a credit instrument. Thus, "cash equivalent" was meant to indicate an instrument that is as negotiable as cash. Credit cards are so widely accepted in today's society that they would come within the purview of the phrase "cash equivalent." Likewise, such instruments as money orders, bank checks, etc. may well be considered akin to a traveler's check, and hence the equivalent of cash.

Furthermore, it is significant that a recognized traveler's check is given as an example of a cash equivalent. The purpose of a traveler's check would appear to be to provide an individual with an instrument that is as negotiable as cash. Yet, certain traveler's checks may be purchased through the use of a credit card, thereby permitting an individual to gamble on credit or borrowed funds. It is important to note that gambling on funds that have been borrowed from a source not within the strictures of Section 101 is not prohibited by the Casino Control Act.

As discussed earlier, the procedures utilized by Comchek and Western Union require the presentation of a Visa or Mastercharge card to them as opposed to it being directly presented to the casino. Thereafter, a document known as "Comchek" or a Western Union money order, as the case may be, is actually presented to the casino. The Commission believes that credit cards as well as the foregoing documents are cash equivalents within the scope of Section 101(b) of the Act. It is important to note that the casino hotels readily accept Comcheks and Western Union money orders and that no evidence has been presented which indicates that Comchek or Western Union has ever refused to pay the casino hotels the value of these documents when presented to them.

Additional guidance as to the interpretation of the phrase "cash equivalent" may be sought in legislative history. Understanding the Legislature's purposes in enacting Section 101 may lead to a better understanding of what was actually intended.

As originally proposed, the Casino Control Act (Assembly Bill No. 2366 and Senate Bill No. 1780) contained no proscriptions on credit within the casinos. Many individuals suggested that credit restrictions were needed and hence the final version of the Casino Control Act included Section 101.

Legislative history reveals three reasons for credit restrictions within casinos:

1. To prevent collection abuses;

2. To present skimming and employee embezzlement; and

3. A fear that easily obtained credit may encourage a player to exceed his own personal financial limitations.

Use of credit cards would not appear to lead to collection abuses. The concern for collection abuses stems from the unsavory collection pratices used by Las Vegas casinos to collect "house markers." In the present instance, a casino is reimbursed by Comchek and Western Union who, in turn, are reimbursed by Visa or Mastercharge. Hence collections, if necessary, would be handled by Visa or Mastercharge and not the casinos. This would seem to be desirable.

"Skimming" also does not seem to be an extensive problem in a credit card transaction. The fear of skimming also stems from the Nevada casino experience. When an informal marker system, as utilized in Las Vegas, is used there are many opportunities for the house to engage in underhanded deals by not reporting all cash received. Further internal and accounting control regulations however, appear necessary so that the Commission can ensure proper recordation of credit card transactions.

The third rationale for restricting credit stems from a fear of patrons betting beyond their means. Governor Brendan Byrne's Staff Policy Group on Casino Gambling stated in its report that:

> The Atlantic City vacationer who is invited to gamble with future income is being urged to gamble imprudently. In the heat of the moment, when he is anxious to win back his lost cash stake, access to...credit...can seem like easy money--a loan which is not really a loan since the next card or dice roll will square it. [Governor's Staff Policy Group on Casino Gambling, 2nd Interim Report 35 (1977)].

The foregoing problem is present with credit cards as well as with other types of credit. However, the Legislature has not, in Section 101, restricted the amount of credit that a casino can extend to a patron.

A conscious policy decision seems to have been made by the Legislature to extend credit through a check cashing system. This limited credit was considered desirable because a cash only system would cause patrons to carry large amounts of cash which might increase street crime. It was also feared that loan sharking would be encouraged and investors would be scared away. The check cashing system was defended as avoiding the problems of patron over extension. First, the patron in cashing a check is dealing on a familiar transaction with consequences which are predictable and certain. Governor's Staff Policy Group on Casino Gambling, 2nd Interim Report. 35 (1977). Second, his bank and family would be aware of the debt. This provides an inhibiting factor. Third, he is aware that he is going to be able to meet it (the check) immediately or liquidate readily realizable assets to meet the check. Public Hearings on Senate Bill 1780. Before New Jersey Legislature, Senate Judiciary Committee, 7 a (March 2, 1977) (statement of Victor Lownes).

The first two characteristics of a check cashing system are also shared by a credit card system. Credit card purchases are an everyday event and it is predictable that a bill will be received and a certain interest rate will be owed. Credit card debts are also processed through normal credit channels. A

patron's creditors, bank and family would be aware of the debt.

The Commission recognizes a difference, however, between credit advanced through checks and that advanced through credit cards. This difference revolves around the time available for repayment. Section 101 of the Act allows casinos to retain checks of less than $1,000 for only seven days, checks of more than $1,000 but less than $2,500 for 14 days, and checks of more than $2,500 for only 90 days. In a credit card cash advance, however, credit is extended for an indefinite period because of the revolving nature of Visa and Mastercharge amounts.

Whether or not this difference would be viewed by the Legislature as dispositive is difficult to determine. The Commission, however, does not view this distinction as controlling.

Only the New Jersey State Commission of Investigation (S.C.I.) in its report and recommendation on casino gambling mentions the use of credit cards within casinos. See Report and Recommendation on Casino Gambling by the Commission of Investigation of the State of New Jersey 1E (April 1977). The S.C.I., in weighing the above factors, concludes that the use of credit cards would be an acceptable form of credit. They stated:

> ...the State Commission of Investigation recommends that the Legislature enact a statutory provision requiring casinos to issue chips to a player only upon the presentation by him of cash, or its equivalent such as traveler's checks, a nationally recognized credit card, or a personal check. [Id. at 5E]. (Emphasis added).

Even more interesting than the S.C.I.'s endorsement of credit card use is the striking similarity in language between the S.C.I. report and N.J.S.A. 5:12-101(b). This similarity of language suggests that the drafters of Section 101(b) of the Act had the S.C.I. report in mind when they wrote the section even though they did not totally accept the recommendation.

Moreover, as first passed by the New Jersey General Assembly, the bill authorizing casino gambling in Atlantic City did not include in Section 101(b) any reference to "cash equivalent" transactions. However, the New Jersey Senate on May 16, 1977, by its Committee Amendments to Assembly Committee Substitute for Assembly Bill No. 2366, added the language "or other cash equivalent" now found in Section 101(b) of the Act.

Reading the mind of a drafter is a tricky and possibly misleading endeavor. Indeed, ascertaining what the Senate intended when it added the above-quoted language, and what the Assembly intended when it ultimately concurred in that amendment, cannot be achieved with exactitude. Nevertheless, it does appear that because of the similarities in language betweeen the S.C.I. recommendations and Section 101(b) that the Legislature has indeed defined "cash equivalent" as including nationally recognized credit cards and other paper instruments. The Commission finds this to be the case.

For the foregoing reasons, the Initial Decision of the Administrative Law Judge is adopted in part and rejected in part as specified above. Additionally, until such time as the

Commission adopts appropriate internal and accounting control regulations and until further Order of this Commission, the terms and conditions of this Commission's Emergency Order of April 15, 1980, which was modified by letter of Chairman Lordi dated April 18, 1980, shall remain in full force and effect.

New Jersey Casino Control Commission

By: _____
Joseph P. Lordi
Chairman

By: _____
Martin B. Danziger
Vice-Chairman

By: _____
Madeline H. McWhinney
Commissioner

By: _____
Don M. Thomas
Commissioner

By: _____
Carl Zeitz
Commissioner

Commissioner Thomas and Commissioner Zeitz dissent from this Opinion.

Dated March 18 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CSI-1
80-CSI-2

STATE OF NEW JERSEY :

v. :

COMDATA NETWORK, INC.; :

RESORTS INTERNATIONAL HOTEL, INC.; :
BOARDWALK REGENCY CORPORATION; :
BALLY'S PARK PLACE, INC.; :

EMERGENCY ORDER

STATE OF NEW JERSEY :

v. :

WESTERN UNION TELEGRAPH COMPANY; :
RESORTS INTERNATIONAL HOTEL, INC.; :
BOARDWALK REGENCY CORPORATION; :
BALLY'S PARK PLACE, INC. :

These matters having been brought before the Commission by the Division of Gaming Enforcement upon Petitions for Decla Judgment which were filed on March 26, 1980, and April 3, 1980, and it appearing that the Division has requested the entry of an emergency order pending a final resolution of these Petition and the Commission having considered the request for emergency relief at its public meeting of April 9, 1980, and the followin parties having been represented:

For Comdata Network, Inc.:
Francis Hartman, Esq. of the law firm of
Hartman, Schlesinger, Schlosser & Faxon

For Western Union Telegraph Company:
Henry Portner, Esq. of the law firm of
Valore, McAllister, Aron & Westmoreland

For Resorts International Hotel, Inc.:

Richard Weinroth, Esq. of the law firm of

For Boardwalk Regency Corporation:

Morris Brown, Esq. of the law firm of Wilentz, Goldman & Spitzer

For Bally's Park Place Inc.:

Daniel L. Grossman, Esq. of the law firm of Sills, Beck, Cummis, Radin & Tischman

For the Division of Gaming Enforcement:

Howard M. Barman, Deputy Attorney General

and it appearing that an emergency order is necessary pursuant the authority of N.J.S.A. 5:12-109 and N.J.S.A. 5:12-75 in orde to preserve the public policies of the New Jersey Casino Contro Act pending a final resolution of the Division's Petitions for Declaratory Judgment, it is hereby on this 15th day of April, 1980, ORDERED that pending a final resolution of the Division's Petitions for Declaratory Judgment (80-CSI-1 and 80-CSI-2), or until further order of this Commission, the followi conditions shall be observed:

1. No use of any cage or casino facility by Comdata Network, Inc., Western Union Telegraph Company, or any agents thereof, for the issuance of money orders, drafts or funds bas on credit cards.

2. No referrals of patrons by the personnel of a casino licensee to any Comdata or Western Union outlets for th purpose of obtaining funds for participation in gaming as a pl through the use of a credit card.

3. Prior to the issuance of a Comchek or Western money order in a casino hotel facility based on a credit card

the issuer shall inquire whether the patron intends to u
any or all of such funds for gaming.

4. No Comchek or Western Union money order based o
a credit card shall be issued within a casino hotel facility
purposes of permitting a patron to participate in gaming acti

5. No Comchek or Western Union money order issued
in a casino hotel facility on the basis of a credit card may
be accepted by a casino licensee to enable a patron to partic
in gaming activity as a player.

6. Notwithstanding the foregoing, nothing herein
shall be deemed to prohibit Comchek or Western Union from wir
a telegraphic money order to a patron either in the casino or
elsewhere in the facility based on funds deposited at a Comch
or Western Union office or based upon funds in that patron's
bank account, where such funds are simultaneously dedicated
assigned for repayment to Comchek or Western Union.

7. Whenever a Comchek or Western Union money orde
issued in a casino hotel facility the fact that such Comchek
money order was issued in such facility shall be imprinted th

8. The Chairman is authorized to approve a mechani
for providing notice to patrons who request funds for non-gam
purposes.

and it is further ORDERED that upon the receipt of answers fr
the parties to the Division's Petitions, or upon the expira
of the time to file such answers, these Petitions shall be
referred to the Office of Administrative Law for considerati
on an expedited basis; and it is further ORDERED that a copy
of this Order shall be served upon Comdata Network, Inc., Wes
Union Telegraph Company, Resorts International Hotel, Inc.,
Boardwalk Regency Corporation, Bally's Park Place, Inc., and
the Division of Gaming Enforcement within two days of its ent

CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: APRIL 15, 1980

I consent to the form of this Order

On behalf of Comdata Network, Inc. _____

On behalf of Western Union Telegraph Co. _____

On behalf of Resorts International Hotel, Inc _____

On behalf of Boardwalk Regency Corporation _____

On behalf of Bally's Park Place, Inc. _____

On behalf of the Division of Gaming Enforcement _____

State of New Jersey

CASINO CONTROL COMMISSION

379 WEST STATE STREET
TRENTON, N.J. 08625
PHONE NUMBER 609-292-7720, 7731

ATLANTIC CITY [illegible]
TENNESSEE AND B[illegible]
PHONE NUMBER: 609-[illegible]

[illegible] RDI
[illegible]RMAN

[illegible] W. MERCK
D. CORSEY
ERO DEBONA, JR.
MISSIONERS

M. F. X. BAND
CUTIVE SECRETARY

April 18, 1980

Howard Barman, Deputy Attorney General
Division of Gaming Enforcement
Independence Mall
Trenton, New Jersey 08625

RE: STATE OF NEW JERSEY v. COM-DATA NETWORK, INC., et al;
CCC DOCKET NO. 80-CSI-1

STATE OF NEW JERSEY v. WESTERN UNION TELEGRAPH COMPANY, et al;
CCC DOCKET NO. 80-CSI-2

Dear Mr. Barman:

The Emergency Order entered by the New Jersey Casino Control Commission in the above matters on April 15, 1980, provides in paragraph number 8 as follows:

> "The Chairman is authorized to approve a mechanism for providing notice to patrons who request funds for non-gaming purposes."

Consistent with the meeting among the parties and Benjamin Cohen, General Counsel to the Commission, on April 15, 1980 at the Commission office, I am advising you that, while the Emergency Order is in effect, the only approved means for providing notice within the casino of the credit card services of Comchek or Western Union to patrons who request funds for non-gaming purposes, is as follows:

1. Patrons who request funds for non-gaming purposes are to be referred to the cage.

2. Patrons who request funds for non-gaming purposes at the cage are to be shown a card or sign which card or sign shall be affixed to the cage by a chain or other device and which card or sign shall not be visible to the patron prior to his request.

3. Such card or sign shall be displayed only to patrons who request funds for non-gaming purposes.

4. Such card or sign shall read as follows:

> CREDIT CARDS MAY NOT BE USED IN THIS CASINO HOTEL TO OBTAIN FUNDS FOR GAMING.
>
> IF YOU NEED FUNDS FOR NON-GAMING PURPOSES AND YOU HAVE A VISA OR MASTER-CHARGE CREDIT CARD, YOU MAY INQUIRE AT [insert appropriate location outside the casino room].

Sincerely,

JOSEPH P. LORDI
CHAIRMAN

JPL:fh

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2508-80

AGENCY DKT. NOS. 80-CSI-1

and 80-CSI-2 (CONSOLIDATED)

IN THE MATTER OF:

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

v.

COMDATA NETWORK, INC. T/A COMCHEK;
RESORTS INTERNATIONAL HOTEL, INC.;
BOARDWALK REGENCY CORPORATION;
BALLY'S PARK PLACE, INC.,
Respondents

AND

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

v.

WESTERN UNION TELEGRAPH COMPANY:
RESORTS INTERNATIONAL HOTEL, INC.;
BOARDWALK REGENCY CORPORATION;
BALLY'S PARK PLACE, INC.
Respondents.

Record Closed: August 7, 1980

Agency Received: 9/22/80

Decided: September 19, 1980

Mailed to Parties: 9/23/80

A-7

New Jersey is An Equal Opportunity Employer

APPEARANCES:

Howard M. Barman, Deputy Attorney General, on behalf of the Department of Law and Public Safety, Division of Gaming Enforcement, (John J. Degnan Attorney General of New Jersey, attorney)

Jan M. Schlesinger, Esq., on behalf of Comdata Network, Inc., t/a Comchek (Hartman, Schlesinger, Schlosser & Faxon, Esqs., attorneys)

Lars S. Hyberg, Esq., on behalf of The Western Union Telegraph Co. (Valore, McAllister, Aron & Westmoreland, Esqs., attorneys)

Richard K. Weinroth, Esq., and John M. Donnelly, Esq., on behalf of Resorts International Hotel, Inc. (Sterns, Herbert & Weinroth, Esqs., attorneys)

Morris Brown, Esq., and Brian J. Molloy, Esq., on behalf of Boardwalk Regency Corporation (Wilentz, Goldman & Spitzer, Esqs., attorneys)

Daniel Louis Grossman, Esq., on behalf of Bally's Park Place, Inc. (Sills, Beck, Cummis, Radin & Tischman, Esqs., attorneys)

BEFORE RICHARD L. VOLIVA, JR., ALJ:

This is a consolidated declaratory judgment proceeding instituted by the Department of Law and Public Safety, Division of Gaming Enforcement (Division), petitioner, by verified petitions filed on March 26, 1980 and April 3, 1980 with the Casino Control Commission (Commission), against Comdata Network Inc., t/a Comchek (Comchek), The Western Union Telegraph Company (Western Union), Resorts International Hotel, Inc. (Resorts), Boardwalk Regency Corporation (BRC) and Bally's Park Place, Inc. (Park Place), respondents. On April 9, 1980, the Commission issued an Emergency Order limiting the transactions that could be conducted within the various casino hotels by Comchek and Western Union (P-18, see attached List of Exhibits Admitted Into Evidence). The Emergency Order was modified by the Honorable Joseph P. Lordi, Chairman, by letter dated April 18, 1980 (P-19). The Emergency Order remains in effect pending the outcome of this action. The respondents 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 conducted on May 21, 1980. The matter was heard on July 14, 1980 and briefs were submitted and the record closed on August 7, 1980.

The petitions for declaratory judgment seek a determination that Comchek and Western Union are casino service industries subject to licensure under N.J.S.A

5:12-92a. The Division also seeks a determination that the transactions conducted by and among Comchek and Western Union and the three operating casino hotels are prohibited by the provisions of N.J.S.A. 5:12-101.* The Division amended the petitions by withdrawing from this proceeding, without prejudice, any consideration of possible penalties or sanctions it sought against any or all of the respondents concerning the alleged violations of Sections 92 and 101 of the Casino Control Act (Act). The parties agreed to written stipulations of facts (J-1 and J-2).

Resorts is the holder of a Plenary Casino License, while BRC and Park Place are the holders of Temporary Casino Permits. All three casino hotels operate pursuant to Certificates of Operation issued by the Commission. The three casino hotels are subject to the extensive regulatory supervision of the Commission as enforced by the Division pursuant to the Act. N.J.S.A. 5:12-1, et seq. Western Union and Comchek are both publicly held corporations. As is relevant to this proceeding, both companies provide the service of telegraphically transferring money. More specifically, the companies electronically wire money to their customers, patrons of the casino hotels. Western Union has an application for exemption from the requirements of licensure as a casino service industry and Comchek has an application for licensure as a casino service industry now pending before the Commission. N.J.S.A. 5:12-92(c).

Western Union performs the transfer of funds service at Resorts and BRC pursuant to written contracts, which were approved by the Commission on August 29, 1979 and June 20, 1979, respectively (J-1, J-2, P-4 and P-5). Negotiations between Western Union and Park Place are in process. Comdata provides this service pursuant to oral contracts with the three casino hotels (J-1, J-2, P-1, P-2 and P-3). Comchek's oral contract with Resorts was approved by the Commission on February 7, 1979 (J-1). Comchek's request for approval of its contracts with BRC and Park Place is currently pending before the Commission (J-1, P-2 and P-3). However, since the Emergency Order was issued by the Commission, Comchek has not been providing any services to BRC (P-18).

* There were only three casino hotels in operation at the time the petitions were filed.

The transfers of funds occurred at the cashier's cage located in the casino of each of the three casino hotels. A holder of a credit card from either Visa or Master Charge would use a telephone in the vicinity of the cage to contact either Western Union or Comchek via a toll free 800 number. The patron would advise Western Union Comchek, among other things, of his name, the name and account number of his credit card and the amount to be received. Western Union or Comchek would then contact Visa or Master Charge by computer. Subsequently, Visa or Master Charge would verify the status of the patron's account with its member bank, approve the transaction and issue an authorization number. Western Union or Comchek would then telex a money order or Comchek, respectively, to the cashier's cage. The patron would execute the draft and receive the amount advanced. Both companies charge a service fee which is also charged to the customer's account with the Master Charge or Visa bank and repaid by the patron along with the amount advanced according to his contract with the member bank. Funds received by casino hotel patrons by means of this service have been used, at least in part, for participation in casino gaming. Western Union and Comchek both pay a per transaction fee to the casino hotel, which is either paid to the cage employees on a pro rata basis or included in general revenues by the casino hotel. Although there are minor differences between the operations of Western Union and Comchek, for example Western Union transfers the funds by means of a money order as opposed to a Comchek, the overall nature of the services are the same. Both companies electronically transfer cash advances from Visa and Master Charge member banks to patrons of the casino hotels.

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

1. The preceding discussion of undisputed facts is adopted as though fully set forth herein.

2. The stipulations of facts agreed to by and between the parties are adopted as though fully set forth herein (J-1 and J-2).

3. Neither Comchek, Western Union, nor any of the three casino hotels makes a loan or provides an extension of credit during the performance of the subject transfer of funds.

A-10

4. The Visa or Master Charge member bank acting under an arrange with Comchek or Western Union extends credit to a casino pat subject to a previously approved line of credit.

5. The funds extended to a patron, at least in part, enable the patron to participate as a player in gaming activity.

LICENSURE

The Division alleges that Comchek and Western Union are casino service industries and, accordingly, are subject to licensure pursuant to N.J.S.A. 5:12-92. N.J.S.A. 5:12-12 defines a casino service industry in part as "Any form of enterprise which provides casinos with ... services on a regular or continuing basis....". It has been established that both companies provide the subject service pursuant to contracts with the three casino hotels. Also, prior to the Emergency Order there were numerous daily transfers involving substantial sums of money. This extensive transfer business clearly establishes Comchek and Western Union as casino service industries under Section 12 of the Act and subjects them to licensure pursuant to Section 92.

The issue thus becomes whether licensure is under subsection a or c of Section 92. The Division contends that Comchek and Western Union are providing a service which is directly related and essential to gaming activity. N.J.A.C. 19:43-1.2 delineates the types of casino service industries which must be licensed pursuant to Section 92a of the Act.

N.J.A.C. 19:43-1.2(a)1.i and ii require licensure under Section 92a of companies which provide, distribute or maintain gaming equipment. Comchek and Western Union merely transfer funds to casino hotel patrons. The fact that money is necessary for a patron to participate in gaming activity does not establish Comchek and Western Union as providing a service specifically designed for the operation of a casino or essential to the conduct of a game.

N.J.A.C. 19:43-1.2(a)1.iii concerns a service which is "....directly related to the operation, regulation or management of a casino....". The examples provided (gaming schools, casino security and casino credit collection enterprises) make it clear the regulation is solely directed to the conduct and management of the gaming activity. This

implies functions which could have an effect upon the outcome of a game, i.e. the fairness of the game. There are no proofs which would even remotely suggest that the subject services are in any way directly related to the operation of gaming activity in a casino.

Finally, N.J.A.C. 19:43-1.2(a)1.iv requires licensure under Section 92a when such services are "....incident to... casino activity as to require licensing in order to contribute to the integrity of the gaming industry in New Jersey." In order to understand the type of services included in this catchall rule, it is necessary to examine the policies set forth by the Legislature in adopting the Act. Of primary concern to the Legislature was the establishment of "....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). Further, the Legislature determined that the casino industry should be strictly regulated on all levels. N.J.S.A. 5:12-1b(6) and (13). Public confidence and trust in the regulation and conduct of casino operations was deemed to be vital to attainment of the purposes of the Act.

There can be no question that the services in issue are incident to casino activity. Of concern is whether licensure under Section 92a, as opposed to Section 92c, would contribute to the integrity of the gaming industry in this State. The respondents have shown that the transaction, the electronic transfer of funds, is nothing more than a legitimate transfer via a credit card pursuant to previously approved credit limits. There was no evidence of any threat, financial or otherwise, to the integrity of the casino industry or the regulatory process. The fact that some of the funds are used to enable a patron to participate in gaming activities does not establish that this service is capable of altering the outcome of the game or affecting the odds. The mere fact that the service is performed in the casino cage and in part by casino hotel employees does not establish an appearance of or an impediment to the integrity of the gaming industry thus mandating licensure under Section 92a. The public confidence and trust in the gaming industry, specifically concerning this service, can be secured by the mere licensure of Comchek and Western Union. It has not be shown that the public confidence and trust would in any way be enhanced or otherwise affirmatively affected by the licensure of the subject service under Section 92a as opposed to Section 92c. It is difficult to imagine that the general public would be able to perceive the differences between the two sections. There is no detectable contribution to the integrity of the gaming industry or the regulatory process which would require licensure under Section 92a. Therefore, Comchek and Western Union should be licensed under N.J.S.A. 5:12-92c.

A-12

I FURTHER FIND;

1. Comchek and Western Union perform numerous daily transfers of f[illegible] to casino hotel patrons involving substantial sums of money.

2. This service does not involve the manufacture, supply, distribution or maintenance of equipment which is specially designed for use in the operation of a casino or needed to conduct a game.

3. This service is not directly related to the operation, regulation or management of a casino.

4. Licensure under Section 92a as opposed to Section 92c would not contribute to the integrity of the gaming industry.

I CONCLUDE that Comchek and Western Union are casino service industries and the service of electronically transferring funds requires licensure pursuant to N.J.S.A. 5:12-92c of the Act.

NATURE OF THE TRANSACTION

The Division contends that the subject scheme by which prospective gambl[illegible] obtain funds to use, in part, for gaming purposes by means of their Visa or Master Charge credit cards violates N.J.S.A. 5:12-101. For purposes of this determination it is necessary to assume that Comchek and Western Union are licensed casino service industries in accordance with the previous portion of this initial decision.

Section 101a of the Act states, in part, that ".... no person acting ... under any arrangement with a ... person licensed under this act, shall: (1) ... make any loan, or otherwise provide or allow to any person any credit ... to enable any person to take part in gaming activity as a player ...". There is no doubt that the Visa or Master Charge banks are, pursuant to an arrangement with Comchek and/or Western Union, making a loan or allowing credit to a patron, thus enabling the patron to participate in gaming activity as a player. In this instance the making of a loan or the extension of credit is made by the Visa or Master Charge member bank according to previously approved lines of credit. Since Comchek and Western Union are licensed pursuant to Section 92c of the Act and

Visa or Master Card member banks are making a loan or extending credit under an arrangement with Comchek and/or Western Union, this activity is specifically and absolutely prohibited by Section 101a(1) of the Act.

The respondents contend that Section 101b of the Act permits such transfers of funds because the checks or money orders by which the transfers are effected constitute cash equivalents. However, Section 101b is merely an exception to that portion of Section 101a(1), which otherwise precludes the cashing of a check in order to obtain funds for gaming purposes. Subsection 101b sets forth enumerated criteria by which the cashing of a check, including traveler checks or other cash equivalents, is permitted. However, assuming that the checks or money orders used by Comchek and Western Union constitute cash equivalents under subsection 101b, the fact that funds are transferred by means of a cash equivalent does not legitimatize the otherwise prohibited conduct of making a loan or advancing credit. Here the concern is with the underlying transaction, not the apparently valid means of transferring the funds.

Section 101 does not contain any exceptions to the prohibition against the making of a loan or otherwise providing credit to a person for participation in gaming activity.

It is unnecessary to give any consideration to the prior knowledge or conduct of the Commission or the Division concerning the subject activities, or their knowledge or approval of contracts by and among several of the respondents concerning the transfer of funds. The applications for approval of agreements filed with the Commission prior to the commencement of this action do not sufficiently identify the true nature of the transactions in order to preclude a determination on the merits in this matter. Regardless of the prior knowledge or actions by the Commission or the Division, the subject conduct is specifically prohibited by Section 101 of the Act.

I CONCLUDE that the services provided by Comchek and Western Union, as described above, constitute an extension of credit in violation of N.J.S.A. 5:12-101.

Therefore, IT IS ADJUDGED that Comdata Network, Inc., and The Western Union Telegraph Co., as casino service industries, are subject to licensure pursuant to N.J.S.A. 5:12-92c; and IT IS FURTHER ADJUDGED that the electronic transfer of funds as described above, are prohibited under N.J.S.A. 5:12-101.

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

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

September 19, 1980
DATE

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

Receipt Acknowledged:

Sept. 22, 1980
DATE

David Arnesi
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

September 23, 1980
DATE

Ronald D. Parker Jr.
OFFICE OF ADMINISTRATIVE LAW

plb

A-15

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Stipulation of Facts (80-CSI-1).

J-2 Stipulations of Facts (80-CSI-2).

P-1 Contract Approval Request Form for Resorts International Hotel, Inc. and Comdata Network, Inc., t/a Comchek, January 19, 1979.

P-2 Contract Approval Request Form for Boardwalk Regency Corporation and Comdata Network, Inc., t/a Comchek, August 17, 1979.

P-3 Contract Approval Request Form for Bally Park Place and Comdata Network, Inc., t/a Comchek, March 10, 1980.

P-4 Contract Approval Request Form for Resorts International Hotel, Inc., and The Western Union Telegraph Co., April 29, 1979.

P-5 Contract Approval Request Form for Boardwalk Regency Corporation and The Western Union Telegraph Co., April 29, 1979.

P-6 Letter to Chairman Joseph P. Lordi from Deputy Attorney General Stephen Becker, February 9, 1979.

P-7 Letter to Chairman Joseph P. Lordi from Deputy Attorney Ger Stephen Becker, September 6, 1979.

P-8 Memoranda to Deputy Attorney General Howard Barman from Thomas N. Auriemma, Senior Assistant Counsel, April 2, 1980.

P-9 Casino Service Industry Exemption Form for The Western Union Telegraph Co., June 5, 1978.

P-10 Memoranda of Law in Support of a Request for Exemption by The Western Union Telegraph Co.

P-11 Business Entity Disclosure Form of the exemption request of The Western Union Telegraph Co.

P-12 Example of a Comchek.

P-13 Example of a Western Union Telegraphic Money Order.

P-17 Stock prospectus for Comdata Network, Inc., February 15, 1980.

P-18 Emergency Order of the Casino Control Commission (80-CSI-1, 80-CSI-2).

P-19 Letter to Deputy Attorney General Howard Barman from Chairman Josep Lordi, April 18, 1980.

A-16

R-1 State Commission of Investigations Report, Part E. Casino Cus Relations.

R-2 Senate Committee Amendments to Assembly Committee Substitut Assembly, No. 2366, adopted April 25, 1977.

R-3 Letter to William Hoffman from Wallace R. Barr, October 17, 1979.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4059-79
CCC DOCKET NO. 79-EA-114

IN THE MATTER OF THE APPLICATION :	
OF CHARLES A. COMETA FOR :	
	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :	
(SLOT ATTENDANT) :	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Norman D. Smith of the Office of Administrative Law; and the Commission having considered the entire record of that hearing and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties; and the Commission having resolved at its public meeting of November 5, 1980, to affirm and adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure;

IT IS on this 5th day of December 1980, ORDERED that the Initial Decision of the Administrative Law Judge in matter be and is hereby affirmed and adopted; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the parties within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 5, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4059-79

AGENCY DKT. NO. 79-EA-114

IN THE MATTER OF:

CHARLES A. COMETA,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: August 4, 1980

Agency Received:

Decided: September 15, 1980

Mailed to Parties:

APPEARANCES:

Charles A. Cometa, Petitioner, Pro Se

Joseph Mussomeli, Esq., Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

BEFORE NORMAN D. SMITH, ALJ:

This matter concerns the application of Charles A. Cometa to the Casino Control Commission for a license as a casino employee (slot attendant) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement objected to petitioner's licensure and the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The objection of the Division of Gaming Enforcement rests on a single chain of events which are undisputed. I find the following facts to be true from the petitioner's own testimony:

1. Mr. Cometa filed his Personal History Disclosure Form with the Casino Control Commission on March 3, 1979. In response to question number 46 concerning arrests and criminal conduct and question number 49 concerning drug use and distribution, he failed to disclose that he used methamphetamines for approximately one year prior to December 2, 1978 and became addicted to that drug; he sold methamphetamines for approximately two months after December 2, 1978; he was arrested at his home on December 2, 1978 for the use and distribution of methamphetamines, a controlled dangerous substance.

2. Although the Personal History Disclosure Form was filled out by petitioner's mother, who was unaware of her son's conduct and arrest, the petitioner was completely aware of the omissions when he signed the form, under oath and filed it with the Casino Control Commission.

3. He intentionally failed to disclose his conduct and arrest in the hope that the Commission would not learn about it. However, in June 1979 when confronted with the omissions by a Commission investigator during a telephone interview, Mr. Cometa tried to explain them by stating that he misunderstood the questions. Mr. Cometa knew that it was not the truth when he made those statements to the investigator.

I CONCLUDE from the foregoing facts that Mr. Cometa failed to reveal facts material to qualification in violation of N.J.S.A. 5:12-86b. This conclusion requires denial of the petitioner's license.

I FURTHER CONCLUDE that the use and sale of methamphetamines, together with the failure of petitioner to disclose those facts on his Personal History Disclosure Form, render his proofs concerning his good character, honesty and integrity less than clear and convincing, in violation of N.J.S.A. 5:12-89b(2), as incorporated by reference in N.J.S.A. 5:12-90b. This conclusion also requires the denial of petitioner's application for licensure.

Finally, the possession and distribution of methamphetamines constitutes a high misdemeanor pursuant to N.J.S.A. 24:21-19 requiring disqualification by the terms of N.J.S.A. 5:12-86c(3) and N.J.S.A. 5:12-86g. There is some evidence that Mr. Cometa has taken the first steps on the road toward rehabilitation. He has apparently avoided any trouble with the law since the December 1978 arrest. He was also married, become a father, and worked diligently to support his new family. Nevertheless, the seriousness of the offense, its recent occurrence, and his failure to disclose it on his Personal History Disclosure Form prevents a finding that rehabilitation has been accomplished.

For the foregoing reasons, **IT IS HEREBY ORDERED** that petitioner's application for licensure be denied.

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

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

9/15/80
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

9/16/80
DATE

CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ms

LIST OF WITNESSES:

Charles A. Cometa
Detective Given
Joseph J. Patetta

LIST OF EXHIBITS:

P-1 Applicant's Personal History Disclosure Form

P-2 Letter from Joseph P. McGuiness dated March 14, 1980

P-3 Letter from Linda Goller dated August 1, 1980

P-4 Letter from John T. Casiero dated August 1, 1980

P-5 Letter from Joe McGinnis, District Manager, Ocean County dated July 24, 1980

P-6 Letter from Patrolman William X. Hauswirth, Jr., dated August 3, 1980

P-7 Letter from Edward A. Jeromski dated August 1, 1980

P-8 Letter from Barry Friedman dated August 2, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1438-79
CCC DOCKET NO. 79-EA-41

IN THE MATTER OF THE APPLICATION OF BARBARA D'ASCENZO FOR LICENSURE AS A CASINO EMPLOYEE	:	FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, the exceptions filed by the Division of Gaming Enforcement and the argument of counsel; and the Commission having resolved at its public meeting of November 5, 1980 to license the applicant as a casino employee;

IT IS on this 17th day of November 1980 ORDERED that the result recommended in the Initial Decision of Administrative Law Judge in this matter be and is hereby adopted substantially for the reasons set forth therein; and

IT IS FURTHER ORDERED that the application of Barbara D'Ascenzo for a casino employee license be and is hereby granted and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: November 17, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1438-79
AGENCY DKT. NO. 79-EA-41

IN THE MATTER OF:

BARBARA A. CALLABRESE D'ASCENSO,
Applicant
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: July 23, 1980
Agency Received:

Decided: September 5, 1980
Mailed to Parties:

APPEARANCES:

Jack Edward Granzow, Esq. for Applicant
Howard M. Barman, Deputy Attorney General for Respondent
(John J. Degnan, Attorney General of New Jersey, attorney)

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

This matter concerns the application of Barbara A. Callabrese D'Ascenzo to the Casino Control Commission for licensure to work in a casino as a cocktail waitress or bartender. By letter report to the Casino Control Commission dated March 23, 1979, the Division of Gaming Enforcement recommended that the applicant be denied licensure.

The applicant requested a hearing on her license application 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 issues to be determined in this matter are as follows:

1. Whether applicant for licensure as a casino employee has established by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2).

2. Whether applicant is an associate of career offenders or career offender cartels in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Casino Control Act and to gaming operations, pursuant to N.J.S.A. 5:12-86f.

3. Whether applicant has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of N.J.S.A. 5:12-86b.

The applicant is a 32 year old divorced mother of two who has been employed for nearly one year as a cocktail waitress under a temporary casino hotel employee license at Resorts International Hotel Casino. The Division of Gaming Enforcement contends the applicant should be denied licensure as a casino employee due to the nature of her association with two alleged career offenders, her father, Harry D'Ascenzo, Sr., and her former housemate, Robert Dougherty. Harry D'Ascenzo was convicted in 1977 on multiple counts of loansharking and was sentenced to concurrent terms of three to five years in the Trenton State Prison. Robert Dougherty was convicted in 1979 on pleas of guilty to charges of conspiracy to possess and distribute drugs, conspiracy to break and enter and possession of burglar tools, conspiracy to conduct bookmaking, loansharking and selling or passing counterfeit instruments. Mr. Dougherty is presently incarcerated for five to seven years on concurrent terms. As a result of their convictions, Messrs. D'Ascenzo and Dougherty could be subject to exclusion from casino premises generally, pursuant to N.J.S.A. 5:12-71. As a result of their conduct underlying their convictions, each may properly be described as a career offender, which is defined by

section 86f of the Casino Control Act as "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of the State."

A continuing association with a career offender would justly call into question the integrity of the regulation of legalized gaming where the nature and quality of the relationship creates a risk that the career offender might exercise some degree of influence or control over the association with regard to gaming operations or other business incidental to such operations. Opinion of the Casino Control Commission, In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, at page 19. Does the nature and quality of the applicant's relationship with her father or her boyfriend create such a risk? This question must be answered with an awareness of the relatively slight degree of influence on the proper functioning of legalized gaming which could be exerted by a person in the licensed position of cocktail waitress or bartender. This lack of direct involvement with the conduct of gaming operations is expressly recognized by the Casino Control Act, which excludes casino bartenders and waitresses from the prohibition against casino employee wagering. N.J.S.A. 5:12-100n.

The applicant's parents separated and divorced when she was a small child and she only saw her father on birthdays and Christmas until she was an adult. Her father did not pay for or participate in the applicant's wedding to Vincent Callabrese in April 1966. Approximately 9 years ago, Harry D'Ascenzo twice loaned his daughter small amounts of money when her husband's veteran grant payments were late. The money was promptly repaid. The applicant also performed receptionist work for her father's business on a voluntary, unpaid basis for a period of about 9 months beginning in 1974. The applicant had no knowledge of any criminal activities of her father until his conviction in 1977 of loansharking. The applicant last saw her father in December 1979, and does not know where her father presently resides. Because of his criminal background, indirect participation in gaming operations by Harry D'Ascenzo ought not to be tolerated. However, the evidence presented demonstrates that the applicant's minimal association with her father is of such a nature as to pose no appreciable threat to the proper functioning of legalized gaming in this State.

In contrast to her infrequent and insignificant contacts with her father, the applicant has had a close personal relationship with Robert Dougherty since January 1976 when they began living together. However, the applicant had no knowledge of

Mr. Dougherty's criminal record or activities prior to his arrest in January 1976. The applicant testified persuasively that her relationship with Mr. Dougherty after January 1976 was founded upon her demand and his assurance that his criminal conduct would cease. The applicant's former financial dependence on Mr. Dougherty arose from her inability to work as a result of injuries received in an automobile accident in 1975. The source of Mr. Dougherty's support of the applicant was his lawful employment as an iron worker. Mr. Dougherty's support and the applicant's financial dependence ceased in 1979 when he was sentenced to prison for several concurrent terms of no longer than 7 years, pursuant to convictions on pleas of guilty to multiple counts of his indictment arising from his 1976 arrest. The applicant's present employment on a temporary license as a cocktail waitress is the sole source of support for herself and her two daughters.

Aside from his former financial support, there is no indication that Mr. Dougherty exercised any significant influence or control over the applicant as a result of their romantic relationship. Rather than his being an unwholesome or corrupt influence upon her, it would appear that the applicant exerted influence upon Mr. Dougherty to enforce his assurance that his criminal activity had ceased. It is apparent that the applicant's relationship with Robert Dougherty, especially in view of his present incarceration, is of such a nature as to pose no appreciable threat to the proper functioning of legalized gaming.

N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of failure to reveal a fact material to qualification, or supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b of the Casino Control Act arises from the applicant's responses on her Personal History Disclosure Form to question No. 31, requiring disclosure of her employment history, and question No. 46, requiring disclosure of the arrest and conviction record of the applicant and her immediate family. The Division of Gaming Enforcement contends that the applicant should be disqualified from licensure due to her failure to list her employment with the Mark Construction Company, which was operated by her father. However, as previously noted, the applicant did not have an employment relationship with this Company. She performed her receptionist work with the Mark Construction Company on a voluntary, unpaid basis, without adherance to a regular schedule. Inasmuch as this work involved her relationship with her father, information concerning it is material to the evaluation of the applicant's

qualifications for licensure. However, not every failure to provide material information should result in disqualification from licensure. The applicant's unpaid work relationship with Mark Construction Company would not constitute "employment" as that term is commonly understood. Furthermore, there is no indication that the applicant was attempting in any way to conceal her relationship with her father, especially since she had revealed his criminal conviction record in response to question No. 46 of the Personal History Disclosure Form. The applicant's failure to reveal her work relationship with Mark Construction Company was not willful, nor did it evince a conscious disregard for the regulatory system.

The Division of Gaming Enforcement also contends that the applicant should be disqualified from licensure due to her failure to disclose in response to question No. 46 the 1973 conviction of her former husband, Vincent Callabrese, for possession of 21 cartons of untaxed cigarettes. However, the applicant's uncontroverted testimony persuasively established her ignorance of her former husband's arrest and conviction record. The applicant's failure to disclose a fact material to an evaluation of her qualification criteria, due to her ignorance of that fact, clearly ought not to result in her disqualification from licensure.

Although the proofs in the entire record fail to establish the existence of any of the section 86 disqualification criteria by a preponderance of the relevant and credible evidence, those proofs may nonetheless be considered as to the remaining issue of whether the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity. There is no evidence that the applicant has ever been arrested for, charged with or convicted of any criminal act or disorderly persons offense. The applicant has disclosed her relationship to two men who may be characterized as career offenders, and has persuasively established her ignorance of their criminal activities prior to their respective arrests. There is no indication that the applicant was involved in any way in the criminal activities of Harry D'Ascenzo or Robert Dougherty.

As a condition for the continuation of their relationship, the applicant required the assurances of Robert Dougherty that his criminal behavior would cease. Mr. Dougherty did not have a detrimental influence on the applicant during the time they lived together. On the contrary, it would appear that she influenced him, at least in part, to avoid further criminal involvement. The applicant's good character, honesty and

integrity have not been adversely affected by the nature of her association with the two career offenders. Furthermore, to the extent that the public's perception of the applicant's reputation for good character, honesty and integrity is relevant, there has been no showing that these affirmative criteria have been in any way tainted by the nature of her association with the career offenders. Although the two individuals achieved some notoriety due to newspaper coverage of their criminal activities, the coverage was totally silent concerning the applicant and would thus have no effect whatsoever on her reputation for good character, honesty and integrity. In any event, the applicant would not be denied licensure on the basis of an undeserved poor reputation, since she has affirmatively demonstrated that she possesses the requisite attributes of good character, honesty and integrity.

Having reviewed the testimony and other evidence offered in this matter (See Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, **I FIND:**

1. Under the name Barbara A. Calabrese, the applicant had applied for a license to permit her to work in a casino as a cocktail waitress. After her divorce from Vincent Calabrese on June 29, 1979, the applicant amended her application to include the position of bartender and to indicate the resumption of her maiden name of Barbara D'Ascenzo, as authorized by her divorce judgment.

2. The applicant has obtained employment experience as a waitress or bartender between 1975 and the present. She is currently employed as a cocktail waitress under a temporary casino hotel employee license at Resorts International Hotel Casino.

3. The applicant's father, Harry D'Ascenzo, was convicted in 1977 for loansharking, and is a career offender or an associate of career offenders within the meaning of N.J.S.A. 5:12-86f.

4. The applicant has had infrequent contact with her father since the age of 3, when her parents separated. There is no financial or other dependency existing between the applicant and her father, and the

applicant had no knowledge of and did not participate in any illegal activity of her father.

5. The applicant resided with Robert Dougherty from January 1976 until his incarceration after sentencing on numerous criminal charges in November 1979.

6. Robert Dougherty's incarceration resulted from his arrest prior to taking up residence with the applicant, and subsequent indictment, on charges of illegal gambling, loansharking, possession of drugs with intent to distribute, participation in a burgular ring, and various counts of conspiracy. Mr. Dougherty is a career offender or an associate of career offenders within the meaning of N.J.S.A. 5:12-86f.

7. The applicant did not participate in nor have any knowledge of the illegal conduct of Robert Dougherty or other career offenders with whom he acted. Although the applicant knew while dating Mr. Dougherty that he wagered on football games, she had no knowledge of his involvement in illegal bookmaking.

8. As a condition for the continuation of their relationship after his arrest, the applicant demanded of Mr. Dougherty and received his assurances that he would refrain from further criminal conduct. The applicant has no knowledge of any further criminal conduct by Mr. Dougherty since receiving his assurances.

9. The applicant has never been arrested, charged with or convicted of any crime or disorderly persons offense.

10. The applicant's failure to dislose on her Personal History Disclosure Form her voluntary, unpaid work for her father's business was merely inadvertent and did not evince a conscious disregard for the regulatory system. The applicant's failure to disclose the arrest and conviction of her former husband for possession of untaxed cigarettes in 1973 was the result of her complete ignorance of those events, rather than a willful failure to disclose a material fact.

ll. The applicant possesses the requisite attributes for licensure of good character, honesty and integrity.

The credible proofs in the entire record concerning the applicant's association with career offenders do not create a reasonable belief that the association is of such a nature as to either justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming, within the meaning of N.J.S.A. 5:12-86f. The credible proofs in the entire record also do not establish that the applicant has furnished untrue or misleading information, or purposely failed to disclose information material to licensure, within the meaning of N.J.S.A. 5:12-86b.

Based upon the foregoing discussion and the applicable statutory provisions, I **CONCLUDE** that the applicant should not be disqualified from receiving a casino employee license to work as a cocktail waitress or bartender, and I further **CONCLUDE** that the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her requisite qualifications for licensure. It is therefore **ORDERED** that a casino employee license, permitting the applicant to work in a casino as a cocktail waitress or bartender, be granted to applicant.

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

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

September 5, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

September 8, 1980
DATE

David Arajj
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Personal History Disclosure Form

FOR THE APPLICANT:

P-1 Divorce Decree
P-2 Real Estate Settlement Form

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Application to Winslow Township Police Department
R-2 Letter from South Jersey Chief's Association
R-3 Newspaper Article Dated May 21, 1976
R-4 Newspaper Article Dated November 10, 1976
R-5 Certified Statement of Conviction
R-6 Newspaper Article Dated February 11, 1975
R-7 Newspaper Article Dated December 18, 1978
R-8 Fifteen page arrest record and disposition
R-9 Cherry Hill Police Department Case Number Card
R-10 Arrest File Card dated September 23, 1976
R-11 Certified Judgment of Conviction
R-12 Newspaper Article Dated March 9, 1977
R-13 Newspaper Article Dated January 24, 1976
R-14 Newspaper Article Dated May 8, 1979
R-15 Newspaper Article Dated November 10, 1979
R-16 Newspaper Article Dated May 10, 1979
R-17 Three page memo from Deputy Attorney General DiMattia
R-18 Four page New Jersey State Police Report dated June 23, 1973
R-19 Investigating Report dated July 19, 1973
R-20 State of New Jersey v. Vincent Callabrese Judgment
R-21 Transcript of sentencing of Robert Dougherty

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-207

IN THE MATTER OF THE APPLICATION OF ROBERT A. FERRIN FOR LICENSURE AS A CASINO EMPLOYEE (CRAPS DEALER) DOCKET NO. 79-EA-207	FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on September 5, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge filed on June 26, 1980, the exceptions and objections to that Decision filed by the Division of Gaming Enforcement on July 21, 1980, the reply thereto filed by the Applicant on August 25, 1980, and the Commission having resolved to reject the Initial Decision of the Administrative Law Judge which recommended granting licensure and further having resolved to deny the application for licensure;

IT IS on this 5th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected in its entirety; and

IT IS FURTHER ORDERED that the application of Robert A. Ferrin for licensure as a casino employee be and hereby is denied for the reasons stated on the record of the public meeting of September 5, 1980 and in the Final Commission Decision of this matter to be issued by the Chairman, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Chairman be and hereby is authorized to issue a Final Decision on behalf of the Commission explaining the reasons for the rejection of the Initial Decision and setting forth the reasons for denying the application of Robert A. Ferrin for licensure as a casino employee; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: 9/5/80

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 0331-80
CCC DOCKET NO. 79-EA-207

IN THE MATTER OF THE APPLICATION :
OF ROBERT A. FERRIN FOR LICENSURE : FINAL COMMISSION DECISION
AS A CASINO EMPLOYEE (CRAPS DEALER):

Jack Plackter, Esquire, appeared for the Applicant.

Robert J. Melillo, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter arises out of the application of Robert A. Ferrin [hereinafter: the Applicant], who filed his application for licensure as a casino employee (craps dealer) with the Casino Control Commission on March 20, 1979. After conducting an investigation, the Division of Gaming Enforcement [hereinafter: the Division] objected to the licensure of the Applicant on the ground that the Applicant had failed to disclose his entire arrest and conviction record. See N.J.S.A. 5:12-86(b). Based upon the Division's objection, the Commission advised the Applicant by letter dated December 2, 1979, that there was a substantial possibility that his application would be denied.

On January 23, 1980, following the Applicant's request for a hearing, the Commission transmitted this matter to the Office of Administrative Law in accordance with N.J.S.A. 52:14B-10(c). A prehearing conference was held on March 20, 1980 and an Order entered. The matter proceeded to a formal hearing on May 19,

1980. With the permission of the Administrative Law Judge, the Applicant filed a letter from the Atlantic County Probation Off regarding his rehabilitation on June 4, 1980. The record was thereafter closed on June 11, 1980 upon the submission of memoranda of law by both parties. The Administrative Law Judge rendered his Initial Decision on June 26, 1980 in which he recommended that licensure be granted. A copy of the Initial Decision is appended hereto at A-1 to A-12 for convenient reference.

By letter dated July 17, 1980, the Division filed extensive exceptions and objections to the Initial Decision. By letter dated August 22, 1980, the Applicant filed a reply to the Division's exceptions and objections.

This matter came before the Commission at its public meet of September 5, 1980, at which time the Commission unanimously resolved to reject the Initial Decision and to deny the application for licensure. This Final Decision reiterates and supplements the reasons for the Commission's action in this case which were stated on the record at the public meeting of September 5, 1980.

The Applicant is 30 years old and a native of the Atlantic City area. In answer to question 46 of the Personal History Disclosure Form [hereinafter: PHDF], which inquires whether the Applicant or any member of his immediate family has "ever been arrested, indicted, charged with or convicted of a criminal or

disorderly persons offense in this State or in any other jurisdiction", he listed only two 1970 convictions for petty larceny which resulted from arrests in 1969 in Mays Landing and Linwood, New Jersey. However, the Applicant failed to list four other involvements with the criminal law.

On March 15, 1976, the Applicant was arrested in North Miami Beach, Florida and charged with grand larceny and receiving stolen property, namely, ten crates of iced fish, when a truck in which he was a passenger was stopped by police. The charges were subsequently dismissed after further investigation indicated that the Applicant was apparently unaware that the merchandise was stolen. (R-3; T76-78).[1]

On December 10, 1974, the Applicant was arrested in Hallandale, Florida and charged with aggravated assault following a barroom fight with another man over a game of pool. The fight, which the Applicant testified was initiated by the other man, resulted in serious personal injury requiring the hospitalization of the victim who was beaten severely about the head with a pool cue wielded by the Applicant (T69-71; T114-119). Following a plea of nolo contendere, adjudication of the Applicant's guilt was withheld pending his later successful completion of 18 months probation and payment of restitution to the victim for hospital expenses (R-2; R-6; T111).

---

[1] This notation indicates that the referenced statement was introduced into evidence at the hearing. Documents and other materials so introduced will be identified by the following code: "P" for Petitioner and "R" for Respondent.

References to the transcript of the May 19, 1980 hearing will be signified by a "T" followed by the relevant page number.

On October 7, 1971, the Applicant was arrested and charged with disorderly conduct and resisting arrest in East Hampton, New York. These charges arose out of a barroom fight between the Applicant and a man with whom the Applicant's wife was having "somewhat of an affair" (T77). The police were summoned and the Applicant, who had sustained a broken nose in the altercation, resisted police efforts to take him to a hospital, kicking and pushing a policeman in the process. The Applicant was later convicted on a plea of guilty to the offense of resisting arrest and disorderly conduct (T107-108).

On November 5, 1969, the Applicant was stopped by an Atlantic City policeman for a traffic violation while in possession of a stereo tape deck which the officer suspected was stolen. The Applicant was arrested and the matter proceeded to a hearing in municipal court in which the victim of the theft stated that the subject tape deck was not the one stolen from her. The charges were thereupon dismissed (T63-64).

The Administrative Law Judge determined that the first three of these nondisclosures were "inadvertent or mistaken and therefore excusable" (A-12). The fourth nondisclosure, pertaining to the 1969 arrest in Atlantic City, passed without mention in the Initial Decision.

Under N.J.S.A. 5:12-86(b), the failure of an applicant to provide information requested by the Commission or failure to reveal any fact material to qualification constitutes a disqualifying event. Also, depending upon the circumstances, such failure may reflect adversely on the overall character and integrity of the Applicant. See N.J.S.A. 5:12-89(b)(2) and 90(b). However, as we have previously held, "...not every

failure to provide material information should be deemed a disqualifying event ..... Merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 at 13 (1979) [hereinafter: Resorts]. Willful nondisclosures or those evincing a conscious disregard for the regulatory will result in disqualification. Ibid.

At the hearing, the Applicant first stated that at the time he filled out his PHDF, he felt that question 46 sought a response only as to criminal convictions, not arrests that did not result in a conviction (T122). He also averred that he had completely forgotten about the 1971 East Hampton arrest and conviction (T102). Further testimony revealed that, when interviewed by a Division investigator on September 18, 1979, the investigator read to the Applicant an additional instruction regarding question 46 on the PHDF.[2] The Applicant at that point revealed the two Florida incidents in 1976 and 1974. However, he again failed to mention the 1969 Atlantic City arrest or the East Hampton arrest and conviction. The investigator then questioned the Applicant about the Atlantic City

---

[2] This instruction, which was not part of the Applicant's PHDF but which has since been incorporated into current PHDF's, reads as follows:

> ... For the purpose of this question, the words "arrest", "indictment", or "charge" include any questioning, detaining, holding or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other State or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations. The only such "arrest", "indictment", or "charge" which an applicant is not required to disclose on this application is the one which has been legally expunged by a written order of a court of this State.

arrest and also asked if he had ever been in East Hampton. The Applicant had no recollection of the Atlantic City arrest and advised that he would check into it, which he did, imparting the relevant and correct information to the investigator the following day. The Applicant at that point also recalled the East Hampton arrest and conviction, but claimed at the hearing herein to have completely forgotten about it, both at the time he filled out the PHDF and at the interview, prior to the investigator's mention of it (T65-66; T132; T173-174).

We are not concerned with the Applicant's failure to disclose the 1969 Atlantic City stolen property arrest. From our review of the entire record, we are satisfied that, as found by the Administrative Law Judge, the Applicant genuinely confused this arrest with the other two New Jersey petty larceny arrests whic occurred at approximately the same time. See page 2, ante. Thus we find that this nondisclosure was neither willful nor in conscious disregard of the regulatory process, and therefore that it should not result in disqualification. Resorts, supra; see also In the Matter of the Application of Harl Lee Cooper for Licensure as a Casino Employee Docket No. 79-EA-34 at 16 (1980) [hereinafter: Cooper]. However, we do not reach the same conclusion with regard to the other three incidents which the Applicant failed to disclose in his answer to question 46.

As noted above, the Applicant's explanation for not disclosing the two Florida arrests was that he understood the question to only require disclosure of those arrests which

resulted in convictions. Such an interpretation is, of course, in patent conflict with the express language of question 46. The Legislature has explicitly placed upon applicants for licensure the affirmative responsibility of producing information to establish their qualifications under the Act, the burden of demonstrating such qualifications by clear and convincing evidence, and the continuing duty to provide requested information and to cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b),and (c); 89(b); 90(b) and 91(b). Moreover, the Legislature has also mandated that an applicant's failure to provide the same must result in disqualification. N.J.S.A. 5:12-86(b).

The Commission is charged with the responsibility of "strict State regulation" of "all persons" related to the operation of the casino industry and of maintaining "public confidence and trust in the credibility and integrity of the regulatory process" (N.J.S.A. 5:12-1(b)(6),(7),(8),and (9)), and we cannot ignore this clear legislative mandate. See Cooper, supra at 16-17. In light of the Applicant's educational and business background, described in the Initial Decision, coupled with the fact that he is obviously no stranger to the criminal justice system, we find it patently incredible that the Applicant could have misunderstood the true import of question 46.

We also find incredible the Applicant's assertion that he forgot about the 1971 arrest and conviction in East Hampton. The

offense was certainly of a serious nature. It resulted in personal injury to the Applicant as well as his arrest. These events were attended by a scuffle with the police, after which the Applicant was physically restrained, handcuffed, taken into custody and confined for the night in jail. Upon his appearance in court and plea of guilty the following morning, he paid a find of $550. These events are simply not, in our view, so innocuous, common and forgettable as the Applicant would have us believe.

Given all these circumstances, we simply are not persuaded that the Applicant's nondisclosures were inadvertent or mistaken. To the contrary, we find that these nondisclosures were intentional and made in conscious disregard of the regulatory process. Therefore, we find the Applicant to be disqualified pursuant to N.J.S.A. 5:12-86(b).

We next consider whether the Applicant is also disqualified under Section 86(c) or (g) of the Act. (N.J.S.A. 5:12-86(c) and (g)). The Division contends in its exceptions that the Applicant's conduct in 1974 in Hallandale, Florida constituted aggravated assault and should be considered a basis for disqualification under Section 86(g) which provides for disqualification based upon the commission, even in the absence of conviction, of any act or acts which would constitute a disqualifying offense under any subparagraph of Section 86(c). However, no such issue was specifically set forth in the Prehearing Order

issued on March 27, 1980, nor was it expressly raised in the discussion of issues on the day of the hearing. Although substantial testimony concerning the incident was adduced in connection with the nondisclosure issue, the simple fact is that the Division did not proceed on this "underlying conduct" theory at the hearing. To permit it to do so at this juncture would, we believe, not be entirely fair to the Applicant, who was not afforded the opportunity to meet such an issue at the hearing. Accordingly, we will not consider the Applicant's conduct underlying the Hallandale offense as a basis for disqualification under Section 86(g) and (c). However, as will be further discussed herein, the Commission may, and in this case we do, consider the conduct underlying the offense insofar as it bears upon the Applicant's reputation for good character, honesty and integrity.

The Division also contends that the Applicant's 1971 conviction for resisting arrest[3] constitutes a disqualifying offense under Section 86(c)(1) or (2). The Administrative Law Judge rejected this contention, and while we agree with the conclusion that the Applicant is not automatically disqualified by reason of the East Hampton conviction, we disagree with the

---

[3] No issue is raised concerning the conviction on the disorderly conduct charge.

rationale upon which that conclusion is premised. We therefore find it necessary to set forth our interpretation of pertinent sections of the Act under the circumstances presented here.

A threshold question in connection with this issue is whether the Applicant's offense should be initially measured against New Jersey crimes as defined in Title 2A or Title 2C of the New Jersey Statutes. This question arises because Title 2C, the New Jersey Code of Criminal Justice, did not become effective until September 1, 1979. Its effect, of course, was to repeal the vast bulk of Title 2A. Partly in response to this change in the criminal law, Section 86(c) of the Casino Control Act was amended, effective January 9, 1980, to create two separate lists of automatically disqualifying convictions. Section 86(c)(1) delineates the disqualifying Title 2C offenses and Section 86(c)(2) sets forth the comparable Title 2A offenses.

The Administrative Law Judge and the Division both expressed the view that the date of the application, i.e., the date an Applicant's PHDF is filed with the Commission, is the operative date for the purpose of determining which version of New Jersey Criminal Law should be applied, as well as for the purpose of whether the pre- or post-amendment version of Section 86(c) should be applied to the conduct of the question. We hold that this conclusion is correst as to the criminal law, but incorrect as to the application of Section 86(c).

That the conduct of the Applicant in question should be measured against the New Jersey Criminal Law in effect at the time of the filing of the application is obvious from the plain

terms in Section 86(c), which provides:

> 86. Casino License--Disqualification Criteria. The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> . . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law: ... N.J.S.A. 5:12-86(c) (emphasis added).

However, we believe, and so hold, that there is no compelling reason why the Commission should not apply the version of Section 86 existing at the time the Commission passes on the matter. The general prohibition against retroactive laws or ex post facto laws does not generally apply where the subject of the legislation concerns proper qualifications for a profession or license, as opposed to punishment or making criminal an act which was legal when done. See generally, 2 Sutherland, Statutory Construction, Section 4203 at 317-318 (4th ed. Sands 1973).

Accordingly, the proper analytical approach in matters of this type is to first determine whether the pertinent provisions of Title 2A or Title 2C of N.J.S.A. were in effect at the time the application was filed, and then to refer initially to the appropriate list in Section 86(c) as amended. If the application was filed after September 1, 1979, the Title 2C list, Section 86 (c)(1) is controlling. If, as here, the application was filed before September 1, 1979, the Title 2A list, Section 86 (c)(2)

should first be consulted. If the conviction or conduct at issue fits the definition of an offense set forth in the Section 86 (c)(2) Title 2A list, the applicant involved is nevertheless afforded the opportunity by Section 86(c)(4) to escape disqualification as follows:

> ...provided further however, that, any applicant ... who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant ... demonstrates to the Commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for a disqualification pursuant to paragraph (1) of this section;
>
> . . . .

Thus, conduct constituting an offense on the Title 2A list of Section 86(c)(2) is not a disqualification if it is shown not to constitute an offense on the Title 2C list of Section 86(c)(1).

Here, the Applicant filed his PHDF on March 20, 1979, nearly six months prior to the effective date of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., L. 1978, c. 95 (effective date September 1, 1979), and approximately ten months before N.J.S.A. 5:12-86(c) was amended by L. 1979 c. 282 (effective January 9, 1980). The conduct of the Applicant relevant to this discussion is resisting arrest (with which he was charged) and assault and battery on a police officer (with which he was not charged, but of which there is some evidence in the record). In March 1979, the common law indictable offense

of resisting arrest was proscribed by N.J.S.A. 2A:85-1. See State v. Lawrence, 142 N.J. Super. 208 (App. Div. 1976); State v. Blanton, 166 N.J. Super. 62 (App. Div. 1979), certif. den., 81 N.J. 265 (1979). The Administrative Law Judge here failed to recognize the applicability of N.J.S.A. 2A:85-1 which proscribed all common law offenses of an indictable nature not otherwise provided for by statute.

N.J.S.A. 2A:85-1 was a listed offense in the original Section 86(c), and the Division, seeking to apply the pre-amendment version of 86(c), asserts that the Applicant is therefore disqualified. But as we have noted, the proper approach is rather to apply the presently existing version of Section 86(c). So doing, we find that N.J.S.A. 2A:85-1 does not appear on the present list of Title 2A offenses. N.J.S.A. 5:12-86(c)(2). Accordingly, the Applicant's conviction for resisting arrest, viewed as such alone, would not, under New Jersey law at the time of his application, have been a violation of any listed provision of N.J.S.A. 5:12-86(c)(2).

However, as noted above, the record shows the Applicant to have kicked and shoved a police officer in the course of resisting arrest. These acts could reasonably be viewed as constituting a violation of N.J.S.A. 2A:90-4, which proscribed assault and battery on a police officer. N.J.S.A. 2A:90-4 did not appear on the list of offenses in the pre-amendment version of 86(c), but is now listed in 86(c)(2). After noting this fact, the Administrative Law Judge went on to correctly conclude under

the "escape clause" of Section 86(c)(4) that the Applicant's assault would nevertheless not constitute a disqualifying offense on the Title 2C list in 86(c)(1) and therefore does not now disqualify him.

Such conduct is now termed aggravated assault and is proscribed under N.J.S.A. 2C:12-1(b)(5)(a). It is an automatically disqualifying offense under Section 86(c)(1) only if it constitutes a crime of the second or third degree. Pursuant to N.J.S.A. 2C:12-1(b), for an assault of a police officer to constitute a crime of the third degree, the victim must suffer some bodily injury. The Administrative Law Judge found, and we agree, that there is no evidence in the record to show that the officer or officers whom the Applicant apparently assaulted suffered any bodily injury. Therefore, no automatic disqualification should result by reason of this offense. N.J.S.A. 5:12-86(c)(4).

The Division further contends that, if such conduct is not an automatic disqualification under Section 86(c)(1) or (2), then the offense of resisting arrest should be deemed to be an offense which renders the Applicant's licensure inimical to the policy of the Casino Control Act and to casino operations within the meaning of N.J.S.A. 5:12-86(c)(4). The Administrative Law Judge did not address this issue in his Initial Decision, and in light of our disposition of the other issues raised herein, we need not consider it further. Accordingly, we make no finding

or conclusion as to whether or not the offense committed by the Applicant in East Hampton itself indicates that his licensure would be inimical to the policy of the Act or to casino operations.

It is, however, appropriate for us to consider the issue of the Applicant's reputation for good character, honesty and integrity. Section 89(b)(2) (N.J.S.A. 5:12-89(b)(2)) made applicable to casino employees by Section 90(b) (N.J.S.A. 5:12-90(b)) requires the Applicant to prove his reputation for good character, honesty and integrity by clear and convincing evidence. Our review of the entire record leads us to the conclusion, contrary to that of the Administrative Law Judge, that the Applicant has not met this burden. The Applicant's involvement in criminal adventures stretches back to 1969 when, at the age of 19, he was twice arrested and convicted of petty larceny offenses in Ventnor and Mays Landing, New Jersey. (R-5; R-6; T123-126). At the time of these offenses, the Applicant was absent without leave from the Marine Corps (T80), and was later discharged under other than honorable conditions based upon these civilian criminal charges and also his admitted use of illegal drugs (T83-85; T134-137). Recently, this discharge was administratively changed to one occurring under honorable circumstances (T83). In October 1971 and December 1974, the Applicant was involved in relatively serious barroom fights, the details of which need not be restated here. Also, the Applicant admitted at the hearing that when

he applied for a real estate license sometime in 1977, he failed to disclose the complete extent of his criminal record (T44; T139). Further, the Applicant also admitted that when he obtained an order of removal of his statutory disqualification from employment in the alcoholic beverage industry in 1978, he falsely averred that he had not been convicted of any crime since 1970 (P-3; T141). Lastly, and perhaps most importantly, there is the matter of the Applicant's recent nondisclosures in his PHDF which we have heretofore found to be intentional and in conscious disregard of the regulatory process. All of the foregoing facts, we find, reflect most negatively upon the Applicant's good character, honesty and integrity.

We have weighed all the positive evidence adduced by the Applicant on this issue and have considered the advancements he has made in his educational and business endeavors. While we find these latter efforts commendable, we cannot conclude that they, in combination with other positive character evidence in the record, constitute the required demonstration by clear and convincing evidence of good character, honesty and integrity. Accordingly, we find that the Applicant has failed to establish these affirmative criteria as required by Section 89(b)(2) and 90(b) of the Act.

Lastly, we should address the finding of the Administrative Law Judge that the Applicant has affirmatively demonstrated his

rehabilitation under N.J.S.A. 5:12-90(h)[4] . Preliminarily, it should be noted that the Administrative Law Judge correctly determined that, though the statute does not so expressly provide, the Applicant has the burden of proving rehabilitation by clear and convincing evidence (A-10). However, we do not agree with the Administrative Law Judge's finding on the merits of the issue here. We have previously held that while the proofs necessary to establish rehabilitation and reputation for good character, honesty and integrity are not necessarily co-extensive, there is, in most cases, significant overlap. In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113 at 2 (1980); In the Matter of the Application of Carroll A. Johnson for Licensure as a Casino Hotel Employee, Docket No. 79-EA-133 at 15 (1980). In this case, the factors which led us to conclude that the Applicant has not proved his reputation for good character, honesty and integrity, particularly the nondisclosures on his PHDF, compel a finding adverse to the Applicant on the issue of his rehabilitation. We therefore reject the Administrative Law Judge's finding on this issue and conclude that the Applicant has failed to demonstrate

---

[4] It was unnecessary for the Administrative Law Judge to address this issue because he found no disqualifying conviction or conduct under Section 86(c). He determined this issue on the assumption that such a disqualification appears in the record. We address this determination here essentially because it is inconsistent with our findings above with regard to the Applicant's character.

his rehabilitation under Section 90(h) by clear and convincing evidence.

In summary, we conclude that the Applicant is disqualified pursuant to N.J.S.A. 5:12-86(b) by reason of his intentional failure to disclose his entire arrest and conviction record. The Applicant has also failued to prove by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b). Accordingly, based upon all of our findings set forth above in this Decision, the Initial Decision of the Office of Administrative Law is rejected in its entirety and the application of Robert A. Ferrin for licensure as a casino employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: January 29, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In the Matter of:)	INITIAL DECISION
APPLICATION OF ROBERT A. FERRIN) FOR LICENSURE AS A CASINO EMPLOYEE/CRAPS)	OAL DKT. NO. C.C.C. 0331-80 Agency Dkt. No. 79-EA-207

APPEARANCES:

HORN, KAPLAN, GOLDBERG & GORNEY, ESQS.
Attorneys for applicant
by: Jack Plackter, Esq.

John J. Degnan, Attorney General of New Jersey
for Division of Gaming Enforcement
by: Robert Melillo, Deputy Attorney General

EXHIBITS MARKED IN EVIDENCE:

P-1 Letter of recommendation, May 16, 1980, J. Floyd Malick, Jr. to whom it may concern

P-2 Letter of recommendation, May 18, 1980, H.E. Hines, Manager, Atlantic City Gray Line, to whom it may concern

P-3 Order, May 4, 1978, of State Alcoholic Beverage Control Director, removing applicant's statutory disqualification for employment in alcoholic beverage industry for conviction of crime in 1970.

P-4 PHDF-2 (blank form)

P-5 Letter re applicant's rehabilitation, June 3, 1980, Betty Lou Sochocky, Atlantic City principal probation officer I, to Casino Control Commission

New Jersey Is An Equal Opportunity Employer

R-1 Applicant's arrest record and certificate of conviction in East Hampton Town Court, Suffolk County, New York on October 7, 1971 for disorderly conduct and resisting arrest.

R-2 Applicant's arrest record for aggravated assault in Hallandale, Broward County, Florida, on December 10, 1974; and order of circuit court on June 3, 1975 withholding adjudication of guilt on nolo contendere plea and decreeing $500 restitution and 18 months probation.

R-3 Applicant's arrest record for grand larceny and receiving stolen property (10 crates iced fish) in No. Miami Beach, Dade County, Florida on March 15, 1976; and nolle prosse by state attorney because applicant "had no knowledge of property in trunk /of vehicle/."

R-4 Applicant's arrest record, possession of stolen tape deck, Atlantic City, November 5, 1969; disposition to grand jury.

R-5 Applicant's arrest record, breaking, entering and larceny, Atlantic City on April 21, 1969.

R-6 Applicant's FBI rap sheet

R-7 PHDF-2

R-8 Letter re Applicant's rehabilitation, February 27, 1978, Betty Lou Sochocky, Atlantic County principal probation officer II, to New Jersey Real Estate Commission; and letter, March 1, 1978, J. Floyd Malick, Jr. to New Jersey Real Estate Commission.

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

This is a Casino Control licensure proceeding by Robert A. Ferrin for licensing as a casino employee/craps dealer under N.J.S.A. 5:12-7,89(b), 90. Having filed his application on March 20, 1979, the applicant was informed by the Commission, on December 12, 1979, that based on information contained in the investigative report of the Division of Gaming Enforcement on December 7, 1979 there "was a substantial possibility that the

Commission will deny your application." On January 4, 1980 applicant exercised his right to request a hearing on the proposed denial pursuant to N.J.A.C. 19:42-2.2. The matter was thereupon transmitted to the Office of Administrative Law on January 23, 1980 for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-9,10.

A prehearing conference was held on March 20, 1980 in the Office of Administrative Law and an order entered. The matter proceeded to formal hearing on May 19, 1980 and June 4, 1980. The record was closed thereafter on June 11, 1980 upon receipt of memoranda of law from the parties.

At issue are the following:

A. Whether applicant's answer to question no. 46 (which referred to other arrests only) of the PHDF-2 constituted a disqualifying material non-disclosure, contrary to N.J.S.A. 5:12-86(b), by reason of:

   1. applicant's arrest in Hallandale, Florida on December 3, 1974 for aggravated assault;

   2. applicant's arrest in North Miami Beach, Florida on March 15, 1976 for grand larceny and receiving stolen property.

B. Whether applicant's answer to question no. 46 (which referred to other arrests only) of the PHDF-2 constituted a disqualifying material non-disclosure, contrary to N.J.S.A. 5:12-86(b), by reason of applicant's arrest in East Hampton, New York, for assault on October 7, 1971 and conviction thereon for resisting arrest and disorderly conduct.

C. Whether applicant's conviction in "B" above is the equivalent under N.J.S.A. 5:12-86(c), and thus disqualifying from licensure, of a conviction in New Jersey under N.J.S.A. 2C:12-1(b)(5)(a).

D. Assuming applicant to be disqualified for conviction of an equivalent offense enumerated in N.J.S.A. 5:12-86(c), i.e. resisting arrest and disorderly conduct

in East Hampton, New York on October 7, 1971, whether, nevertheless, he shall have affirmatively demonstrated his rehabilitation in accordance with N.J.S.A. 5:12-90(h) and shall therefore be entitled to licensure.

E. Whether applicant shall have proven by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2).

Robert A. Ferrin is a 30 year native of the Atlantic City area where he has lived for all but six years of his life. He attended public schools in Ventnor and in 1968 received a graduate equivalency diploma from Stevens Institute in Hoboken. He attended Miami-Dade Junior College and after transferring to Atlantic Community College received an associate degree in hotel services in 1978. He is a licensed New Jersey real estate salesman and holds a lottery license for sales and claims. Since 1976 he has operated a coffee shop partnership in Atlantic City. He is a 1979 graduate of courses at East Coast Gaming School.

In answer to question no. 46 of the Personal History Disclosure Form-2 whether he or any member of his family had ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction, applicant disclosed only two "petit larceny" convictions in 1970. He did not disclose three other arrests, with one conviction, that are the subject of the Division's exhibits R-1, 2 and 3 (see also R-6).

On October 7, 1971, in East Hampton, Suffolk County, New York, applicant was arrested for, charged with and convicted of violation of Section 240.20 subdiv. 1 (disorderly conduct) and Section 204.30 (resisting arrest) of the New York Penal Law. He was fined $50 on the first charge and $500 on the second. A police incident report showed he became intoxicated in a tavern and attacked his wife. When police responded he became abusive, kicking and shoving an officer before being subdued. He was jailed overnight and next day pleaded guilty to the charges in municipal court. See R-1.

On December 10, 1974, in Hallandale, Broward County, Florida, applicant was arrested and charged with aggravated assault. R-2. The police incident reports showed applicant became embroiled with a patron at a tavern while they were playing pool. Applicant was said to have struck the victim repeatedly with a pool cue, injuring him to the extent hospitalization was needed. By order of the circuit court of Broward County on applicant's plea of nolo contendere on June 3, 1975,

adjudication of applicant's guilt was withheld: he was placed on probation for 18 months and was ordered to make restitution of $500 to the victim. His supervisory probation was later transferred to the Atlantic County Probation Office and successfully terminated on December 3, 1976. See also P-5.

On March 15, 1976 in North Miami Beach, Dade County, Florida, applicant was arrested in company with another and charged with grand larceny and receiving stolen property (F.S. 812.021,031). The contraband was ten crates of iced fish. Subsequent investigation prompted the state attorney to move to dismiss the charges on the ground applicant was only a passenger in the truck and had no knowledge of property in the trunk. R-3.

Applicant testified that until informed otherwise by a Division investigator he did not know the PHDF-2 required him to disclose arrests that did not result in convictions. For that reason, he said, he did not disclose either the Hallandale or North Miami Beach incidents. He said he thought about the Hallendale incident but felt it was not reportable because since he pleaded nolo contendere there was no conviction after he made restitution and served his probationary period. He admitted he knew the victim was seriously hurt.

About the 1971 East Hampton matter, applicant said he had forgotten it. He admitted being intoxicated that night and angry when he confronted his wife in the tavern. There was a fight, police came and he kicked and pushed one of the officers. The Division investigator testified applicant told him he had forgotten the incident but that applicant appeared nervous and unsettled during interview.

Applicant offered in evidence two letters attesting to his good character (P-1, 2), an order of the State ABC Director (dated 5/4/78) removing statutory disqualification from employment in the alcohol beverage industry for conviction of crime (P-3), and produced a long-time family friend as a character witness. The crime referred to in P-3 was a 1970 larceny.

Applicant introduced by consent of the Division a letter dated 6/3/80 from the Atlantic County Probation Office (P-5) that recited his supervisory history by that office. Specifically referred to were the two larceny convictions in Atlantic County in 1970, which applicant disclosed on his PHDF-2, and the referred probationary supervision from Hallandale in 1975-76. The author of the letter, a principal probation officer, said the Office has had no contact with him since discharge from supervision on 12/3/76 after he made a satisfactory adjustment. "It would appear", she said, "that he has made every effort to rehabilitate himself."

DISCUSSION

I

Is applicant's conviction in 1971 in East Hampton for resisting arrest (N.Y. Penal Law, sec. 205.30) a conviction that under New Jersey law at time of application would be disqualifying under N.J.S.A. 5:12-86(c)?

I think not. At time of license application here on 3/20/79, the New Jersey Code of Criminal Justice was not yet in effect. The code, L. 1978, c. 95, was approved 8/10/78, to take effect 9/1/79. At that time, 3/20/79, the statutory crime of resisting arrest did not exist and assault and battery on a police officer (N.J.S.A. 2A:90-4) was not listed under N.J.S.A. 5:12-86(c). The latter pre-code crime was not so listed until the amendatory act, L. 1979, c. 282, was approved 1/9/80. Pre-code, resisting arrest was typically prosecuted as a disorderly persons offense under N.J.S.A. 2A:170-26(simple assault and battery).

Now N.J.S.A. 5:12-86(c)(1) and (2), the 1980 amendment lists N.J.S.A. 2C:12-1b (aggravated assault of the second or third degrees) under N.J.S.A. 5:12-86(c)(1). The amendment retains the time of application test. Applicant's qualification or disqualification under N.J.S.A. 5:12-86(c), therefore, must be measured under the state of the law at the time of application, 3/20/79, pre-code and pre-amendment.

But I think even if that were not the case, and even if the New Jersey Code of Criminal Justice and the 1980 amendment to the Casino Act were in force at the time of application, the East Hampton conviction would still not be an automatic bar to licensure. N.J.S.A. 5:12-86(c)(1) presently lists N.J.S.A. 2C:12-1b (aggravated assault of the second or third degree) as a specific statutory disqualifier:

> "b. Aggravated assault. A person is guilty of aggravated assault if he... (5) commits a simple assault ... upon (a) any law enforcement officer acting in the performance of his duties ...
>
> Aggravated assault under ... subsection b.(5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree."

On the other hand, N.J.S.A. 2C:29-2, which is not a statutory disqualifier, provides:

> "Resisting arrest. A person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from effecting a lawful arrest..."

By comparison, the New York Penal Law, sec. 205.30, basis for applicant's conviction in East Hampton, provides:

> "Resisting arrest. A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a peace officer from effecting an authorized arrest of himself or another person ..."

Source for both the New York and New Jersey resisting arrest offenses appears to be section 242.2 of the Modern Penal Code. Their similarity is persuasive of the proposition that a conviction under sect. 205.30 of the New York Penal Law is the equivalent in New Jersey of conviction of a non-disqualifying disorderly persons offense under N.J.S.A. 2C:29-2. I am reluctant to conclude, and therefore do not, that the East Hampton conviction is the equivalent in New Jersey of conviction of the third degree crime of aggravated assault under N.J.S.A. 2C:12-1b(5)(a). Even if one were to go behind the judgment of conviction (R-1), there is to be found there no credible evidence of bodily injury to the police officer: the police incident report as well as the language of the criminal complaint merely say defendant kicked and shoved the officer. Facially and upon the record here, therefore, no equivalent disqualifying third degree aggravated assault is made out under N.J.S.A. 2C:12-1b(5)(a), which in turn is presently listed under N.J.S.A. 5:12-86(c)(1).

II

Is applicant disqualified from licensure for non-disclosure of arrests in Hallandale and North Miami Beach and the East Hampton conviction? A literal application of N.J.S.A. 5:12-86(b) would mandate disqualification. The Commission at least once, however, has said "merely inadvertent or ignorant failures to disclose should clearly not be deemed disqualifying events". See In the Matter of the Application of Harl Lee Cooper for Licensure as a Casino Employee, Docket No. 79-EA-34, decided 2/7/80, at p. 16. Applicant did disclose two convictions in 1970 on his PHDF-2 but when prompted later by a Division investigator readily disclosed the Hallandale, North Miami Beach and East Hampton incidents. He said he thought the first two need not be disclosed

because no convictions, and thus no criminal records, resulted. He said he forgot about the East Hampton incident in 1971. In light of the entire record, I am content to view his non-disclosures as excusably inadvertent or mistaken.

III

But even assuming applicant's putative disqualification under N.J.S.A. 5:12-86 for criminal conviction, is his application nevertheless saved from rejection by N.J.S.A. 5:12-90(h) if he has made an affirmative demonstration of rehabilitation? At the threshold, one must know first the quality of proof of rehabilitation the Legislature required in the recent amendment of Section 90(h). Applicant argues a construction of the amendment to require proof by mere preponderance of the evidence. The Division argues the intended standard is by clear and convincing evidence. The two standards are familiar and, of course, different. Upon a reading of the original act and the amendment together as an integrated, coherent whole, I think the legislative intent is to require rehabilitation to be shown by clear and convincing evidence and not by a mere preponderance. Section 90(h) should be read, I think, as an allocation of the burden of proof between parties and not as a definition of the quality of proofs necessary to sustain it. One must note the legislative model for the language in Section 90(h). The Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168-1,2, employed the same eight rehabilitation factors but put the burden there on the licensing authority to "explain in writing" how they relate to the license sought. N.J.S.A. 2A:168-2. It is a reasonable construction of N.J.S.A. 5:12-90(h), therefore, that the Legislature regarded those factors as necessary for determination of rehabilitation but intended the burden of affirmatively demonstrating it to be borne not by the Casino Control Commission as a licensing authority but by the applicant.

Generally, it is said, amendments are to be construed together with the original act to which they relate, as part of one law and one coherent system of legislation. 82 CJS Statutes, sec. 384, pp 896-7. The original act is presumed to have been within the knowledge and view of the Legislature, which is regarded as having adopted the new in light of the old. See Newark v. Rockford Furniture Co., 4 N.J. Super 205, 208-9 (App. Div. 1949) ("... the amendatory provisions and amended acts are to be harmonized, if possible, to give effect to each and leave no clause in either inoperative"). Left in tact by

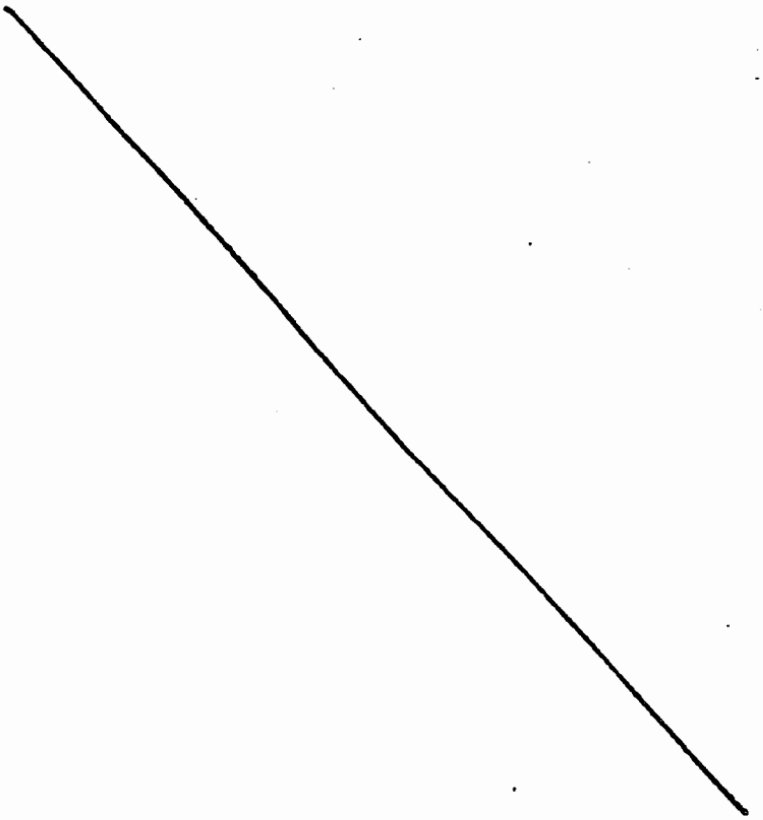
enactment of Section 90(h) is the general provision under article 6, Licensing, that:

> "It shall be the affirmative responsibility of each applicant ... to establish by clear and convincing evidence his individual qualifications ..." N.J.S.A. 5:12-80(a).

Likewise untouched by the 1980 amendment are disqualification criteria generally under N.J.S.A. 5:12-86(a): e.g.,

> "Failure of the applicant to prove by clear and convincing evidence (he is) qualified."

To indulge applicant's preponderance argument as to legislative intent is to render inoperative the generality of section 80(a) in rehabilitation issues.



Integration of amendments with original acts is analogous to the process of reading separate acts in pari materia. Bizarre results will not in such case be attributed to the legislative intent. Cf. Hyland v. Kehayas, 157 N.J. Sup 258, 262 (App. Div. 1978):

> "Were we to conclude otherwise it would follow that those licensees whose misconduct results in criminal convictions and who are therefore eligible to be considered for a certificate of rehabilitation are protected from revocation whereas those whose misconduct falls short of criminality are not. We will not ascribe so illogical a purpose to the legislative intent ..."

By a parity of reasoning, if one were to accept the preponderance thesis argued for by applicant, one would be faced with the paradox that applicants rehabilitated from crimality are given easier avenues to licensure than those whose reputations for good character, honesty and integrity, though devoid of criminality, remain in question.

IV

Is applicant rehabilitated?

He has applied for casino employee licensing as a craps dealer, a position requiring access to the floor of the casino but not a supervisory capacity or such that would empower him to make discretionary decisions regulating casino operations. N.J.S.A. 5:12-7,9. Though presumably a position of trust, it is a position in which close supervision of his work is assured.

He is 30 years old now and one may note his collisions with the criminal justice system occurred when he was between the ages of 21 and 26. Fighting, drunkenness and petty theft seem to have characterized his record, the most serious delinquency in which being that in Hallandale, Florida in 1975. Installed in a pretrial intervention program by the Florida court, however, applicant appears successfully to have completed his supervisory probation period by December 3, 1976, to have earned a favorable opinion as to his rehabilitation from the Atlantic County Probation Office (P-5), and on the record here to have been free of criminal activity since.

Applicant's mother died when he was young, his father remarried, and, according to testimony from a character witness, the new family circumstances unsettled him. His adjustment to

society since 1976 seems continuing and in earnest. A community college associates degree in 1978, real estate salesman licensure in 1977, and lottery sales and claims licensure in 1976 are examples of his progress. He has operated a coffee shop business since 1976. He works part time as a real estate salesman. His present reputation for good character, as evidenced by opinion testimony and P-1, 2, 5 is good.

Applying the standard that applicant must affirmatively demonstrate his rehabilitation by clear and convincing evidence and having considered the factors specified in N.J.S.A. 5:12-90(h), I am content to conclude this applicant is rehabilitated within the letter and spirit of the new amendment. That the evidence is clear is itself clear because the evidence is not contradicted or in dispute, i.e., no countervailing derogatory evidence for the period 1976 to date was adduced by the Division. That the evidence is convincing is a value judgment by the administrative law judge based on objective standards, a consideration of the record and an opportunity to judge the demeanor and credibility of the witnesses. As said by the probation officer (P-5), "It would appear he has made every effort to rehabilitate himself." This record shows he has succeeded so far.

CONCLUSIONS

Having reviewed memoranda of law and exhibits and having heard and observed the witnesses, I FIND as follows:

1. The foregoing discussion, to the extent of any mediate conclusions of fact, is incorporated herein.

2. Robert A. Ferrin has applied for casino employee licensing as craps dealer.

3. Applicant was arrested for, convicted of and fined for disorderly conduct and resisting arrest in East Hampton, New York, in October, 1971.

4. Applicant was arrested for aggravated assault in Hallandale, Florida, on 12/10/74. The circuit court made no adjudication of guilt on his plea nolo contendere, placed him on probation for 18 months and ordered restitution of $500. paid to the victim. Supervisory probation was transferred to New Jersey and successfully completed in December, 1976.

5. Applicant was arrested for grand larceny and receiving stolen property in North Miami Beach, Florida,

on 3/15/76. Satisfied of applicant's innocence, the state dismissed the charges.

6. Applicant did not disclose the above arrests and conviction on his PHDF-2.

7. Here the non-disclosures were inadvertent or mistaken and therefore excusable. They occasioned no undue impediment to the investigatory/regulatory process and do not evince any conscious disregard of it by the applicant.

8. Applicant's 1971 conviction in East Hampton, N.Y. for resisting arrest is not an automatic statutory disqualification from licensure.

9. Applicant has met and presently satisfied the burden of affirmatively demonstrating his rehabilitation since demission from probation in 1976.

10. Applicant has met and presently satisfied the burden of establishing his reputation for good character, honesty and integrity.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE applicant should not be disqualified from casino employee licensure on the reasons advanced by the Division of Gaming Enforcement in this proceeding. I ORDER, therefore, he be licensed as casino employee/craps dealer in accordance with N.J.S.A. 5:12-7, 89(b), 90.

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

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

June 24, 1980
DATE

James A. Ospenson
JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC Docket No. 79-EA-190
OAL Docket No. CCC0064-80

IN THE MATTER OF THE APPLICATION :
OF CARL FLORKOWSKI FOR LICENSURE :
AS A CASINO EMPLOYEE (TIMEKEEPER) :

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on June 11, 1980; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge; and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 23rd day of June 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

It is further ORDERED that the application of Carl Florkowski be and hereby is denied based upon:

1. the reasons set forth in the report of the Division of Gaming Enforcement dated November 1, 1979, which is incorporated herein by reference and made a part hereof; and

2. the Applicant's failure to affirmatively demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90(h); and

3. the Applicant's failure to clearly and convincingly establish his individual qualifications pursuant to N.J.S.A. 5:12-89(b)(2), 90(b); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: June 23, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In the Matter of the Application of Carl Florkowski for Licensure as a Casino Employee (Timekeeper)	:	INITIAL DECISION
	:	OAL DKT. NO. CCC 0064-80
		AGENCY DKT. NO. 79-EA-190
	:	ORDER OF DISMISSAL

APPEARANCES:

Carl Florkowski, pro se
Joseph A. Mussomeli, Deputy Attorney General
for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In October of 1978, Carl Florkowski (applicant) filed an application for a license as a casino employee (timekeeper). On November 1, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of the applicant based upon his conviction in the Superior Court of New Jersey, Ocean County Court, Toms River, New Jersey, upon a guilty plea to the count of conspiracy charged in the State Grand Jury, State Grand Jury Indictment No. 17-73-3B. As a result of the guilty plea, a six month sentence to the Atlantic County Jail was imposed and suspended, a fine of $750. was levied, and the applicant was placed on a non-reporting probation for a period of two years.

On December 13, 1979, the Commission wrote the applicant that there was a "substantial possibility" that it would deny his application. It informed the applicant that he had a right to a hearing on the matter.

The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. After notice, a prehearing conference was held on April 9, 1980, at which time, the specific issues to be resolved at the hearing were identified. A hearing was scheduled for Friday, May 23, 1980 in Atlantic City, New Jersey.

On May 5, 1980, the applicant wrote a letter to Administrative Law Judge, R. Jackson Dwyer, which reads as follows:

"In regard of receipt of Notice of Hearing set for Friday May 23, 1980 in room 706 City Hall, Atlantic City, N.J.

I will not appear. I stated my reasons for same in letter sent to you in March.

Since my livelyhood was taken away when my application for license was denied, my health has broken, my nerves are so that Icould not go through an arguementive hearing. Also as I stated before I cannot afford an attorney.

If the Commission sees fit to look into my work record for the past 4-1/2 yrs. and issue me a license it will be greatly appreciated.

Sincerely,

Carl S. Florkowski"

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

It is, therefore, ORDERED that the applicant's hearing for a casino license (timekeeper) be terminated.

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

This recommended decision may be affirmed, modified, or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lordi, who by law is empowered to make a final decision in this matter. However, if the Chairperson of 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-1.

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

May 6, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

May 8, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

JOHN J. DEGNAN
ATTORNEY GENERAL

CN 047
TRENTON, NEW JERSEY 08625

ROBERT P. MARTINEZ
DIRECTOR

PETER R. RICHARDS
DEPUTY DIRECTOR

November 1, 1979

HAND DELIVERED

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

Re: Carl S. Florkowski, Applicant for Licensure as a Casino Employee as Timekeeper Supervisor
DGE #4877-21

Dear Chairman Lordi:

The above named individual has applied to the Casino Control Commission for licensure as a casino employee as Timekeeper Supervisor. He filed Personal History Disclosure Form #2. As mandated by the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder, the Division of Gaming Enforcement conducted an investigation into his background.

Verification was accomplished by a credit check, a record check through appropriate law enforcement agencies and some field investigation.

The applicant is 58 years old and a resident of New Jersey.

The Division of Gaming Enforcement objects to the licensure of Mr. Florkowski based upon his criminal conviction record. Mr. Florkowski indicated in his Personal History Disclosure Form that in 1975 he was convicted in the Superior Court of New Jersey, Ocean County Court, Toms River, N.J. upon a guilty plea to the count of conspiracy charged in State Grand Jury Indictment No. 17-73-3B. He also noted that he was discharged from an administrative position with the Atlantic City Health Department as a result of his conviction. The investigation of the Division revealed that the applicant was charged under S.G.J. #17-73-3B in the first count with conspiracy and misconduct in public office, in violation of N.J.S.A. 2A:85-1 and 2A:98-1 and 2, and in six additional counts with unlawful taking of money in violation of N.J.S.A. 2A:105-1. As a result of a plea bargain agreement, the applicant pled guilty to the conspiracy charge and the remaining charges were dismised. As a result of the guilty plea a six month sentence to the Atlantic County Jail was imposed and suspended, a fine of $750 was levied and the applicant was placed on non-reporting probation for a period of two years.

Conspiracy, N.J.S.A. 2A:98-1 et seq., is a per se disqualifier under Section 86(c) of the Casino Control Act. Accordingly, it is the position of the Division of Gaming Enforcement that licensure would be inimical to the policies of the Casino Control Act.

Pursuant to N.J.S.A. 5:12-91(e), the applicant is presently employed at the Howard Johnson-Regency in Atlantic City as a time keeping supervisor with a temporary five-day license as a hotel employee. For the aforementioned reasons the Division would respectfully urge that his temporary license not be renewed.

Very truly yours,

ROBERT P. MARTINEZ
DIRECTOR

By Raymond J. Marquez
Raymond J. Marquez
Deputy Attorney General

RJM:mt

cc: Members of the Commission
Joseph Fusco, Esq.
Christopher Storcella
Carl S. Florkowski
608 N Oxford Ave
Ventnor, N.J.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-59
OAL DOCKET NO. CCC 2392-80

IN THE MATTER OF THE APPLICATION	:	
OF PATRICIO GARCES FOR LICENSURE	:	FINAL ORDER
AS A CASINO EMPLOYEE (SLOT	:	
MECHANIC)	:	

A hearing having been conducted in the above-captioned matter before the Honorable Jeff S. Masin, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge and the exceptions and objections filed on behalf of the Applicant; and the Commission having resolved at its public meeting of December 16, 1980, to adopt the Initial Decision as modified herein and to deny the application for licensure;

IT IS on this 22nd day of December 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision in which the Administrative Law Judge set forth his findings and conclusions regarding the Applicant's employment with Atlantic City Electric Company and his subsequent discharge from that employment, and in particular the

conclusion that "curb reading" an electric meter constitutes conduct inimical to the policies and goals of the Casino Control Act, be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the portion of the Initial Decision in which it is concluded that the Applicant's fraudulent collection of unemployment benefits is inimical to the policies of the Casino Control Act be and hereby is rejected by the Commission as being unnecessary; and

IT IS FURTHER ORDERED that the portion of the Initial Decision in which the Administrative Law Judge expressed reliance upon the testimony of Mr. Charles B. Stern and Ms. Barbara Heller be and hereby is rejected by the Commission, except insofar as such testimony authenticates reliable documentary evidence in the record; and

IT IS FURTHER ORDERED that the application of Patricio Garces for licensure as a slot mechanic be and hereby is denied for the reasons stated in the Initial Decision which, as modified above, is incorporated hereby by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 22, 1988

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2392-80

AGENCY DKT. NO. 80-EA-59

IN THE MATTER OF:

PATRICIO GARCES,
APPLICANT FOR LICENSURE
AS A SLOT MECHANIC

Record Closed: August 14, 1980 Decided: September 29, 1980

Received by Agency: 9/29/80 Mailed to Parties: 10/1/80

APPEARANCES:

Patricio Garces, pro se

Patricia Arons, Esq., Deputy Attorney General, Division of Gaming Enforcement

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

Patricio Garces, Applicant for licensure as a Slot Mechanic, received a letter of objection to licensure from the Division of Gaming Enforcement. The specific issues raised in objection are delineated in a Prehearing Order issued by Administrative Law Judge Jack Berman on June 11, 1980. A hearing was held before Administrative Law Judge Jeff S. Masin on August 14, 1980 in Brigantine City Hall, Brigantine, New Jersey. At that time the Applicant and the Division presented evidence relating to the issues in the case. The record will reflect that after the luncheon recess, which followed the testimony of Mr. Garces and the first Division witness, Mr. Garces voluntarily absented himself from the remainder of the proceeding. Of course, his absence played no part in consideration of the merits of the case.

In his testimony, Mr. Garces addressed himself to the allegations raised by the Division. With respect to the charge that he had falsified records while employed by Atlantic City Electric as a meter reader, he categorically denied the charge. He recounted the history of his employment with the electric company, an employment which first began in 1975. At that time Mr. Garces was hired as a garage man in the Atlantic City facility. Following problems at that location, he requested transfer to the power plant at Beasley's Point. He went there as a helper. After a disagreement with his supervisor, he requested transfer to the meter reading unit. His supervisor in that unit was Mr. LaGuardia. Garces stated that he was told to take the time necessary to learn to do the meter reading in a proper fashion. He soon began to receive difficult assignments which he could not finish. He was then informed that he he had been "curb" reading meters. He claimed that he did not even know how to do such a thing. He was warned that if he did it again he would be fired. As a result of what he believed to be a history of discrimination against him by the electric company, Garces filed a discrimination suit with the Division of Civil Rights. Apparently the company learned of this and Garces was then harassed "every day". He was forced to do more work than he was capable of as a new man. Although he did not know how to curb read a meter, he was again accused of doing so. He was then fired.

Garces claimed that he never was able to finish his "book" and always needed help. He was never told that he had falsified records.

The Applicant contended that the company itself curb read meters when the weather is bad.

With respect to the allegations that he had committed unemployment fraud, Garces claimed that the initial finding that he had committed such fraud was under appeal. The basic claim is that he received unemployment compensation during a period in June, July and August, 1979 while actually being employed full time by Electronic Mechanical Products Co. (EMPCO) in Atlantic City. Garces contended that he was not a full time employee during June, July and the early part of August. He claimed that when he first went to EMPCO he told the owner, Charles Stern, that he was receiving unemployment and that Stern told him that because he would be employed as an independent contract employee (independent contractor) that there would be no problem

and that he could continue receiving unemployment compensation. The Applicant claimed Stern's own son was employed under similar circumstances.

On cross-examination, Mr. Garces explained that when he was employed by Atlantic City Electric he had been assigned janitorial tasks on an unequal basis receiving them on a full time basis although this is not what he had been promised. Others with less seniority than he did not receive this kind of treatment.

The Applicant stated that when he became a meter reader he was very inexperienced and had difficulty keeping up with his work and because he was faced with such a heavy load it was quite possible that he could have made many mistakes.

Mr. Garces denied working 8 hours a day at EMPCO during the period June 19 to August 28, 1979, stating that instead he was working at home on an intermittent basis. He also said that when he first talked to Mr. Stern, he was given 23 or 24 checks at once and told to sign them on the back. He did and Stern took them back. Thereafter, Garces was paid almost weekly in cash. He denied ever filling out forms at the unemployment office on which he was asked whether he had been employed or received any money. He testified that he did not know he could not collect unemployment while working for EMPCO. His understanding was that he would start full-time work after his independent contractor's status ended. He eventually quit EMPCO because he felt something was going on which was wrong.

After presenting his own testimony, the Applicant rested. The first witness for the Division of Gaming Enforcement was Priscilla Carrano, a Senior Claims Investigator for the Division of Unemployment. She stated that Division records (R-3a) showed Garces to have received benefits of $110 a week from November 29, 1978 to August 28, 1979. The EMPCO pay records which she had reviewed showed Garces had been paid by EMPCO on a weekly basis from the pay week ending June 21, 1979 to the pay week ending August 21, 1979. Payment was made by check.

Carrano testified that the usual practice and procedure of the Division was for each person receiving unemployment benefits to be asked each week whether they had worked or earned any money. She did not know whether in fact this had been adhered to in Mr. Garces case. Garces would not have been eligible for any benefits at all during the

period of his employment at EMPCO either because of the earnings received or, in the case of one week where he might have been otherwise eligible, because of his failure to report any information as to his earnings. As a result of his actions, Garces received $1,100 to which he was not entitled. Carrano testified that in the course of her investigations she had spoken with a witness who had testified on behalf of Mr. Stern at unemployment proceedings. This witness, Harry Jester, employed by EMPCO as a foreman, had stated initially that Garces had not begun to work at EMPCO until some time in August, approximately two months after he had applied for work. Carrano stated that Jester told her that he really had no independent recollection concerning the circumstances and that it was possible that Garces had been working in another area during those months.

Charles B. Stern, owner of EMPCO, testified that he employed Garces from about June 21, 1979 to August 16, 1979. These dates were taken from the payroll sheets. Garces was originally hired as a machinist, but later as a production manager. He never was employed as an independent contractor. He was never given a group of checks to endorse on the back. He worked five days a week. Garces was paid by check and each check was paid and cashed separately (R-6). He was on the time card system for about five weeks and was then taken off the time card when he went on straight pay as production manager.

Stern denied that he ever knew that Garces was on unemployment and contended that he never instructed Garces to work and keep on collecting unemployment.

Stern was shown P-1 in evidence, a letter which he signed, dated February 5, 1980, which stated that Garces was interviewed on June 11, 1979, hired August 11, 1979 and began work on August 15, 1979, working until October 26, 1979. Stern said that when Garces came in and requested the letter he, Stern, went to the file cabinet and took the dates off of the application. He did not know how these dates got on the application and he should not have relied on dates on a application in preparing the letter.

Stern was shown P-2 and R-1, two applications on his company forms. R-1, containing the dates used on P-1, shows the interviewer as Howard Clemento. Stern testified the name is actually Clemenko. On P-2, which appears to bear the Clemenko name, the dates listed for "hired" and "will report" appear to have been changed from the

number "6" to the number "8". Stern acknowledged that his signature is on R-1, the Clemento document.

Stern also was shown Garces' W-4 form which is dated 8/21/79 (R-8 in evidence). He said that this is not the proper form for an independent contractor.

Barbara Heller, a Bookkeeper at EMPCO, testified that some time after Garces left the company's employ he returned and told her that the Social Security number on his withholding form was incorrect. He asked to fill out a new one. The new one, when examined, showed the same Social Security number. Heller stated that she thinks the original form had a "6" instead of an "8" in the date.

Paul A. Wolcott, Personnel Manager for Atlantic City Electric, testified that Garces had worked in the transportation department where he claimed to be harassed and picked on. He transferred out to the power plant. Wolcott contended that everyone at the company tried to make Garces comfortable, particularly because of his Hispanic background.

When Garces asked to get out of the instrumentation department, he had already exhausted the 90-day trial period and was an apprentice. Normally, the union contract requires that an apprentice stay on in that position but despite the rule, Garces was permitted to transfer to the meter reading department.

Wolcott denied that the company treated Garces unfairly or in a discriminatory fashion. Although the company had other Spanish-speaking employees, Garces' allegation of discrimination was the first by any of these employees.

Paul Fiedler, who served as a superintendent in charge of the generating station when Garces was employed there, testified that Garces was unreliable, undependable and hard to get along with. He had frequent trouble with others and created much turmoil.

According to Fiedler, a review of the Applicant's logs showed that he had engaged in less cleaning than mechanics employed much longer than he. Fiedler testified to incidents in which Garces had lied about reasons for his absences. Finally, he claimed Garces had threatened him in the Fall of 1979 saying he would "get even" with him.

Nicholas B. LaGuardia, Superintendent of Meter Reading since 1972, testified that curb reading involved putting down a reading when the meter had not been read Employees are warned against this practice right on the interview form and Garces was so warned. This practice is not the same as estimating a bill.

After being accepted as a reader, Garces was taught how to read a meter in the same type of instructional course all others received. LaGuardia went out of his way to assist Garces.

Garces' absence record was described as very bad, showing work on only 36 days in a three-month period and performing poor quality work with frequent errors. If anything, he was underworked. During six months he never took out a full load. LaGuardia described the incidents of alleged curb reading. In the first, meter 30746337 was read by meter reader Caroll Hall on July 5, 1978 with a reading of 57926. Following an investigation order for unauthorized use of electricity, the meter was read on July 6, 1978 at 57926. The meter was disconnected on July 19, 1978 at which time the reading was 58247. On August 4, 1978 Garces allegedly read the meter with a reading of 58748. No notations were made with respect to this meter on the meter reading notes. On September 6, 1978 Garces read the meter with a reading of 56675. The meter was checked by meter reading Supervisor John Polillo on September 12, 1978 and the reading was 60067. In view of these readings, LaGuardia contended the meter had to have been "curb read". Garces could not have read the meter at 56675 on September 6. The meter would have had to use up 3400 kilowatts in a very short period of time and LaGuardia said that in order to do this it would have had to burn.

The second incident occurred when Garces claimed that on November 17, 1978 he read a meter at 01887. The meter, No. 106W6368, had been removed on October 21, 1978. The house was boarded up.

LaGuardia claimed that the two incidents did not involve "honest errors from rushing."

Finally, LaGuardia stated that it was not standard for the electric company to estimate bills. When there was a torrential downpour, meters may be marked for estimating but the estimating is done by computer. He believed that Garces understood what he was supposed to do when reading meters.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Following a review of the testimony and the evidence, I make the following **FINDINGS OF FACT:**

1. Patricio Garces, while being trained to serve as a meter reader for Atlantic City Electric, was informed that it was improper to mark down readings for meters which had not actually been read, a practice known as "curb reading."

2. Mr. Garces performed his tasks as a meter reader with difficulty, finding it impossible to complete his assigned tasks and frequently requiring help.

3. On each of the two occasions described in Mr. LaGuardia's testimony, Garces recorded readings for meters which he had not actually read, thus engaging in curb reading.

4. Garces was employed full time by EMPCO from approximately June 15, 1979 until approximately August 16, 1979. During this period he collected unemployment benefits as well as receiving weekly pay from EMPCO.

5. Mr. Garces did not inform the Division of Unemployment that he was employed and receiving earnings.

6. Mr. Garces knew that he was not entitled to receive both unemployment benefits and pay from his employment with EMPCO.

While certain of the circumstances surrounding Mr. Garces' employment with EMPCO are less than clear due to what appear to be conflicts in records and incorrect information supplied by Mr. Stern, the basic records, i.e. checks and time records, tend to confirm employment. Mr. Garces' story of signing a collection of checks in June was less than convincing. His description of the nature of his status from June until August was also less than satisfactory. While I am somewhat troubled by the apparently doctored

records and the circumstances surrounding the Stern letter of February 5, 1980, on the whole I am convinced that Garces did work and collect unemployment at the same time. This action led to his improperly receiving $1,100 in unemployment benefits.

The circumstances described by Mr. LaGuardia clearly and convincingly establish the impropriety of the Applicant's actions at the electric company. While I certainly cannot make any judgment on whether he may have suffered discrimination in other areas of his employment, in regards to the curb reading allegations, **I FIND** them to have been amply supported.

I CONCLUDE that the conduct of the Petitioner in submitting to Atlantic City Electric records of meter readings which were never actually read and were thus false readings is the type of conduct which clearly in inimical to the policies and goals of the Casino Control Act. One who falsifies important records and willfully fails to accurately record data is surely not the type of employee whose licensure will further the goals of the act. On this ground alone, **I CONCLUDE** the application for licensure must **BE DENIED.**

In addition, the action of Mr. Garces in receiving unemployment while employed full-time at EMPCO, an action which I have concluded occurred as the result of his knowing failure to advise the Division of Unemployment that he was employed and receiving income, reflects negatively upon Mr. Garces' reputation for good character, honesty and integrity. N.J.S.A. 5:12-89b(2) requires the Applicant to establish by clear and convincing evidence his reputation for good character, honesty and integrity. The Applicant has failed to meet this requirement. Further, Mr. Garces' receipt of unemployment benefits under the circumstances established herein is the type of action which is both inimical to the policy of the act and involves conduct which could well constitute a violation of N.J.S.A. 2C:20-2 and 2C:20-4. Under 2C:20-4 a person is guilty of theft if he purposely obtains property from another by deception. A person "deceives" if he purposely:

a. Creates or reinforces a false impression, ...

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. ...

Mr. Garces had an obligation to advise the Division of Unemployment that he was employed and receiving income. He failed to do so. In so acting he created and

reinforced the impression held by the Division that he was unemployed and eligible for benefits. He did nothing to correct this false impression. I CONCLUDE that Mr. Garces' action would constitute the commission of an offense under N.J.S.A. 2C:20.2 and 20.4. Under N.J.S.A. 5:12-86 the commission of an action constituting a violation of this statute is a per se disqualifier.

CONCLUSION

In light of the above findings of fact and conclusions of law, I CONCLUDE that the application for licensure as a casino employee (slot mechanic) must BE DENIED.

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

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

September 29, 1980
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

Sept. 29, 1980
DATE

David Aaij
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

October 1, 1980
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ij

EXHIBITS IN EVIDENCE

Petitioner's Exhibit

P-1 Letter, dated February 5, 1908, from Charles B. Stern.

P-2 Application for Employment.

P-3 Grievance Form.

Respondent's Exhibits

R-1 Application for Employment.

R-2 Meter Reading Header and Meter Reading Notes.

R-3 (a through d) Unemployment Records.

R-4 (a) + (b) Pay Records from EMPCO.

R-6 Checks from EMPCO (copied).

R-7 Time Cards.

R-8 Withholding Exemption Certificate.

R-9 Records of Atlantic City Electric Company.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 78-EA-1

IN THE MATTER OF THE APPLICATION	:	
OF GEORGE W. GARRETT FOR	:	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE	:	

A hearing having been conducted in the above-captioned matter by R. Benjamin Cohen, Esq., Hearing Examiner, and the Commission having considered the entire record of that hearing, the Report and Recommendation of the Hearing Examiner, and the exceptions filed by the Applicant, and the Commission having resolved at its public meeting of September 5, 1980, to affirm and adopt the Report and Recommendation of the Hearing Examiner and to deny the application for licensure,

IT IS on this 24th day of September 1980, ORDERED that the Report and Recommendation of the Hearing Examiner in this matter be and is hereby affirmed and adopted in its entirety; and

IT IS FURTHER ORDERED that the application of George W. Garrett for a casino employee license be and hereby is denied for the reasons set forth in the Report and Recommendation of the Hearing Examiner which is incorporated by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 24, 1980

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

IN THE MATTER OF THE APPLICATION :
OF GEORGE W. GARRETT FOR A :
CASINO EMPLOYEE LICENSE. :

REPORT AND RECOMMENDATION

Elmer J. Herrmann, Jr., Esq., for the Applicant
Joan Robinson Gross, Deputy Attorney General, for the Division of Gaming Enforcement

In April, 1978, the applicant, George W. Garrett, submitted to the Commission personal history disclosure form number 2 in support of his application for licensure as a casino employee. Subsequently, a certificate dated May 22, 1978, from Resorts International Dealers School, Inc. was submitted attesting that the applicant had successfully completed the prescribed course of and practice as a casino dealer specializing in craps.

After conducting the requisite investigation into the background of the applicant, the Division of Gaming Enforcement submitted a letter report to the Commission dated June 19, 1978, in which the Division did not object to the licensure of the applicant, but did note his arrest for gambling offenses on April 1976. Although the applicant was indicted by an Essex County Grand Jury and charged with possession of lottery slips, maintaining premises where a lottery was conducted and working for a lottery, those charges were dismissed on the grounds that the evidence in support of those charges had been obtained pursuant to an illegal search and seizure.

On the basis of the information in the Division's letter

report a hearing was held in this matter on September 18, 1978, before the undersigned Hearing Examiner. A threshold legal is e was presented relating to whether this Commission may conside. i a civil licensing proceeding, evidence which had been suppressed by a court in a previous criminal proceeding involving the same incident.[1] The central issue to be determined at the hearing was whether the applicant had committed any acts or acts which would constitute an offense under subsection 86(c) of the Casino Contro Act [2] (even though such conduct might not be prosecuted under the criminal laws of this State) which act or acts would disqualify the applicant pursuant to sections 86(g)[3] and 90(d)[4] of the Casin Control Act. The specific act or acts in question were those act which led to the applicant's arrest and indictment referred to above.

The following facts were undisputed between the part and I find them to have been established.[5] On April 6, 1976 officers of the Montclair Police Department executed a search warrant at a business premises located at 155 Bloomfield Avenue, Montclair, New Jersey,where the applicant was operating a furnitu

---

1. Pre-Hearing briefs were submitted on this issue by the parties.

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

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

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

5. Some of these facts are established by the testimony and exhibits offered in evidence at the hearing. Other of these undisputed facts are contained in the discovery material exchanged between the parties and are referred to in the Pre-Hearing Conference Order and the Pre-Hearing briefs submitted by the parties as part of the record in this proceeding.

store. That search warrant had been issued on March 29, 1976 by a magistrate of the Montclair Municipal Court, based upon an affidavit of that date from Montclair Police Detective Herman J. Hartsfield. As a result of the execution of the search warrant on April 6, 1976, the applicant was arrested. On November 3, 1976 an Essex County Grand Jury returned Indictment No. 760-76 charging th applicant with possession of lottery slips, (contrary to N.J.S.A. 2A:121-3(b)) working for a lottery, (contrary to N.J.S.A. 2A:121-3(a and maintaining premises where a lottery was conducted, (contrary to N.J.S.A. 2A:121-3(c)).[6]

---

6. Any person who:

a. Knowingly engages as a messenger, clerk or copyist, or in any other capacity in or about an office or room in any building or place where lottery slips or copies of numbers or lists of drawings of a lottery, drawn or to be drawn anywhere within or without this State, are printed, kept or used in connection with the business of lottery or lottery policy, so-called; or

b. Knowingly possesses any paper, document, slip or memorandum that pertains in any way to the business of lottery or lottery policy, so-called, whether the drawing has taken place or not, except that this subsection shall not apply to any person who has in his possession or custody any paper, document, slip or memorandum of a lottery which is authorized, sponsored and operated by any State of the United States, provided that the paper, document, slip, or memorandum was purchased by the holder thereof in the State wherein such lottery was authorized, sponsored and operated; or

c. Being the owner of a building or place where any business of lottery or lottery policy, so-called, is carried on knowingly, by himself or his agent, permits such premises to be so used is guilty of a misdemeanor.

Thereafter the applicant filed in the Essex County Court a motion to suppress the evidence which had been seized by the Montclair Police officers when they had executed the search warrant at the applicant's furniture store. That evidence included eight sheets of paper each containing columns of numbers and other notations (xerox copies of which were admitted as D-2 in evidence), several books or pamphlets and a utilities bill from Public Service Electric and Gas Company for the store at 155 Bloomfield Avenue, Montclair in the name of the applicant. By order dated January 27, 1977 the Essex County Court ruled that none of this evidence could be used against the applicant in a criminal prosecution because the information which had been supplied to the Magistrate was not legally sufficient to support the issuance of the search warrant. Consequently, the criminal charges against the applicant were dismissed.

After considering the briefs submitted and the arguments made by the parties at the hearing before me, I concluded that the evidence in question was admissible. My reasons for reaching that conclusion were stated at length on the record.[7]

---

7. Those reasons may be summarized as follows. The primary purpose of the "exclusionary rule" of the Fourth Amendment to the United States Constituti (which provides that evidence obtained by means of unlawful governmenta conduct ordinarily may not be used against a defendant in a criminal p ceeding even though that evidence may be reliable and highly probative of the defendant's guilt) is to deter unlawful governmental conduct. In recognition of the rather heavy price which the exclusionary rule frequentl exacts--letting the criminal go free because the constable has blundered-- courts have restricted application of the rule to those situations where it remedial objectives are best served. The application of the exclusionary rule is to be tested against two criteria: 1) whether the use of the evider is so attenuated from the unlawful obtaining of that evidence that there would be no substantial deterrent to future unlawful governmental conduct b excluding the evidence; and 2) whether the sanction to be imposed upon use of the evidence is civil or criminal in nature. Moreover, even if applicat of the rule is indicated when tested against these criteria, if the benefit to be obtained by applying the rule are outweighed by other policy considerations, the evidence may still be admitted. It is also to be noted that hearings of administrative agencies traditionally have not been subjec to the normal rules of evidence since their primary functions are fact-find ing and regulatory in nature.

   Exclusion of the seized evidence in the context of this administrative age proceeding is not warranted. There would be no significant deterrence of future unlawful governmental conduct. Moreover, this proceeding is not a criminal prosecution, but a civil licensing proceeding. And, in any event the interest in maintaining the integrity of licensed casino gaming strongl militates in favor of considering any and all relevant evidence and ou any incremental deterrent effect which exclusion might have. Therefor th evidence seized at the time the search warrant was executed is admissible a this licensing hearing.

At the hearing before me, Montclair Police Detective Herman T. Hartsfield testified that on April 6, 1976 at approximately 11:45 a.m. he and Sergeant Robert Cummings executed a search warrant for the applicant's furniture store at 155 Bloomfield Avenue, Montclair, New Jersey. The police officers first saw the applicant on that date outside the store. They stopped him, advised him they had a search warrant, and accompanied him to the store. The applicant unlocked the store and they all entered. A search of the applicant's person did not uncover any lottery slips or paraphernalia. However, upon conducting a search of the store, the officers found various items in the rear room of the store (an area approximately eight feet by ten feet which had been partitioned off). Specifically, they found eight sheets of paper (each containing columns of numbers)[8] inside a small container which was located in a hole in a wall beam located in this rear area. The hole in the beam was concealed by a false wood front. The officers also found scattered about the rear room several books or pamphlets described as "dream books," and a utilities bill stating that the services provided in the store were billed to the applicant.

Detective Hartsfield testified that the applicant was the owner of the store, and there appeared to be no other employees working there. On instructions from Sergeant Robert Cummings, Hartsfield had conducted a surveillance of the furniture store from March 16 to March 25, 1976. On each of the dates of his surveillance he had observed the store for several hours and had seen numerous persons enter the store, stay for a very brief period of time and

---

8. D-2 in evidence consisted of xerox copies of these eight sheets of paper.

leave the store apparently without having made any purchases. On these occasions he saw the applicant in and around the store.

Based upon his experience and training in law enforcement Detective Hartsfield was able to testify that the eight sheets of paper found secreted in the rear room of the applicant's store wer lottery slips. He briefly described how a lottery operation works and how persons who accept lottery bets work in concert with others. The Detective explained that each of the three-digit numbers followed by a two or three digit number on the sheets represents a lottery wager. The first three-digit number represen the number played, and the second two-or three-digit number represents the amount wagered.[9] He identified the notation "BR" as meaning "both races," a term used in lottery play. He identifi other notations as indicating the date of the wager and the co number of the person accepting the lottery wagers.[10] The papers found contained the notations "#5,3-30;" "#5, 3-31;" "5,4-1;" and "#5,4-6."[11] The date of the execution of the search warrant was April 6. In light of the large number of wager notations on each page (there are approximately two hundred and thirty (230) such notations on the first of the eight pages (D-2(a)) alone), Detecti Hartsfield stated that those lottery slips were the records of a person who was taking numbers bets from individual players. Hartsfield explained that the "dream books" found in applicant's store are also commonly associated with lottery play.

---

9. For example, the notation "155-25" would indicate that 25 cents was wager on the number 155.

10. For example, #5,4-1 would indicate wagers accepted on April 1 by a pe. on whose code number was 5.

11. On some of the xerox copies, D-2, these notations were cut off and were not legible.

The applicant, George W. Garrett, testified before me and admitted that the slips in question were in fact lottery slips. However, he denied any knowledge of them. He denied that the slips were his, that he was accepting lottery bets and that he was working for a lottery operation. He admitted that the dream books found by the officers belonged to him, and stated that he had them in the back of his store because he used to play the numbers as a bettor.

Based on the record before me, I find that on April 6, 1976 the applicant committed acts which would constitute the crimes of possession of lottery slips, contrary to N.J.S.A. 2A:121-3(b), working for a lottery, contrary to N.J.S.A. 2A:121-3(a), and maintaining a premises where a lottery was conducted, contrary to N.J.S.A. 2A:121-3(c).

Pursuant to section 86(g) of the Casino Control Act:

> "The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> [g] The commission by the applicant...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;"

Section 86(c) of the Act enumerates as disqualification criteria conviction under any of several specific statutory provisions,[12] "or any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations."

---

12. One of the specific enumerated statutory provisions in section 86(c) is N.J.S.A. 2A:170-18, a disorderly persons offense which provides:

> "Any person who has in his possession or custody any lottery slips, books or records pertaining to a lottery, or any person who has in his possessio or has in an automobile in his custody any ticket or tickets, slip or slip paper, document or memoranda in any way pertaining to the business of a nu game, is a disorderly person. 'Number game' as used in this section means any betting on any number or numbers, or sets or arrangements of numbers, or according to any plan or method whatsoever.
>
> This section shall not apply to any person who has in his possession or custody any ticket, slip,paper, document or memorandum of a lottery which is authorized, sponsored and operated by any State of the United States, provided that the ticket, slip, paper, document or memorandum was purchase by the holder thereof in the State wherein such lottery was authorized, sponsored and operated."

Thus the applicant has committed acts which would constitute an offense specifically enumerated under section 86(c) of the Act.

Subject to specific constitutional[13] and statutory[14] exceptions, there is a strong public policy in this State against gambling. It has long been recognized by our courts that lottery operations, by their very nature, require the concerted actions of a group of persons operating together. Moreover, lottery operations are not conducted as isolated events, but are ongoing concerns in the nature of a business.[15]

In light of these considerations I conclude that under the circumstances here presented the applicant has committed acts constituting criminal offenses which indicate that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations. Therefore, I recommend that the Commission deny the application of George W. Garrett for a casino employe license.

Respectfully submitted,

Dated: March 22, 1979

R. Benjamin Cohen
Hearing Examiner

---

13. See, Art IV, Sec. VII, par. 2 (N.J. Constitution of 1947).

14. See, e.g., N.J.S.A. 5:9-1, et seq. (authorizing State lotteries); N.J.S.A. 5:12-1 (authorizing casino gaming).

15. I note that the commission of acts which would constitute possession of lottery slips, working for a lottery and maintaing premises where a lotte is conducted, would also appear to constitute a disqualifying criteria u section 86(e) of the Act which includes: "The pursuit by the applicant... of economic gain in an occupational manner or context which is in violati of the criminal or civil public policies of this State, if such pursuit creates a reasonable belief that the participation of such person in casi operations would be inimical to the policies of this act or to legalized gaming in this State. For purposes of this section, occupational manner context shall be defined as the systematic planning, administration, ment, or execution of an activity for financial gain;"

EXHIBIT LIST

D-1 Affidavit of Detective Herman T. Hartsfield and Search Warrant;

D-2 Xerox copies of eight sheets of paper containing list of numbers and other notations;

D-4 Essex County Indictment No. 760-76, filed November 3, 1976;

A-1 General Release signed by George W. Garrett, dated August 23, 1976.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 864-79
CCC DOCKET NO. 79-EA-22

IN THE MATTER OF THE APPLICATION :
OF JOHN J. GLENNON FOR LICENSURE : FINAL ORDER
AS A CASINO HOTEL EMPLOYEE :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Chairman having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and exceptions thereto filed by the Applicant,

It is on this 4th day of February, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected by the Chairman; and

It is further ORDERED that the application of John J. Glennon for a casino employee license be and hereby is granted based upon the finding that the Applicant has demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d), with respect to which, specific findings of fact and conclusions of law shall be more fully stated in a formal opinion to be issued forthwith by the Chairman, and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi,
Chairman

DATED: February 4, 1980

IN THE MATTER OF)
THE APPLICATION OF JOHN J. GLENNON)
FOR LICENSURE AS A CASINO HOTEL)
EMPLOYEE)

INITIAL DECISION

OAL DKT. NO. CCC 864-79

Agency Dkt. No. 79-EA-22

APPEARANCES:

Richard T. Philips, Esq.
For the Applicant, John J. Glennon

John J. Degnan, Attorney General of New Jersey
By: Howard M. Barman, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

R. Benjamin Cohen, General Counsel
By: Denise A. Cobham, Assistant Counsel
for the Casino Control Commission

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

On April 12, 1978, John J. Glennon (Applicant) filed an application, including a Personal History Disclosure Form with the Casino Control Commission for licensure to work as a casino hotel employee. Applicant was advised by letter from the Commission's General Counsel, dated March 8, 1979, that based upon information received by letter from the Division of Gaming Enforcement, dated February 2, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

Applicant requested a hearing on his application 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 August 1, 1979, and the hearing was held on October 23, 1979, at the Office of Administrative Law, Trenton, New Jersey.

At issue is whether Applicant has qualified for licensure as a casino hotel employee by sustaining his burden of demonstrating his rehabilitation pursuant to Section 91d of the Casino Control Act (N.J.S.A. 5:12-1 et seq.),

despite his conviction of an offense which is an enumerated statutory disqualifier for licensure within the meaning of Section 86c of the Act. Applicant's demonstration of his rehabilitation by clear and convincing evidence would necessarily sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity as required by Section 89b (2), as incorporated in Section 91b of the Act.

At the hearing, the Applicant did not dispute the accuracy of his abstracted criminal arrest and convictions (Exhibit D-1) or his abstracted Motor Vehicle violations (Exhibit D-2). The abstract of Applicant's criminal arrest and conviction record reveals a 1958 conviction in New York State for grand larceny for which Applicant was sentenced to 2½ - 5 years in prison. The abstract also reveals a 1967 conviction in New Jersey on eight (8) counts of breaking and entering (N.J.S.A. 2A:94-1) and larceny (N.J.S.A. 2A:119-2), for which Applicant was sentenced to 2 - 3 years in prison. N.J.S.A. 2A:119-2 is specifically enumerated under Section 86c of the Act as a disqualifier for licensure. The abstract of Applicant's Motor Vehicle violations reveals that his driver license was suspended in 1970 following two arrests that year for driving while intoxicated. It is undisputed that Applicant's driver license was suspended by the Municipal Court for a period of 10 years.

Applicant has been an employee of Resorts International Hotel and its predecessor, Haddon Hall, since October 1974. Testifying on his own behalf, Applicant described the room service duties which he performs. According to Applicant, he takes orders from hotel patrons, and delivers dinners to their rooms. This requires the receipt of money from cash customers, with the delivery of the payments to the food and beverage cashier. It was established that there were never any shortages in the amounts of money for which Applicant was responsible. Applicant stated that he has had no complaints from, or problems with, his employers.

Applicant described his upbringing in a foster home in Brooklyn, New York. He explained that he had been associating with a "bad crowd" at the time of the grand larceny offense in 1958. He had similarly associated with a "bad crowd" which involved him in the 1966 breaking and entering and larceny offenses. According to Applicant, he has been employed on a full-time basis since he was released from prison in 1969. He stated that he no longer associates with a "bad crowd."

Although Applicant denied having had a drinking problem, he did acknowledge his arrest for drunk driving and the suspension of his driver license for a 10 year period commencing in 1970. Applicant very candidly testified that he obtained a Florida driver license in 1972 while living in that state, which license he still possesses. Applicant acknowledged that he has been arrested in New Jersey for driving on the revoked list, and he admitted that he has occasionally driven in New Jersey for the purpose of getting to his employment and returning home, even though his New Jersey driving privileges have been suspended.

Applicant's sister, Mary Glennon, and his foster brother, John A. Hussa, Esq., testified concerning the difficulties the Applicant experienced as a youth. According to these witnesses, the Applicant was easily led and was influenced by an undesirable peer group, which resulted in his trouble with the law. Both were pleased with the improvements in the Applicant's personal situation since he was last released from prison.

The testimony of Resorts International Hotel employees Edward Keller, shift manager, and Paul Glaser, food and beverage cashier, established that Applicant's reputation for good character, honesty and integrity among his fellow workers and supervisors at the hotel is good. The testimony of both indicated that Applicant is a trustworthy and dependable worker who has never had a shortage in the amounts of money for which he has been responsible. A letter signed by eight of Applicant's supervisors and fellow employees recommending his licensure was admitted into evidence as Exhibit P-1.

The Division of Gaming Enforcement based its case in opposition to Applicant's licensure upon admission into evidence of the aforementioned abstracts of the Applicant's criminal and Motor Vehicle records.

There is no dispute as to the relevant facts in this matter. Applicant has acknowledged his conviction in 1967 on eight (8) counts of breaking and entering and larceny, which is a specifically enumerated disqualifier for licensure under Section 86c of the Act. Pursuant to Section 91b of the Act, Applicant could not be denied a casino hotel employee license on the basis of his larceny conviction if that offense were not reasonably related to the room service duties for he which he would be employed in the casino hotel. The existence of such a nexus in the instant matter cannot seriously be questioned. Therefore, in order to overcome his conviction of a disqualifying offense, Applicant must demonstrate by clear and convincing evidence his rehabilitation within the intent of Section 91d of the Act. Applicant has established the performance of his room service duties in a competent and trustworthy manner. He maintains a reputation for good character, honesty and integrity among his supervisors and fellow employees.

The conduct of Applicant which is not directly related to his employment must also be examined in order to determine whether he has sustained his burden of demonstrating his rehabilitation. Applicant's testimony was sincere and candid. By his own admission, Applicant has from time to time driven in New Jersey despite his driver license having been suspended for a 10 year period commencing in 1970 for driving while intoxicated. The abstract of Applicant's Motor Vehicle violations reveals that Applicant was arrested in 1973 and 1976 for driving while his license was suspended. The Applicant's willingness to defy the court imposed suspension of his privilege to drive in this State clearly does not demonstrate his rehabilitation sufficiently to overcome his conviction for a specifically enumerated disqualifier under Section 86c of the Act.

Having reviewed the testimony and other evidence offered in this matter (see inventory of exhibits attached hereto), and having given fair weight thereto, I FIND:

1. Applicant has applied for a license to permit him to work as a casino hotel employee.

2. Applicant has been employed in the room service department of Resorts International Hotel and its predecessor, Haddon Hall, since October 1974.

3. In 1958, Applicant was convicted of grand larceny in New York State.

4. Applicant was convicted in 1967 in New Jersey on eight (8) counts of breaking and entering (N.J.S.A. 2A:94-1) and larceny (N.J.S.A. 2A:119-2).

5. N.J.S.A. 2A:119-2 is a specifically enumerated disqualifier for licensure under Section 86c of the Act.

6. Applicant's driver license was suspended in 1970 by the Municipal Court for a period of 10 years following two (2) arrests that year for driving while intoxicated.

7. Applicant performs his room service duties in a competent and trustworthy manner.

8. Applicant maintains a reputation for good character, honesty and integrity among his supervisors and fellow employees.

9. Applicant was arrested in 1973 and 1976 for driving while his driver license was suspended.

10. Applicant admits that he has from time to time driven in the State of New Jersey while his New Jersey driving privileges have been suspended.

11. Applicant has failed to 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 pursuant to Section 91d of the Act by clear and convincing evidence.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has failed to demonstrate by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino hotel employee license based upon his conviction of an offense which is an enumerated disqualifier for licensure within the meaning of N.J.S.A. 5:12-86b. It is, therefore, ORDERED that the application of John J. Glennon for licensure as a casino hotel employee be denied.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final agency 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-1, et seq.

I HEREBY FILE with the chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

December 5, 1979
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

December 7, 1979
DATE

AGENCY HEAD

Mailed to Parties:

Dec. 11, 1979
DATE

Elizabeth D. Lunney, Esq.
OFFICE OF ADMINISTRATIVE LAW

mel

INVENTORY OF EXHIBITS

For the Applicant:	P-1	Letter of Recommendation from Resorts International Hotel personnel

For the Division of Gaming Enforcement:

	D-1	Abstract of Criminal Arrests and Convictions
	D-2	Abstract of Motor Vehicle Violations
Joint Exhibit:	J-1	Personal History Disclosure Form of John J. Glennon

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 79-EA-15

IN THE MATTER OF THE APPLICATION OF :
AUGUSTINE E. GOMEZ FOR LICENSURE AS : ORDER
A CASINO AND GAMING SCHOOL EMPLOYEE. :

The New Jersey Casino Control Commission having read and considered the Initial Decision of Administrative Law Judge Richard McGill of the Office of Administrative Law in this matter which concludes that the Applicant's request to withdraw his application for licensure should be granted with the provision that he be disallowed from reapplying therefor for a period of one year, and the Commission having further read and considered the Applicant's written request for withdrawal of his application for a period of three months only, as well as the Division of Gaming Enforcement's letter in opposition to that application, and the Commission having determined at its public meeting of August 1, 1979 to reject the Initial Decision and to deny the Applicant's request for withdrawal of his application for licensure,

It is on this 9th day of August, 1979, ORDERED that the Initial Decision filed by the Office of Administrative Law in this matter is hereby rejected on the ground that the Administrative Law Judge had no jurisdiction to consider the

Applicant's request for withdrawal, such jurisdiction reposing solely in this Commission in the first instance pursuant to N.J.A.C. 19:41-8.6 and 19:41-8.7; and

It is further ORDERED that the Applicant's request to withdraw his application for licensure for a period of three months be and is hereby denied; and

It is further ORDERED that final action by this Commission upon the application of Augustine E. Gomez for licensure shall be deferred until November 1, 1979 or thereafter; and

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

THE NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: August 9, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-230-79
CCC DOCKET NO. 79-EA-15

IN THE MATTER OF THE APPLICATION :
OF AUGUSTINE E. GOMEZ FOR :
LICENSURE AS A SLOT MECHANIC AND : COMMISSION DECISION
GAMING SCHOOL INSTRUCTOR. :

Leo B. Schoffer, Esq., appeared for Augustine E. Gomez
Fredric E. Gushin, Deputy Attorney General, appeared for the Division of Gaming Enforcement

Augustine E. Gomez [hereinafter "Applicant"] filed an application for licensure as a slot mechanic and as a gaming school instructor on September 27, 1978. The application was forwarded to the Division of Gaming Enforcement [hereinafter "Division"] for the appropriate background investigation. By letter dated February 2, 1979, the Division informed the Casino Control Commission [hereinafter "Commission"] of the results of its investigation and interposed an objection to the licensure of the Applicant.

By letter dated February 13, 1979, the Applicant was advised that based upon the Division's letter report there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing. Through counsel, the Applicant requested a hearing and the matter was thereafter transmitted to the Office of Administrative Law. That agency scheduled a hearing for June 4, 1979, at Mercer County College, before

Administrative Law Judge Richard McGill.

On the date of the hearing, the Division staff and the Commission staff were prepared to proceed with the matter. However, counsel for the Applicant orally expressed his intention to seek permission to withdraw his client's application for licensure. The Administrative Law Judge adjourned the hearing to afford the Applicant an opportunity to submit such a request in writing. Subsequently, the Applicant (through his attorney) did request withdrawal of his application by letter dated June 2, 1979, addressed to Judge McGill. The Division responded to this by its own letter dated June 22, 1979 to Judge McGill and objected to the withdrawal of the application.

On July 12, 1979, Administrative Law Judge McGill rendered an Initial Decision on the request for withdrawal in which he recommended that the Commission grant the withdrawal "without prejudice" on the condition that the Applicant be restricted from reapplying for licensure for a period of 12 months. The Initial Decision is appended hereto at A-1 to 3. The sole issue to be addressed is whether the Administrative Law Judge had jurisdiction to consider the Applicant's request for withdrawal.

The Casino Control Act, [hereinafter "Act"] N.J.S.A. 5:12-1 et seq., is silent with respect to the procedure for withdrawal of license applications to be utilized by an applicant. Pursuant to N.J.S.A. 5:12-63(c) and 5:12-69, the Commission is authorized to adopt such regulations as may be necessary to fulfill and effectively implement the policies of the Act. Pursuant to i authority, the Commission adopted N.J.A.C. 19:41-8.6 which provides:

> A written notice of withdrawal of application may be filed by an applicant at any time prior to final commission action thereon. No application shall be permitted to be withdrawn, however, unless the applicant shall have first established to the satisfaction of the commission that withdrawal of the application would be consistent with the public interest and policies of the act. The commission shall have the authority to direct that any applicant so permitted to withdraw his application shall not be eligible to apply again for licensure, registration or approval until after the expiration of one year from the date of such withdrawal. Unless the commission shall otherwise direct, no fee or other payment relating to any application shall become refundable by reason of withdrawal of the application. (Emphasis added).

Additionally, N.J.A.C. 19:41-8.7 provides that:

> Any application submitted to the commission shall constitute a request by the applicant for a determination as to his qualifications in accordance with the act and regulations of the commission and a consent by the applicant to the making of such a determination by the commission, in its discretion, when the application thereafter becomes moot for any reason whatsoever.

These regulations clearly and unambiguously empower the Commission to consider an applicant's request for withdrawal in the first instance. The Commission also has the authority to make a final determination as to licensure regardless of whether an application therefor has become moot for any reason whatsoever, e.g., an applicant's request for withdrawal of the same.

The fact that the Applicant may have exercised his right to a hearing pursuant to N.J.A.C. 19:42-3.2, because of an objection raised by the Division to licensure, does not empower the Administrative Law Judge to whom the matter has been assigned for determination on the issue of licensure to consider a request for withdrawal. When no action has been taken by the Commission in

response to such a withdrawal request, no factual or legal dispute with regard to such request exists upon which the Administrative Law Judge is empowered to act. In such circumstances, there is no "contested case," as defined in either N.J.A.C. 19:42-1.2 or N.J.S.A. 52:14B-2(b), with regard to the withdrawal request. The Office of Administrative Law is therefore without jurisdiction to consider in the first instance an applicant's request to withdraw his or her application for licensure. Nor has the Commission requested the Office of Administrative Law's assistance in considering the request for withdrawal here. See N.J.S.A. 52:14F-5(o).

For the foregoing reasons, the Initial Decision of the Office of Administrative Law is rejected consistent with this Commission's Order in this matter issued on August 9, 1979. Th matter is not, however, remanded to the Office of Administrative Law at this time, inasmuch as the Commission has determined, in accordance with the express wish of the Applicant, to defer further action in this matter for at least three months.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI, CHAIRMAN

Dated: November 29, 1979

IN THE MATTER OF THE APPLICATION OF AUGUSTINE E. GOMEZ FOR LICENSURE AS A SLOT MECHANIC AND GAMING SCHOOL INSTRUCTOR AS SLOT MECHANIC INSTRUCTOR - #79-EA-15	)	INITIAL DECISION ON REQUEST FOR WITHDRAWAL WITHOUT PREJUDICE O.A.L. DKT. NO. CCC 230-79

APPEARANCES:

Leo B. Schoffer, Esq., Pleasantville, N.J., for Augustine E. Gomez

Fredric E. Gushin, Esq., Deputy Attorney General, Trenton, N.J., for the Division of Gaming Enforcement

Thomas N. Auriemma, Esq., Trenton, New Jersey, for the Casino Control Commission

BEFORE THE HONORABLE RICHARD McGILL, A.L.J.:

On September 27, 1978, Augustine E. Gomez (applicant) filed an application for a license as a slot mechanic and as a gaming school instructor as slot mechanic instructor. On February 2, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Gomez on the basis of Mr. Gomez's alleged conviction for an offense that is a statutory disqualifier under Section 86(c) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and other circumstances which reflect unfavorably upon the applicant's reputation for good character, honesty and integrity. Mr. Gomez was advised by letter dated February 13, 1979, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

On February 17, 1979, the applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. After appropriate notice, the matter was brought to hearing on June 4, 1979, at Mercer County Community College, before Administrative Law Judge Richard McGill.

At the hearing, the applicant expressed the intention to seek permission to withdraw his application without prejudice. The hearing was adjourned to give the applicant an opportunity to submit his request in writing and to give the other parties the opportunity to respond.

The applicant bases his request for withdrawal on a possible change in the Casino Control Act that would give the Commission discretion in considering the applications of individuals who have been convicted of statutory disqualifiers under Section 86(c) of the Act. The applicant also stresses the fact that he is a member of a minority group and that as such he will be able to encourage other minority individuals to consider a career as a slot mechanic, consistent with the policies of the Act. The applicant requests permission to reapply within three (3) months.

The Division of Gaming Enforcement opposes the request for withdrawal on the grounds that the Division would object to approval of the application even if the change in legislation to which the applicant refers were enacted into law. The Division believes that the law should be enforced as it now stands and that administrative efficiency would be served if the request for permission to withdraw without prejudice were denied. The Division maintains that if the request for permission to withdraw without prejudice is granted, the applicant should not be allowed to reapply for twelve (12) months.

Under the circumstances of this case, if the request for permission to withdraw without prejudice were granted, no policy of the Casino Control Act would be contravened since the applicant would not be working in the casino industry. With respect to administrative efficiency, the impact on the applicant of a possible denial because of an alleged conviction for a statutory disqualifier appears to outweigh the burden on the State of perhaps having to process the application a second time. The burden on the State of processing applications, however, is not a light one, and it is appropriate that applicants be discouraged from requesting permission to withdraw except for substantial reasons. Accordingly, the applicant will not be allowed to reapply for twelve months as provided in N.J.A.C. 19:41-8.6.

Therefore, it is HEREBY ORDERED that the request for permission to withdraw without prejudice pursuant to N.J.A.C. 19:41-8.6 be GRANTED, and it is FURTHER ORDERED that the applicant not reapply for twelve months from the date of this Order.

This action cannot be effected prior to the effective date of this Order, which is forty-five (45) days from the date of agency receipt of this Order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the Casino Control Commission my Initial Decision in this matter and the record of these proceedings.

July 12, 1979
DATE

Richard McGill
RICHARD McGILL, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

bnh

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 684-80
CCC DOCKET NO. 80-EA-4

IN THE MATTER OF THE APPLICATION :
OF WILLIAM GONZALES FOR LICENSURE:
AS A CASINO EMPLOYEE (SLOT :
ATTENDANT) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Richard L. Voliva, Jr., of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of 1980, to affirm and adopt in part and reject in part the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 5th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted in part and rejected in part as specified below; and

IT IS FURTHER ORDERED that the application of William Gonzales for a casino employee license be and hereby is denied on the basis of the following:

A. The Applicant's intentional failure to disclose on his Personal History Disclosure Form various arrests and convictions for disorderly persons and criminal offenses in violation of N.J.S.A. 5:12-86(b).

B. The Applicant's failure to establish by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2).

IT IS FURTHER ORDERED that that part of the Administrative Law Judge's Initial Decision inconsistent with the above findings be and hereby is rejected as supported by the findings of fact and conclusions of law stated in the Final Commission Decision in this matter which shall be issued simultaneously herewith by the Chairman on behalf of the Commission; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 5, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION	)	INITIAL DECISION
OF WILLIAM GONZALES FOR	)	OAL DKT. NO. CCC 0684-80
LICENSURE AS A CASINO EMPLOYEE	)	CASINO CONTROL COMMISSION
(SLOT ATTENDANT)	)	DKT. NO. 80-EA-4

APPEARANCES:

Barry A. Rosenstein, Esq., on behalf of William Gonzales, Petitioner/Applicant

John J. Degnan, Attorney General of New Jersey, by Deputy Attorney General **Michael Lee,** on behalf of the Department of Law and Public Safety, Division of Gaming Enforcement, Respondent

BEFORE THE HONORABLE **RICHARD L. VOLIVA, JR.,** A.L.J.:

On May 7, 1979, William Gonzales, petitioner/applicant, applied to the Casino Control Commission (hereinafter "Commission") for licensure as a casino employee (Slot Attendant). N.J.S.A. 5:12-90. The applicant was advised by letter from the Commission, dated January 25, 1980 that, based upon information received by letter from the Division of Gaming Enforcement (hereinafter the "Division") dated November 28, 1979, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. Mr. Gonzales requested a hearing and the matter was transmitted to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was conducted on April 21, 1980, and the matter was heard and the record closed on June 18, 1980.

The qualification criteria in issue in this matter, which each applicant must satisfy for licensure, are set forth in N.J.S.A. 5:12-89b. N.J.S.A. 5:12-90. The applicant has the burden of establishing by clear and convincing evidence that he satisfies these criteria. N.J.S.A. 5:12-90 also incorporates N.J.S.A. 5:12-86 by reference, wherein per se disqualifiers are set forth. The Division has the burden of establishing the existence of these disqualifiers by a preponderance of the credible evidence. However, if the Division

is unable to meet this burden, the proofs can still be considered when determining whether the applicant has established the affirmative qualification criteria under N.J.S.A. 5:12-89b. Specifically at issue in this matter is whether the applicant can establish that he has a reputation for good character, honesty, and integrity in light of his alleged failure to disclose in response to Question No. 46 on his Personal History Disclosure Form (hereinafter "PHDF") certain arrests and convictions, which will be discussed in detail later, and the nature of such offenses. Also, pursuant to N.J.S.A. 5:12-86b, whether Mr. Gonzales should be denied licensure based upon the four omissions in response to Question No. 46 of his PHDF.

The Division has raised specific objection to Mr. Gonzales' licensure based upon the commission of and the failure to disclose the following arrests, charges and convictions:

1. July 26, 1973, arrested and charged with a violation of N.J.S.A. 2A:170-29 ("Offensive language; molesting or interfering with person") and N.J.S.A. 2A:170-26 ("Assault; assault and battery"); pled guilty to N.J.S.A. 2A:170-29 and fined $200 (R-1).

2. August 27, 1973, arrested and charged with violation of N.J.S.A. 2A:170-26; pled guilty and was fined $50 (R-2).

3. February 12, 1976, arrested and charged with a violation of N.J.S.A. 2A:170-29; found guilty, fined $100 and placed on six-month probation (R-3).

4. August 29, 1976, arrested and charged with a violation of N.J.S.A. 2A:90-3 (Assault with dangerous weapon, or demand of money, etc., by menaces or force, with intent to rob), downgraded to N.J.S.A. 2A:170-29; found guilty and fined $200 (R-4).

The petitioner called two witnesses to testify concerning his reputation for good character, honesty, and integrity. Jose Rios is currently active in the Puerto Rican community of Atlantic City and is a Vice-President of the Massachusetts Avenue School, which trains Hispanics. Mr. Rios is a graduate of the University of Puerto Rico with a B.S. degree in math and physics. He also holds a Master's degree in Student Personnel and

Management. Prior to emigrating to the United States, Mr. Rios worked as a teacher, counselor and principal. Seven years ago he was recruited to be a Student Counselor at Atlantic City High School, where he worked for three years. For the past four years he has been a Vice-President at the Massachusetts Avenue School. The witness also has taught on a part-time basis in the evening program at Atlantic Community College. Mr. Rios first met Mr. Gonzales four or five years ago while he was a Counselor at the high school. He counseled the applicant at that time, even though the petitioner was no longer a student. Subsequently, the applicant was a student in one of Mr. Rios' courses at ACC in the Adult Education Program. Mr. Gonzales was also involved in a CETA training program with Mr. Rios' son. The witness has frequently seen the petitioner in the neighborhood on an average of three to five times per month. Mr. Rios has observed the neighborhood where the Gonzales family resides to consist primarily of Hispanic residents and is a "tough" area. Upon being requested to testify, Mr. Rios inquired and was advised of the reasons for objection by the Division. Mr. Rios is of the opinion that Mr. Gonzales possesss a positive reputation in the neighborhood. He has observed the applicant to be active in community affairs, primarily church-related activities.

Also testifying on behalf of the applicant was Father James Hally, a Roman Catholic priest. He has been pastor of the Holy Spirit Roman Catholic Church in Atlantic City since October, 1976. Father Hally was born in Ireland, attended Villanova University for both undergraduate and graduate studies and previously worked in the Philadelphia area. Father Hally has observed the neighborhood, in which the Gonzales family resides, to consist primarily of Hispanic residents. The neighborhood is depressed economically and there is a low employment rate. It is a crime ridden and very tough area. The residents of the neighborhood have a relatively low educational achievement rate. They are basically "street people" and the emphasis on personal development is primarily "macho" or based upon an individual's physical prowess. The general male resident has at least a minor police record. Father Hally has known Mr. Gonzales as a parishioner since 1976. Both he and his family are very hard workers and are attempting to improve their station in life. He has observed that the applicant is essentially a product of his environment, a high school drop-out. However, he does not hang around the "joints" as do most of his peers. Although unaware of Mr. Gonzales' police record, he was not surprised. Father Hally stated that most, if not all, of the male residents of the neighborhood possess police records of varying degrees. He attributes the apparent problems with the police to several factors including, the "macho" psychology, the severe language barrier which is fostered by the schools and, especialy during 1976 and prior thereto, the more

severe overcrowded conditions in the neighborhood. He does not believe that the few involvements with the police are truly reflective of Mr. Gonzales' actual character. On the contrary, Father Hally believes the applicant to possess good character as exhibited by his willingness to work hard to improve himself and his lack of involvement with any criminal activity since 1976, although there are great social pressures and substantial opportunities to be so involved. Father Hally revealed each of the specific incidents wherein Mr. Gonzales was charged with offenses and explained that the applicant's involvement was no more serious than that of any other male resident of the community. On cross-examination, the Deputy Attorney General attempted to draw an interesting but unconvincing parallel between the abilities of the Chinese community in Philadelphia to cope with many similar living conditions and language barriers to that experienced by the Hispanic community in Atlantic City. Although the argument was well developed, Father Hally distinguished the two situations on several critical factors, including cultural heritage and U.S. citizenship. Father Hally was of the opinion that Mr. Gonzales possessed a good reputation in the community.

Mr. Gonzales testified on his own behalf. He currently lives at 24 South Massachusetts Avenue in Atlantic City with his mother, father, one sister and two brothers. He has resided at that location for the past four years. Previously, the entire family, including eight boys and two girls, lived at 210 South Massachusetts Avenue. The applicant was born in Puerto Rico and emigrated to the United States when he was seven years of age. He spoke no English at that time. He learned some English in school and passed every grade he attended, although he had generally poor grades and failed many subjects. He found school very difficult and his parents were unable to provide any assistance. His father now speaks limited English, but his mother none. He quit school in 1973 after completion of the tenth grade. Although a high school diploma meant that he would be able to attain a better job, he quit school in order to go to work. Since leaving school, the applicant has worked as a presser at a cleaner's, as an airplane tracker at NAFEC at the Pomona Airport, sponsored by a CETA program, in the kitchen at Zaberer's Restaurant and for the Atlantic City Police Department in the Police Community Reaction Program, also sponsored by CETA. More recently he has been employed by Resorts International Hotel, Inc. and Bally's Park Place in restaurant-oriented jobs. At various times since 1973 the applicant has also collected unemployment. Mr. Gonzales filled out the PHDF himself, with minimal assistance from one of his brothers, who speaks less English than he (J-1). The applicant testified concerning each of the convictions raised by the Division in opposition to his licensure.

Concerning the incident of July 26, 1973, Mr. Gonzales testified that he was employed on the Steeple Chase Pier for the summer operating a kiddie-ride. On his way out of work a person from a hot-dog stand on the pier called him a name. He responded to the challenge and a fight ensued. Both parties struck each other. Following the incident, the owner of the hot-dog stand filed charges against the petitioner. The owner was a member of the Atlantic City Police Department.

Concerning the incident of August 27, 1973, the complainant, Felicia Lugo, was then and is still today the "common law" wife of the petitioner's brother Jose. On the date in question, the complainant and the applicant's brother were involved in a severe fight. The applicant attempted to break up the disturbance and the complainant smacked him in the face. Mr. Gonzales smacked her back, after which she filed the complaint. He is presently on friendly terms with the complainant.

Concerning the incident of February 12, 1976, the petitioner became aware that the police were about to raid a dice game that was taking place in the rear of his father's Hispanic grocery store. He went to the store and warned the participants of the impending raid. The police arrested and charged him with the violation.

Concerning the incident of August 29, 1976, Mr. Gonzales was attending a festival in the church yard. Some uninvited people attempted to crash the party and a fight broke out. Mr. Gonzales contends that he was not fighting. The police arrived with dogs. The petitioner contended a police dog came at him and ripped his pants, in response he threw a rock at the dog. The police charged that he threw a rock at them.

Mr. Gonzales has not been involved in any matters involving the police since 1976. He attributes this clean record to the fact that he has matured.

Mr. Gonzales did not include the arrests and convictions in response to Question No. 46 on the PHDF allegedly because he forgot the incidents in question. However, he did include a conviction occurring in 1975. The State Police investigation revealed no such conviction.

Mr. Gonzales recognized that he was attending the hearing in support of his application for licensure in response to objections raised by the Division. He wants to

work and desires to take maximum advantage of the employment opportunities which are available to him.

The Division, aside from the exhibits introduced, relied primarily upon cross-examination of the applicant to oppose licensure. When confronted by Investigator Brenner of the Division concerning his failure to disclose the arrests and convictions, the applicant stated he had forgotten the incidents (R-5). However, on cross-examination Mr. Gonzales conceded that the matters were not included on his PHDF because he thought they would hurt his chances for licensure. Question was also raised concerning the circumstances under which his employment with the Atlantic City Police Department had been terminated. The petitioner disputed the statement in the investigator's report that he had been terminated due to absenteeism, rather he contended that he had left that position to commence working as a cook for Resorts, because it paid more money and offered a better opportunity. Issue was also raised concerning the failure to list employment at the Steeple Chase Pier, Zaberer's and in his father's store. Mr. Gonzales stated that he had forgotten his brief stints with the Steeple Chase Pier and Zaberer's. He helped his father because he was living at home and occasionally his father would give him some money. At various times while he assisted his father he received some compensation, however, he was collecting unemployment benefits at the same time. The applicant was unable to explain how he qualified for unemployment compensation following his employment as a presser, although he contended that he was not fired. The applicant admitted, without reason, that he failed to notify the Division of his employment with Bally's.

There is no issue that Mr. Gonzales failed to disclose the four arrests and convictions as set forth herein on his PHDF. The issue is whether the failure is excusable. see In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, at page 13 (1978). However, the applicant's candid admission that he had not included the information because he believed it would be damaging to his application for licensure is crucial. There is no question that information concerning arrests and convictions is material to qualification for licensure, regardless of whether the nature of the conduct would preclude a finding of having otherwise satisfied the statutory criteria. The petitioner's admission that he failed to disclose this material information because of fears it would have a negative impact upon his application is precisely the type of conduct contemplated by Section 86b, for which an applicant is automatically disqualified. Mr. Gonzales' explanation does not fit within the exceptions

carved out by the Commission in its opinion in the Resorts case. Although I do not believe the applicant's failure to disclose was the result of a conscious and deep-rooted intent to keep secret damaging information, I am compelled to hold that his error in judgment disqualifies him from licensure. Mr. Gonzales' admission establishes by the preponderance of the credible evidence that he failed to disclose material information pursuant to Section 86b of the Casino Control Act and his application for licensure must be denied accordingly.

But for Mr. Gonzales' failure to disclose material information pursuant to Section 86b of the Act, he has by clear and convincing evidence established his reputation for good character, honesty and integrity pursuant to Section 89b(2). Furthermore, his application establishes by clear and convincing evidence that he has satisfied the other criteria for licensure, to which the Division made no objection. Although on cross-examination the applicant gave responses to inquiries concerning his failure to disclose employment at the Steeple Chase Pier, Zaberer's Restaurant and at his father's store and was otherwise unable to satisfactorily answer other inquiries, I accept his explanations concerning such conduct as completely exhonorating him of any violations of Section 86b of the Act. Specifically, I believe Mr. Gonzales forgot his prior employment at the Steeple Chase Pier and Zaberer's due to their extremely short duration. His so-called employment at his father's store was nothing more than providing assistance in return for room, board and occasional support from his parents upon reaching majority. Despite the petitioner's testimony to the contrary, I believe that he has a poor recollection of these events and that he deems them to be inconsequential. The applicant's testimony concerning his involvement in the matters for which he was convicted, when viewed in light of the testimony of Mr. Rios and Father Hally, clearly revealed that his conduct, although not condoned, was not of such a character as to adversely reflect upon his actual good character. Mr. Gonzales' efforts to pursue employment opportunities have been sincere and are commendable. His conduct since 1976, and on almost all occasions prior thereto, based upon his testimony and that of the two character witnesses, clearly and convincingly establishes not only his reputation for good character, honesty and integrity, but his actual good character. Mr. Rios and Father Hally were exceptionally well qualified and effective character witnesses. Their knowledge not only of the applicant, but of the community and the social and cultural pressures upon him, were most enlightening and of great value. It is unfortunate that Mr. Gonzales, through ignorance and misunderstanding, committed the fatal act of failing to disclose material information. But for this error in judgment, he would have been fully qualified for licensure.

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

1. Mr. Gonzales applied for licensure as a casino employee for the position of slot attendant.

2. The applicant failed to disclose on his Personal History Disclosure Form his arrests, charges and convictions for violations of N.J.S.A. 2A:170-26 and 29 for incidents occurring on July 26, 1973, August 27, 1973, February 12, 1976 and August 29, 1976 (R-1 through R-4).

3. The arrests and convictions which the applicant failed to disclose, were material to the evaluation of his qualifications for licensure within the meaning of the disqualification criteria of Section 86b of the Casino Control Act.

4. The applicant failed to disclose his arrests and convictions because he believed it would have a negative effect upon his application for licensure.

5. But for the aforementioned failure to disclose material information, the applicant would have demonstrated, by clear and convincing evidence, that he possessed the requisite degree of good character, honesty and integrity requisite for licensure as a casino employee pursuant to Section 89b(2) of the Act.

I CONCLUDE that the applicant failed to disclose material information as required by Section 86b of the Act and must be disqualified from licensure.

Therefore, I ORDER that the application of William Gonzales for licensure as a casino employee (slot attendant) be DENIED.

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

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

July 16, 1980
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., A.L.J.

Receipt Acknowledged:

July 17, 1980
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ms

List of Exhibits Admitted Into Evidence

J-1 Personal History Disclosure Form - William Gonzales, Filed May 7, 1979

R-1 Complaint, Investigation Report and Arrest Report concerning incident of July 26, 1973 (3 pages)

R-2 Complaint, Investigation Report and Arrest Report concerning incident of August 27, 1973 (3 pages)

R-3 Complaint, Investigation Report and Arrest Report concerning incident of February 12, 1976 (3 pages)

R-4 Complaint, Investigation Report and Arrest Report concerning incident of August 29, 1976 (3 pages)

R-5 New Jersey State Police Investigation Report, page 2 of 3, Investigator Brenner, September 11, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 684-80
CCC DOCKET NO. 80-EA-4

IN THE MATTER OF THE APPLICATION :
OF WILLIAM GONZALES FOR LICENSURE :
AS A CASINO EMPLOYEE (SLOT ATTENDANT) :

FINAL

COMMISSION DECISION

Barry A. Rosenstein, Esquire, appeared for the Applicant.

Michael Lee, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On May 7, 1979, William Gonzales [hereinafter "Applicant"] filed an application for licensure as a casino employee in the position of slot attendant with the Casino Control Commission [hereinafter "Commission"]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter "Division"] for the appropriate background investigation.

As a result of this investigation, the Division submitted a letter-report dated November 28, 1979 to Chairman Lordi, interposing an objection to the licensure of the Applicant. The Applicant thereafter was advised that there was a substantial possibility that the Commission would deny his application for licensure. The Applicant thereupon requested a hearing and the matter was transmitted to the Office of

Administrative Law as a contested case pursuant to N.J.S.A. 5:12-107(a)(1).

After the issuance of a Prehearing Conference Order the matter proceeded to formal hearing on June 18, 1980. Administrative Law Judge Richard L. Voliva, Jr. filed his Initial Decision in this matter on July 17, 1980, a copy of which is appended hereto at A-1 through A-10. The Initial Decision was served upon the parties on July 21, 1980. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded ten (10) days from their receipt of said Initial Decision to file a statement of written exceptions or objections to the findings and conclusions of the Administrative Law Judge. No exceptions or objections have been filed by either party.

In his Initial Decision, the Administrative Law Judge recommended that the Applicant be denied licensure. The Commission agrees. Nevertheless, for the reasons which follow, we find it necessary to address ourselves to the findings of the Administrative Law Judge concerning the Applicant's failure to disclose a series of arrests and convictions in violation of N.J.S.A. 5:12-86(b), and the Applicant's reputation for good character, honesty and integrity (N.J.S.A. 5:12-89(b)(2) and 90(b)).

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

> 86. ... The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> . . . .
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
>
> . . . .

The Commission has previously held that nondisclosures which are intentional or evince a conscious disregard for the regulatory process result in disqualification. Nondisclosures 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).

As detailed in the Initial Decision, the Applicant failed to disclose on his Personal History Disclosure Form II [hereinafter: PHDF] in response to question 46,[1] various arrests

---

[1] Question 46 on the PHDF states:

> Have you or any member of your immediate family ... ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction? If yes [supply the following information:] name of family member, nature of charge or conviction, name and address of government agency or court involved, date and disposition.

Additional instructions for question 46 provide:

> For the purpose of this question, the words "arrest", "indictment", or "charge" include any questioning, detaining, holding or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense"

(Footnote 1 con't. next page)

and convictions for violations of disorderly persons and criminal offenses, during the period of July 1973 through August 1976. The Commission concurs with the finding of the Administrative Law Judge that disqualification from licensure is mandated as a result thereof. Upon review of the record, we agree with and expressly adopt the Administrative Law Judge's finding that the Applicant's nondisclosures were motivated by fear of their adverse impact and that this "is precisely the type of conduct contemplated by Section 86(b), for which an Applicant is disqualified." (A-6).

In a similar casino employee licensing matter, the Commission has held that an Applicant who fails to disclose information which is requested by the Division or Commission because of its potential negative impact upon his or her qualifications for licensure is disqualified pursuant to N.J.S.A. 5:12-86(b). See In the Matter of the Application of Steven Cohen for Licensure as a Casino Employee, Docket No. 79-EA-91 (1979). Notwithstanding the foregoing, we must reject other statements set forth in the Initial Decision concerning these nondisclosures which are ambiguous and in certain instances inconsistent,not only with our now settled construction of N.J.S.A. 5:12-86(b), but with the facts as well. The statements the Commission rejects are as follows:

Footnote 1 continued from p.3

in this or any other State or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations. The only such "arrest", "indictment", or "charge" which an applicant is not required to disclose on this application is one which has been legally expunged by a written order of a court of this State.

> "Although I do not believe the Applicant's failure to disclose was the result of a conscious and deep-rooted intent to keep secret damaging information,I am compelled to hold that his error in judgment disqualifies him from licensure." (A-7).
>
> "It is unfortunate that Mr. Gonzales, through ignorance and misunderstanding, committed the fatal act of failing to disclose material information. But for this error in judgment, he would have been fully qualified for licensure." (A-7).

The use of the phrase "error in judgment" is ambiguous to the extent that it might be read to imply that the Applicant's nondisclosures were the result of a well-intended but nevertheless erroneous decision to withhold information from the Division and the Commission. In the Commission's view these nondisclosures were anything but well intended. The Applicant's only "error in judgment", if any, was his failure to perceive the consequences of his nondisclosures.

In light of the Administrative Law Judge's finding that the Applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-86(b), the additional finding that the Applicant's nondisclosures resulted from "ignorance and misunderstanding" is also unacceptable. First, the finding that a nondisclosure resulting from "ignorance and misunderstanding" must result in disqualification, flies in the face of the Commission's interpretation of N.J.S.A. 5:12-86(b). Although the concepts are not mutually exclusive, only in rare instances will a nondisclosure resulting from ignorance and misunderstanding

evince a conscious disregard for the regulatory process. Moreover, a deliberate concealment by its very nature cannot be the result of "ignorance and misunderstanding."

Secondly, the Administrative Law Judge's characterization of the Applicant's nondisclosures as being the result of "ignorance and misunderstanding," cannot be squared with the finding that the Applicant failed to disclose requested information because of its potential negative impact upon his application for licensure. These findings are patently inconsistent with each other. An applicant's conscious decision to withhold information from the Commission or Division could not be anything but an intentional nondisclosure.

Apart from the foregoing, even the most cursory review of the record reveals that the Applicant's nondisclosures did not result from "ignorance and misunderstanding." Rather, they were intentional. After failing to list various arrests and convictions in response to question 46 on his PHDF, the Applicant was questioned concerning their existence by a Division investigator. At the hearing, the Applicant testified that he initially

told the Division investigator that he didn't remember the arrests and convictions (T100-16 to 20).[2] He then admitted telling the Division investigator that he had disclosed one arrest and conviction believing that "one would count for all of them"[3] (T100-13 to 15), but denied withholding the information because of its potential impact upon his qualifications for licensure (T100-23 to T100-2).

Under cross-examination, the Applicant reaffirmed that he had forgotten the incidents (T101-3 to 5), but then admitted that he did not disclose them, for fear that they would hurt his chances for licensure (T102-8 to 14). Later, the Applicant again altered his explanation stating that he had forgotten the incidents when preparing his PHDF (T127-7 to 16).

The Applicant's various explanations for failing to disclose his arrest and conviction record are blatantly contradictory. In view of these contradictory explanations and given the Applicant's admission that his failures to disclose resulted from fear that the revelation of their existence would impact negatively upon his qualifications for licensure, we find that these nondisclosures were intentional and must result in disqualification from licensure pursuant to N.J.S.A. 5:12-86. We reject the Administrative Law Judge's finding that these disclosures resulted from "ignorance and misunderstanding"

---

2 "T" refers to the transcript of the hearing held on June 18, 1980.

3 In response to question 46 on the PHDF, in addition to matters in which other members of his family were involved the Applicant listed a 1975 conviction in Atlantic City for assault and battery.

and we further reject any other part of the Initial Decision inconsistent herewith.

Applicants seeking licensure as casino employees must establish, by clear and convincing evidence, their reputation for good character, honesty and integrity. N.J.S.A.5:12-89(b)(2) and 90(b). In the instant matter the Administrative Law Judge found:

> But for the aforementioned failure to disclose material information, the applicant would have demonstrated, by clear and convincing evidence, that he possessed the requisite degree of good character, honesty and integrity requisite for licensure as a casino employee pursuant to Section 89b(2) of the Act.

Based upon careful review of the entire record, the Commission rejects this finding and holds that the Applicant has failed to sustain his burden of establishing his reputation for good character, honesty and integrity. N.J.S.A.5:12-89(b)(2) and 90(b).

It is elementary that the disqualification criteria set forth in N.J.S.A. 5:12-86 cannot be segregated from the affirmative criteria in N.J.S.A. 5:12-89. Intentional non-disclosures reflect adversely upon an Applicant's good character, honesty and integrity. The finding that the Applicant has sustained his burden regarding character "but for" a nondisclosure only serves to muddle this basic principle.

Moreover, the Commission does not share the view of the Administrative Law Judge that the Applicant's criminal record does not reflect adversely upon his character. Two of the

incidents involved direct confrontations with law enforcement authorities in the performance of their duties. Notwithstanding the explanations offered by the Applicant concerning these incidents, their adverse reflection upon his character cannot be totally discounted. This conduct, when coupled with the Applicant's failure to disclose, compels the finding that the Applicant has failed to sustain his burden of establishing by clear and convincing evidence, his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b).

For the reasons set forth herein, we find that the Applicant intentionally failed to disclose various arrests and convictions for disorderly persons and criminal offenses in direct contravention of N.J.S.A. 5:12-86(b). The Commission further finds that the Applicant has failed to sustain his burden of establishing by clear and convincing evidence, his reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)(2) and 90(b). We reject those portions of the Initial Decision that state or imply otherwise. The application of William Gonzales for licensure as a casino employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: J. P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 5, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-5

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	
v.	:	FINAL ORDER
CHARLES C. GOWDY,	:	
Respondent.	:	

The NEW JERSEY CASINO CONTROL COMMISSION, having read and considered the May 30, 1980 Report and Recommendation of Commissioner Alice D. Corsey, which is incorporated herein by reference, at its public meeting of June 11, 1980, and having received no exceptions from the Respondent or the Division of Gaming Enforcement; and having voted to adopt the said Report and Recommendation;

It is on this 16th day of June 1980, ORDERED that the Stipulation of Settlement to which the parties have given their consent, and which is incorporated herein and made a part hereof, be and hereby is adopted by the Commission; and

It is further ORDERED that Charles C. Gowdy be admonished that wagering at a casino in this State while off duty from his employment as a Casino Security Guard is a violation of N.J.S.A. 5:12-100(n) and that future conduct of

that nature will be subject to vigorous prosecution and appropriate punishment; and

It is further ORDERED that the casino employee license of Respondent Charles C. Gowdy be and hereby is retroactively suspended for five (5) weeks, which five-week suspension is to coincide with the first five (5) weeks of an eleven-week suspension from employment imposed by his employer, Resorts International Hotel, Inc., and

It is further ORDERED that a copy of this Final Order be served upon the charging party and the Respondent within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: 6/16/80

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-5

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. CHARLES C. GOWDY, Respondent.	:	REPORT AND RECOMMENDATION

Joseph A. Mussomeli, Deputy Attorney General appeared for the Division of Gaming Enforcement.

Jack E. Granzow, Esquire, appeared on behalf of the Applicant.

David Arrajj, Senior Assistant Counsel, appeared for the Casino Control Commission Legal Staff.

The Respondent, Charles C. Gowdy, is the holder of a casino employee license duly issued by the Casino Control Commission. Resorts International Hotel, Inc. has employed the Respondent as a security employee since August 14, 1978. At that time, the Respondent was deployed by Resorts International Hotel in hotel security functions. On or about October 10, 1978, the Respondent was transferred to security duty in the casino. On October 26, 1978, the Respondent was observed wagering at Blackjack Table No. 48 at Resorts International Hotel Casino in Atlantic City, N.J. As a direct and proximate result of these acts, the Respondent was suspended without pay from employment by Resorts International Hotel for a period of 11 weeks.

On March 22, 1979, the Division of Gaming Enforcement [hereinafter: the Division], the charging party, filed with the Casino Control Commission a Complaint against the Respondent setting forth the facts detailed above and charging that the Respondent's activity constituted a violation of N.J.S.A. 5:12-100(n). The Statute provides in pertinent part that it is "*** unlawful for *** any casino employee *** to wager at any game in any casino in this State." The Division sought as judgment a letter of censure which was to become a permanent part of the Respondent's licensure file, the imposition of a monetary fine for each violation of N.J.S.A. 5:12-100(n) and any other relief which the Casino Control Commission may deem just, right and appropriate. The Complaint was covered by letter dated March 23, 1979 and duly served upon the Respondent.

Thereafter, on April 6, 1979, the Respondent filed with the Commission and served upon the Division an answer wherein, among other things, he requested a hearing on this matter.

On November 9, 1979, a prehearing conference was held, attended by Jack Edward Granzow, Esquire, appearing on behalf of the Respondent, the Division, Joseph A. Mussomeli, Deputy Attorney General, appearing, and the Casino Control Commission Legal Staff, David Arrajj, Senior Assistant Counsel, appearing. At the prehearing conference, the parties discussed settlement and thereafter arrived at an amicable agreement as embodied in

the within Stipulation of Settlement. Specifically, the Respondent admitted that he did in fact commit a violation of N.J.S.A. 5:12-100(n) as alleged in the Complaint herein. Further, the Respondent and the Division consented to the entry of a Final Order by the Commission without a plenary hearing. Such Final Order would contain findings that: (1) the Respondent, although he had committed the aforementioned violation, had not done so willfully or in bad faith; and (2) Respondent consented to the retroactive suspension of his casino employee license for a period of five weeks to coincide with the first five weeks of his suspension from employment with Resorts International Hotel, Inc., and (3) the Respondent be admonished that his conduct aforesaid was in violation of N.J.S.A. 5:12-100(n), and that future conduct of that nature will be subject to vigorous prosecution and appropriate punishment.

A Stipulation of Settlement, a copy of which is attached hereto and made a part hereof, embodying the terms and conditions of the settlement by the parties has been circulated to them for their signatures. By affixing their respective signatures thereto, the parties have indicated their consent to and affirmance of the Stipulation of Settlement.

RECOMMENDATION

I find that the settlement reached by the parties is just and reasonable, consistent with the policy of the Casino Control Act, and with the public interest. Accordingly, I recommend that the terms and conditions of the agreement of the parties as embodied in the Stipulation of Settlement, be accepted and adopted by the Commission, and further that the casino employee license of the Respondent be suspended retroactively to coincide with the first five weeks of the 11-week suspension from employment suffered by him.

BY: Alice D. Corsey ADC
COMMISSIONER ALICE D. CORSEY,
HEARING EXAMINER

DATED: May 30, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-5

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	STIPULATION
v.	:	OF
CHARLES C. GOWDY,	:	SETTLEMENT
Respondent.	:	

This matter having been opened to the Casino Control Commission by way of Complaint, Docket No. 79-5, filed by Joseph Mussomeli, Deputy Attorney General, on behalf of the Division of Gaming Enforcement; and Jack E. Granzow, Esq., appearing on behalf of the Respondent, having filed an Answer thereto; and a Prehearing Conference having been held on November 9, 1979 in the presence of David Arrajj, Senior Assistant Counsel, representing the Casino Control Commission; and the parties having subsequently discussed settlement; and having arrived at an amicable agreement, the parties have stipulated as follows:

A. FINDINGS OF FACT

1. Respondent admits that on October 26, 1978, while off duty, although employed by Resorts International Hotel, Inc. as a Casino Security Guard, he did wager at Blackjack Table No. 48 at Resorts International Hotel Casino in Atlantic City, New Jersey;

2. Respondent was suspended without pay from employment for 11 weeks by his employer Resorts International Hotel, Inc. for wagering in violation of N.J.S.A. 5:12-100(n).

3. The parties agree that Respondent's violation of N.J.S.A. 5:12-100(n) by wagering while off-duty from his employment as a Casino Security Guard, was neither willful nor in bad faith.

B. DISPOSITION

It is therefore stipulated that:

1. The Respondent and the Division of Gaming Enforcement consent to the entry of a Final Order of the Commission, incorporating the above findings without a hearing.

2. The Respondent and the Division agree and give their consent to the imposition of the following sanctions upon Respondent:

a. Respondent, Charles C. Gowdy, be admonished that his conduct aforesaid was in violation of N.J.S.A.5:12-100(n), and that future conduct of that nature will be subject to vigorous prosecution and appropriate punishment;

b. Respondent's Casino Employee License be suspended retroactively for a period of five weeks. Said suspension shall coincide with the first five weeks of the 11 weeks during which Respondent was suspended from employment by his employer, Resorts International Hotel Casino, Inc.

C. COMMISSION ACTION ON STIPULATION OF SETTLEMENT

Final disposition of this matter in accordance with the foregoing Stipulation of Settlement upon which the parties have agreed will not occur until and unless the said Stipulation of Settlement is affirmed and adopted by a majority vote of the Casino Control Commission. Said Stipulation of Settlement will not be submitted to the Commission until and unless the Respondent and the Division have affirmed their agreement upon the Stipulation of Settlement in writing by signing same in the spaces designated below.

COMMISSIONER ALICE D. CORSEY

By: Denise A. Cobham
DENISE A. COBHAM,
Assistant Counsel

DATED: April 22, 1980

I hereby consent to both the form and content of the foregoing Stipulation of Settlement. I hereby affirm that the foregoing Stipulation of Settlement accurately memorializes the agreements reached by and between the parties.

DATED: May 1, 1980 BY: [signature]
JACK E. GRANZOW, ESQ.
Attorney for the Respondent

DATED: 5/1/80 BY: [signature]
JOSEPH A. MUSSOMELI,
Deputy Attorney General
Attorney for Charging Party

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-32

IN THE MATTER OF THE APPLICATION OF :
GEORGE I. HAYES FOR LICENSURE AS A : FINAL ORDER
CASINO EMPLOYEE (SECURITY OFFICER) :

This matter having been opened to the Casino Control Commission at its public meeting on August 7, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, the exceptions and objections filed by the parties, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to grant George Ivan Hayes' application for licensure,

IT IS on this 13th day of August 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of George Ivan Hayes be and hereby is granted for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: 8-13-80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF **GEORGE IVAN HAYES** FOR LICENSURE AS A CASINO EMPLOYEE (SECURITY OFFICER)	))))	INITIAL DECISION **O.A.L. DKT. NO. CCC 598-79**

APPEARANCES:

Donald G. Targan, Esq., Atlantic City, New Jersey, for petitioner

Patricia J. Arons, Esq., Deputy Attorney General, for the Division of Gaming Enforcement, Department of Law and Public Safety

Denise Cobham, Esq., for the Casino Control Commission

BEFORE THE HONORABLE **EUGENE D. GINLEY**, A.L.J.:

The petitioner, George Ivan Hayes, filed an application including the Personal History Disclosure Form with the Casino Control Commission for licensure to work in a casino as a security officer. Petitioner received a letter dated March 12, 1979, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement, "there is a substantial possibility that the Commission will deny your application." Based upon that letter, the petitioner exercised his right to request a hearing on his application.

The matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. Public hearings were held in the Atlantic City area on August 23, September 19, October 24, November 29, 1979 and January 16, 1980. The record was closed upon receipt of a letter of clarification from petitioner's attorney, on February 11, 1980.

The standards to be employed by the Commission in the licensing of applicants are set forth in the "Casino Control Act", N.J.S.A. 52:12-1, et seq. Specifically, the Division of Gaming Enforcement objects to petitioner's licensure on the following grounds.:

1. Lack of clear and convincing evidence that applicant has a reputation for good character, honesty and integrity. (Sections 89b (2) and 90).

2. Failure of the applicant to reveal facts material to qualification, and for the supplying of information which is untrue or misleading. (Section 86b).

3. Commission by the applicant of offenses which indicate that his licensure would be inimical to the policy of the Casino Act (Section 86c and g).

Petitioner testified that he has been employed as a security officer in the Resorts International Hotel since September, 1978. During this time, he has received promotions and is now a supervisor in the security department. Prior to his employment at Resorts, he spent six years as a security officer for the Air National Guard at NAFEC which he left in August 1978 so that he could accept employment at Resorts which he believed offered better career opportunities. Mr. Hayes stated that he was informed by personnel at Resorts that he could not be hired as a supervisor while he was working in security at NAFEC. According to the witness, he resigned from his employment at NAFEC voluntarily so that he could pursue the employment opportunity at Resorts. In fact, he testified that he told his superiors at NAFEC of his intention to leave in June of 1978.

Mr. Hayes has been continuously employed at Resorts International Hotal since August 1978 while in possession of a temporary casino hotel license. Subsequent to the commencement of his employment at Resorts, the Division of Gaming Enforcement undertook its investigation of Mr. Hayes. It was during this investigation that the issues herein were raised by the Division.

In addition to Mr. Haye's own testimony, three other witnesses testified on his behalf. These three witneses were comprised of his father, mother, and wife. All three of the witnesses agreed that the applicant is a person of good moral character, integrity, and a hard worker who has always done his best to

provide for his family, which consists of his wife and three children. They explained that he often held a second job to provide extra income and that he is a special police officer for the municipality of Galloway Township.

Along with the direct testimony, petitioner submitted six letters of recommendation which were accepted into evidence in the record. These exhibits include the following excerpts:

1. Exhibit P-3 written by Roy Heintz, Chief of Police, Township of Galloway:
   "he has displayed an outstanding attitude and a high moral character."

2. Exhibit P-4 written by Peter Mucci, Captain, Atlantic City Police:
   "Hayes was an outstanding airman ... is highly regarded ..., cooperative, ... professional confidence and expertise in the security duties."

3. Exhibit P-5 written by Anthony McGuire, Chief of Hotel Security, Resorts International:
   "Due to his abilities and dedication to our service, he was promoted to Senior Officer on February 5, 1979 and again promoted to Supervisor on May 7, 1979. Since his last promotion, he has continued to show his leadership abilities and loyalty to Resorts International."

4. Exhibit P-6 written by Phillip Smith, Director of Security, Resorts International:
   "he has been promoted to Senior Officer and again to Supervisor due to his dedication and loyalty to this firm."

5. Exhibit P-7 written by Quentin Still, Sergeant, New Jersey Air National Guard:
   "With the exception of one mistake, he was considered among our better supervisors ... his potential for excellence is obvious."

6. Exhibit P-8 written by Edward Timm, Chief, Investigations and Security Divison, FAA:
   "He is of high moral character."

However the latter two individuals, Sergeant Still and Mr. Timm, testified during the hearings on behalf of the Division of Gaming Enforcement (Division).

The Division alleges two material non-disclosures in the petitioner's application (Exhibit DG-2). The allegations are that the petitioner did not disclose having been arrested three times and that the reason for his leaving his job at NAFEC was because he was forced to resign. The applicant acknowledges the three arrests, but denies that he left NAFEC involuntarily.

State Police Detective Michael Hart testified that he conducted the investigation of the petitioner for the Division. Detective Hart testified that he contacted the petitioner twice by telephone in December, 1978. The first contact was for routine questioning whereas the second call was made because the detective was aware of certain information not contained in the application: namely, the three previous arrests and information regarding whether or not petitioner had left his employment at NAFEC voluntarily. Detective Hart stated that he confronted the petitioner with this information during this second telephone contact. He stated that petitioner told him that there had been a problem with his job at NAFEC, but that he was told that if he resigned there would be no record of it. Also, petitioner told the detective that the three arrests occurred during a period of his life that he would like to forget.

The three arrests referred to occurred during the period 1962-1964 when petitioner was serving in the Army stationed in Georgia. He was 17 to 19 years of age at the time. The offenses which resulted in the arrests were drunkedness, possession of alcoholic beverage as a minor, and stealing of a hub cap. In regard to the non-disclosure of these offenses, the petitioner had testified that he legitimately had forgotten about them inasmuch as they were minor offenses, having occurred many years ago during his youthful days in the military while stationed in the South. He stated that he does not particularly remember the incidents, however, he does recall having spent some time in custody for one of the incidents.

In reference to the job termination incident, petitioner admits that he might have been charged with possible misconduct which could have resulted in his removal; nevertheless, he insists that his answers in the application form (Exhibit DG-2) were accurate in that his resignation was voluntary and was based upon his desire to seek employment at Resorts. Further, he states that the notice of possible removal for the misconduct charges was subsequent to his application. In

this regard, the petitioner submitted Exhibit P-2 which is an official government form with the title "Notification of Personnel Action" and which is signed by Thomas E. Hansen, Personnel Officer, dated August 23, 1978. This document states — "Employee resigned to accept other employment."

Information concerning alleged misconduct by petitioner at NAFEC surfaced in August, 1978, shortly before petitioner resigned his employment. Staff Sergeant Fournier testified that he conducted an investigation of alleged unauthorized activity in the Security Police Flight. During the course of this investigation, the witness took a statement from the petitioner (Exhibit DG-4) in which the petitioner admitted to killing a deeer with a military weapon while on duty. The petitioner was questioned about several other incidents including the calling of members of his flight team by derogatory names, and the recording of post checks that may not have been made. The results of the investigation led to the proposal by Sergeant Still to remove the petitioner from his position of employment. Said proposal is documented in a letter to the petitioner from Sergeant Still dated August 16, 1978, Exhibit DG-6. This letter charged the petitioner with unauthorized discharge of firearms (deer hunting), violation of safety practices and regulations, deliberate falsification of official documents, (recording of non-existent post checks) and failure to carry out supervisory duties in a responsible manner. Petitioner contends that he was not aware of the official proposed removal at the time of his application as he asserts that Sergeant Still had told him that since he was resigning anyway, the proposal to remove him would not be part of his record.

It appears from the testimony and exhibits that the charge of unauthorized discharge of government firearms, which involved the deer hunt, is the one with which the Division is most concerned. In fact, it is the only one of the charges that the Division mentions in its letter of objection (Exhibit DG-1). Testimony in the case shows that deer hunting at the NAFEC had been permitted by the Chief of Security, Mr. Edward Timm, on occasion. Apparently the deer herds which reside on the installation have a tendency to grow in population and then become a safety hazard in relation to the landing of aircraft. The incident involving the petitioner occurred one night in January of 1978 when the petitioner and two of his subordinates were on duty and some time during their shift they shot and killed a deer and took and divided the meat from it. Petitioner stated that hunting incidents are not uncommon at the installation.

In Exhibit DG-1, the letter of objection, the Division notes that the applicant was placed in voluntary bankruptcy in November, 1975 with debts of $10,700. Petitioner and his wife both testified that the bankruptcy resulted from petitioner's giving up his second part-time job so that he could undertake a rug cleaning franchise as a part-time business. That business failed and, between the money involved in it and the money lost from his other job, resulted in their financial difficulties. Upon the advice of their then attorney, petitioner filed for personal bankruptcy. However, he testified that he believes that he has a moral obligation to repay the debts which were dissolved under the bankruptcy. In fact, some of those debts have already been paid off. In this regard, I do not believe that where an applicant has entered into a legally established proceeding, upon the advice of his attorney, such a decision should not be used against him as evidence of lack of financial stability. In any event, all of the other evidence in the case, and the evidence as a whole, indicate that the applicant possesses subsantial financial stability.

The burden of proof is clearly upon the applicant in this type of proceeding. However, the Commission must weigh all of the surrounding circumstances including the type of licensure sought. After weighing all of the evidence in this case, although petitioner may have made some mistakes, I am nevertheless convinced by clear and convincing evidence that petitioner is a person of good character, honesty and integrity with a reputation for such, and is at the same time, financially stable and responsible. This conclusion is buttressed by the fact that he was twice promoted from the position he now seeks a license to hold. Whether or not the petitioner told Detective Hart that he forgot about the three arrests which occurred in the early 1960's or told him that he would like to forget about them does not appear significant in light of the case as a whole.

Further, I believe and find that the petitioner truly believed that he was resigning from his job at NAFEC in order to accept employment elsewhere. He had intended to resign prior to the allegations of misconduct having surfaced and it was his understanding that since he was resigning anyway, the charges would not be brought against him. Such is corroborated by the document in his personnel file, Exhibit P-2, which states that "employee resigned to accept other employment." The other charges listed by Sergeant Still in Exhibit DG-6 appear to be internal matters which were never litigated either at NAFEC or in these hearings. The only

charge listed by the Division in its objection to the petitioner was the incident concerning the "deer hunting." When weighing the charges against the evidence substantiating the petitioner's character and past performance as a security officer, both past and present, I conclude that he should qualify to receive the license sought. Specifically, based upon the entire record, I FIND that:

1. Petitioner has applied for a license permitting him to work as a security officer in a casino.

2. Petitioner has been employed as a casino hotel security officer since September, 1978 during which time he has received two promotions and is currently a supervisor of security officers.

3. The three incidents involving the petitioner having been arrested, occurred in 1962-64, involved relatively minor incidents when the petitioner was a minor and serving in the Armed Forces.

4. Petitioner did voluntarily resign from his employment with the Air National Guard at NAFEC in order to accept other employment.

5. Petitioner presently maintains a reputation of good character, honesty and integrity.

6. It appears likely if petitioner is licensed, that he will make an honest and trustworthy employee.

Based upon the facts adduced at the hearing in this proceeding and the applicable statutory law, I CONCLUDE that applicant should not be disqualified from receiving a casino employee license to work as a security officer based upon the issues which were litigated during this proceeding.

I, THEREFORE ORDER, that the casino employee license (security officer), be granted to petitioner.

This action cannot be effected prior to the effective date of this Order which is forty-five (45) days from the date of Agency receipt of this Order unless the Agency Heal acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the designee of the **CASINO CONTROL COMMISSION, R. BENJAMIN COHEN, GENERAL COUNSEL,** My Initial Decision in this matter and the record in these proceedings.

March 25, 1980
DATE

Eugene D. Ginley
EUGENE D. GINELY, A.L.J. c/b

Receipt Acknowledged:

March 31, 1980
DATE

Joseph A Sarcone
AGENCY HEAD

Mailed To Parties:

April 2, 1980
DATE

Ronald L. Parker /BA
FOR OFFICE OF ADMINISTRATIVE LAW

gyd

EXHIBITS

Petitioner

P-1	Army Discharge
P-2	Notification of Personnel Action - National Guard
P-3	Letter of Recommendation - R. Heintz
P-4	Letter of Recommendation - P. Mucci
P-5	Letter of Recommendation - A. McGuire
P-6	Letter of Recommendation - P. Smith
P-7	Letter of Recommendation - Sgt. Q. Still
P-8	Letter of Recommendation - E. Timm
P-9	Employment Rating - National Guard

Division of Gaming Enforcement

DG-1	Letter of Objection
DG-2	License Application - Personal History Disclosure Form - 2
DG-3	Credit Profile
DG-4	Statement of Military Suspect
DG-5	Summary of Sgt. Fournier's Investigation
DG-6	Letter from Sgt. Still to Petitioner - proposed removal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1257-80
CCC DOCKET NO. 80-EA-21

IN THE MATTER OF THE APPLICATION :
OF JOSEPH J. HECKMANN FOR :
LICENSURE AS A CASINO EMPLOYEE :
(SLOT ATTENDANT). :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Jack Berman of the Office of Administrative Law; and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions filed by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of November 5, 1980, to affirm and adopt the Initial Decision of the Administrative Law Judge in part and to grant the application for licensure;

IT IS on this 17th day of November 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted except as otherwise ordered below; and

IT IS FURTHER ORDERED that that part of the Initial Decision which addresses the issue of whether the Applicant has committed an offense indicating that his licensure is 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; and

IT IS FURTHER ORDERED that the application of Joseph J. Heckmann for a casino employee license be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: JOSEPH P. LORDI, CHAIRMAN

DATED: November 17, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In re:	)	INITIAL DECISION
	)	OAL DKT. NO. CCC 1257-80
IN THE MATTER OF THE APPLICATION	)	AGENCY DKT. NO. 80-EA-21
OF JOSEPH J. HECKMANN FOR LICEN-	)	
SURE AS A CASINO EMPLOYEE	)	

APPEARANCES:

Joseph Mussomeli, Esquire, Deputy Attorney General
for the Division of Gaming Enforcement

Barry Rosenstein, Esquire, for applicant Joseph J.
Heckmann

BEFORE THE HONORABLE **JACK BERMAN,** A.L.J.:

In March, 1979, Joseph J. Heckmann (applicant) filed an application, including a personal history disclosure form, with the Casino Control Commission (Commission) for license to work in a casino as a dealer. By letter dated January 4, 1980, the Division of Gaming Enforcement (Division) did not object to the licensure of Mr. Heckmann. Applicant was advised by letter dated February 8, 1980, from the Casino Control Commission General Counsel, that based upon the information received from the Division there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing.

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

A prehearing conference was held May 1, 1980 at the Office of Administrative Law, Trenton, New Jersey at which time the following were framed as the issues:

A. Whether the applicant has engaged in conduct, although not prosecuted, that would constitute an offense of such a nature that it would be inimical to licensure under the Casino Control Act, i.e. 1976, he was arrested and subsequently indicted for misconduct in office as a Sheriff's Officer. He had brought contraband into the Atlantic City jail (marijuana and racing forms) in violation of N.J.S.A. 2A:85-1 and 2A:104-12. He pleaded guilty to N.J.S.A. 24:21-20a(4) and resigned his position as a Sheriff's Officer N.J.S.A. 5:12-90e, 86g, 86c.

B. Whether the petitioner has demonstrated by clear and convincing evidence that he possesses that degree of good character, honesty and integrity which is a prerequisite to licensure as a Casino employee pursuant to N.J.S.A.5:12-90(b).

A hearing was held on July 8, 1980, at the Commissioner's Chambers - City Hall - Atlantic City, New Jersey. At the hearing Franklin Naumann and Joseph Heckmann testified. Also, eight exhibits were introduced into evidence. (They are listed in the appendix attached). The record was closed on August 7, 1980.

ISSUE A inquires whether the act by the applicant of bringing contraband in violation of N.J.S.A.2A:85-1 into the Atlantic City Jail is inimical to the applicant's licensure. Formerly N.J.S.A.2A:85-1 was listed in N.J.S.A.5:12-86c as a per se disqualifier. This is no longer so as that section has been recently amended deleting N.J.S.A.2A:85-1 from it. Nonetheless the latter part of N.J.S.A.5:12-86c which states "or any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations," remains unchanged. The testimony and exhibits reveals that the applicant had been arrested and indicted for bringing contraband into the Atlantic County Jail during the period July 1 to September 15, 1976. Although the charge was reduced to a disorderly persons offense, the applicant was caused to terminate his employment as a correction officer. The applicant readily admitted that the contraband consisted of marijuana and reading materials. The latter was made available to the inmates and the former not, but consumed by the applicant. The applicant readily admits

his mistake in having brought the marijuana into the jail for his personal consumption and represents that he did not distribute it to any inmate and no longer uses it himself. The reading material which he made available to the inmates was not pornographic or lewd. He was aware at the time that the bringing in of the reading material to the inmates was a violation of his employer's rules; which he states was not enforced. On subsequent applications for employment with the Atlantic City Police Department, Atlantic City Fire Department and the N.J. Unemployment Division, he readily disclosed his prior arrest.

ISSUE B inquires as to whether the applicant has demonstrated by clear and convincing evidence that he possesses that degree of good character, honesty and integrity which is a prerequisite to licensure as a Casino employee pursuant to N.J.S.A.5:12-90b. In this regard, the character testimony of witness Franklin Naumann, a close friend and neighbor of the applicant, knowing him since he was born, is relevant. Mr. Naumann testified to a long, social and friendly relationship with the applicant and his family. Living next door to the applicant he has observed him on numerous occasions and has retained his services to perform various odd jobs for him. He testified that he has loaned the applicant money and the applicant has paid him back on schedule. Notwithstanding applicant's previous arrest, which this witness is familiar with, his opinion that applicant maintains a reputation for good character, honesty and integrity is not changed.

Applicant's testimony reveals that he has held responsible positions of employment since his arrest. Thus he has worked as a Special Officer for the Atlantic City Police Department in the Summer of 1977. He also was employed by N.J. Unemployment as a claims taker. Presently he is a fireman with the Atlantic City Fire Department.

Based on the foregoing, the **COURT FINDS:**

1. Applicant has applied for a license to permit him to work as a dealer in a Casino.

2. Applicant completed the personal disclosure form in good faith.

3. Applicant was arrested on September 23, 1976 for violation of N.J.S.A.2A:85-1 and N.J.S.A.2A:104-12 (two counts of bringing prohibited articles into jail).

4. On October 5, 1976, the indictment against applicant was dismissed and the charges were downgraded to possession of marijuana under 25 grams. N.J.S.24:21-20(A)(4).

5. The applicant was convicted of this downgraded offense and received a 60 days suspended sentence, $200.00 fine and probation for one year.

6. As a condition of having the misconduct in office charge dismissed, applicant agreed to resign from the Atlantic County Sheriff's Office.

7. Applicant has successfully completed his probation and has not been arrested since that time. (See page 2, letter 1/4/80, Division of Gaming Enforcement)

8. Applicant did not distribute marijuana to any inmate of the Atlantic County Jail.

9. Applicant made available to inmates of the Atlantic County Jail reading material that was not pornographic or lewd.

10. Applicant has secured responsible positions of employment since his arrest having revealed on all applications his prior arrest.

11. There is nothing in applicant's past employment history from which any adverse inferences should be drawn.

12. Applicant presently maintains a reputation for good character, honesty and integrity.

13. It appears likely, if applicant is licensed, he will make an honest and trustworthy Casino employee.

14. The offense that the applicant committed is not inimical to licensure.

The Division urges delicensure as the offenses applicant was charged with occurred in a highly regulated environment, the County Jail. The Division points out that the Casino industry is the most strictly regulated industry in this jurisdiction. The Division emphasizes that a public servant's disregard for regulations are clearly "inimical" to the Act. N.J.S.A.5:12-1b(6) cited by the Division states in relevant part:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

To adopt the Division's position would cast an unfair burden upon the applicant likening him to the per se disqualifiers in N.J.S.A.5:12-86 c and g which clearly was not intended by the legislature.

I believe that the intent of the Act is that most conduct, is not to be treated in and of itself as a disqualification to licensure as a casino employee. Rather, all of the surrounding circumstances must be taken into account. In this instance, I do not believe that a reasonable interpretation of the Act requires a permanent disqualification of the applicant because of previous misconduct. Accordingly, I believe that such misconduct should be weighed against the present attitude of the applicant, which includes his forthrightness and genuine desire not to repeat his past mistakes.

The alleged incidents occurred approximately four years ago. Since then the applicant has sought and obtained other public servant employment revealing in all instances his prior arrest. Clearly and convincingly, the applicant has demonstrated his ability to have become rehabilitated.

It is therefore CONCLUDED that applicant has not engaged in conduct that would constitute an offense of such a nature that it would be inimical to licensure under the Casino Control Act.

It is further CONCLUDED that the applicant has demonstrated by clear and convincing evidence that he possesses that degree of good character, honesty and integrity which is a prerequisite to licensure as a casino employee.

It is therefore ORDERED that the casino employee license, dealer license, be granted to the applicant. This license, however, may be conditioned so as to provide for its immediate revocation in the event of any substantial future misconduct on the applicant's part.

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

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

September 5, 1980
DATE

Jack Berman
JACK BERMAN, A.L.J.

Receipt Acknowledged:

September 9 1980
DATE

CASINO CONTROL COMMISSION
By: Anthony J. Sposaro
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

vl

APPENDIX

EXHIBITS

RESPONDENT

R-1	Indictment - N.J. v. Joseph Heckmann, dated 9/23/76
R-2	Atlantic County Superior Court Criminal Record of Heckmann (6 pages), dated 9/23/76
R-3	Criminal Complaint dated 10/5/76, State of New Jersey v. Heckmann
R-4	Sworn Statement of Heckmann, dated 9/17/76 re: Investigation of Criminal Activity in the Atlantic County Jail
R-5	Sworn Statement of Heckmann, dated 9/18/76 re: Neglect of Official Duty
R-6	Report (3 pages) of Atlantic City Sheriff's Department, dated 9/9/76 -part of prisoner's employment records - assign appropriate weight info from inmate
R-7	Sworn statement of Judge Heads, dated 9/15/76 (inmate assign appropriate weight)
J-1	Applicant's Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 335-80
CCC DOCKET NO. 79-EA-191

IN THE MATTER OF THE APPLICATION :
OF ROBERT HOKE FOR LICENSURE AS :
A CASINO KEY EMPLOYEE :

FINAL ORDER

A hearing having been conducted in the above-captioned matter by Administrative Law Judge James A. Ospenson of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of September 4, 1980, to reject the Initial Decision of the Administrative Law Judge, accept the Applicant's motion to amend his application for licensure from that of a casino key employee to that of a casino employee, and to grant said application for licensure,

IT IS on this 24th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby rejected; and

IT IS FURTHER ORDERED that this application be amended and considered as an application for licensure as a casino employee; and

IT IS FURTHER ORDERED that the application of Robert Hoke for a casino employee license be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: September 24, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF ROBERT HOKE FOR LICENSURE AS A CASINO KEY EMPLOYEE (SECURITY SUPERVISOR)	)))))	INITIAL DECISION OAL DKT. NO. CCC 335-80

APPEARANCES:

Paul K. Wright, Esq., Attorney for Applicant.

John J. Degnan, Attorney General of New Jersey by Robert Melillo, Deputy Attorney General for the Division of Gaming Enforcement.

EXHIBITS MARKED IN EVIDENCE:

J-1 Personal History Disclosure Form-1.

J-2 Stipulation of Settlement with Petitioner's Affidavit.

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

This is a Casino Control Commission licensure proceeding in which Robert Hoke applied for casino key employee licensing as security supervisor under N.J.S.A. 5:12-9, 89. Having filed his application on March 15, 1979, applicant was informed by the Commission, on December 13, 1979, that based on information contained in the investigative report of the Division of Gaming Enforcement of November 17, 1979, there was "a substantial possibility that the Commission will deny (your) application." On January 7, 1980 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42-2. The matter was thereupon transmitted to the Office of Administrative Law on January 23, 1980 for hearing and determination as a contested case pursuant to N.J.S.A. 52:14B-9, 10.

A prehearing conference was held in the Office of Administrative Law on March 13, 1980 and an order entered. The matter was first listed for hearing on May 12, and 13, 1980 but was adjourned at the request of the parties to June 4, 1980 upon the expectation that certain subsequent investigation by the Division and amendments to the application would permit withdrawal of objections to licensure. (In addition, the Division by letter of March 24, 1980 filed in the proceeding, withdrew objection issues framed as

Paragraphs 5C and 5D of the prehearing order).

On June 4, 1980, the parties represented the terms of a stipulation of settlement, with affidavit by the applicant, under the terms of which the Division withdrew its remaining objections to licensure. The stipulation acknowledged that the primary basis for objection to licensure involved applicant's conduct leading to his arrest on December 5, 1974 on charges of threatening a life in violation of N.J.S.A. 2A:113-8, creating a disturbance while under the influence of liquor contrary to N.J.S.A. 2A:170-30, and his failure to disclose the arrests therefor, disposition of the charges, and the disciplinary action taken against applicant by his employer, the Essex Fells Police Department, on his Personal History Disclosure Form-1. As to such charges and action, applicant received favorable dispositions. Applicant stipulated by affidavit his willingness to abandon application for casino key employee licensure and to accept licensure as a casino employee / security employee under N.J.S.A. 5:12-7, 89(b), 90. He agreed that if issued such a license he would not apply for casino key employee licensure for a period of two years from date of issuance of casino employee licensure. The Division was satisfied from its subsequent investigation and from the application amendments agreed to by applicant to withdraw its objections to licensure.

Under all the circumstances, I FIND the stipulations of the parties and the withdrawal of objection to licensure by the Division in consideration thereof to be reasonable. Accordingly, I ORDER applicant licensed as a casino employee/security employee in accordance with N.J.S.A. 5:12-7, 89(b), 90.

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

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

June 13, 1980
DATE

James A. Ospenson
JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

June 17, 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

ad

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-6

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Charging Party,	FINAL ORDER
v.	
JOHN L. ITRI,	
Respondent.	

The NEW JERSEY CASINO CONTROL COMMISSION having read and considered at its public meeting of June 11, 1980 the Stipulation of Settlement embodying the terms and conditions consented to by the parties; and the Commission having found said Stipulation of Settlement to be just, reasonable and consistent with the policies of the Act and with the public interest; and the Commission having voted to adopt and affirm same;

It is on this 20th day of June 1980, ORDERED that the Stipulation of Settlement to which the parties have given their consent, and which is incorporated herein and made a part hereof, be and hereby is adopted by the Commission; and

It is further ORDERED that John L. Itri, the Respondent, be admonished that wagering at a casino in this State while off-duty from his employment as a blackjack dealer is a violation of N.J.S.A. 5:12-100(n), and that future

conduct of that nature will be subject to vigorous prosecution and appropriate punishment upon a finding of guilt; and

It is further ORDERED that the Respondent's casino employee license be suspended retroactively for a period of three (3) weeks. Said suspension shall coinside with the first three (3) weeks of the period during which the Respondent was suspended from employment by Resorts International Hotel, Inc., his employer; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: June 20, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 80-6

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party	:	STIPULATION OF SETTLEMENT
v.	:	
JOHN L. ITRI,	:	
Respondent	:	

This matter having been opened to the Casino Control Commission by way of Complaint, Docket No. 80-6, filed by the Division of Gaming Enforcement, Joseph Mussomeli, Deputy Attorney General, appearing on behalf of the Division, Respondent, John L. Itri appearing pro se; and the parties having arrived at an amicable settlement agreement, the parties have stipulated as follows:

A. STIPULTATIONS OF FACT

1. Respondent admits that on September 26, 1979, while off duty, although employed by Resorts International Hotel, Inc. as a blackjack dealer he did wager at Blackjack Table No. 15 at the Boardwalk Regency Hotel in Atlantic City, New Jersey in violation of N.J.S.A. 5:12-100(n).

2. Respondent was suspended without pay from employment for four (4) months by his employer Resorts International Hotel, Inc. for wagering in violation of N.J.S.A. 5:12-100(n);

3. The parties agree that Respondent's violation of N.J.S.A. 5:12-100(n) by wagering while off-duty from his employment as a blackjack dealer was knowing and willful.

B. DISPOSITION AND SANCTIONS

It is therefore stipulated that:

1. The Respondent and the Division of Gaming Enforcement consent to the entry of a Final Order of the Commission, incorporating the above findings without a hearing.

2. The Respondent and the Division agree and give their consent to the imposition of the following sanctions upon Respondent:

a. That Respondent, John L. Itri, be admonished that his conduct aforesaid was in violation of N.J.S.A. 5:12-100(n), and that future conduct of that nature will be subject to vigorous prosecution and appropriate punishment upon a finding of guilt;

b. Respondent's Casino Employee License be suspended retroactively for a period of three (3) weeks. Said suspension shall coincide with the first three (3) weeks of the period during which Respondent was suspended from employment by his employer, Resorts International Hotel Casino, Inc.

C. COMMISSION ACTION ON STIPULATION OF SETTLEMENT

Final disposition of this matter in accordance with the foregoing Stipulation of Settlement upon which the parties have agreed will not occur until and unless the said Stipulation of Settlement is affirmed and adopted by a majority vote of the Casino Control Commission. Said Stipulation of Settlement will not be submitted to the Commission until and unless the Respondent and the Division have affirmed their agreement upon the Stipulation of Settlement in writing by signing same in the spaces designated below.

R. Benjamin Cohen,
General Counsel

BY: David Arrajj
David Arrajj,
Senior Assistant Counsel

DATED: April 29, 1980

I hereby consent to both the form and content of the foregoing Stipulation of Settlement. I hereby affirm that the foregoing Stipulation of Settlement accurately memorializes the agreements reached by and between the parties.

DATED: 5-7-80 BY: John L. Itri
JOHN L. ITRI, Respondent.

DATED: 5/19/80 BY: Joseph A. Mussomeli
JOSEPH A. MUSSOMELI,
Deputy Attorney General
Attorney for Charging Party

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5730-79
CCC DOCKET NO. 79-EA-185

IN THE MATTER OF THE APPLICATION	:	
OF JAMES A. JONES FOR LICENSURE	:	FINAL ORDER
AS A CASINO EMPLOYEE	:	
(FLOORPERSON).	:	

A hearing having been conducted in the above-captioned matter before the Honorable R. Jackson Dwyer, Administrative Law Judge; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge and the exceptions filed on behalf of the Applicant; and the Commission having resolved at its public meeting of December 16, 1980, to adopt the Initial Decision as modified herein and to deny the application for licensure;

IT IS on this 6th day of January 1981, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which relies on the Applicant's arrest record and the Applicant's outstanding indebtedness to Zales' Jewelry Store in Las Vegas, Nevada, as part of the basis for the

finding that the Applicant has failed to establish by clear and convincing evidence his good character, honesty and integrity, be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the Applicant's intentional failure to disclose information requested by the Commission be and hereby is considered by the Commission as an additional part of the basis for the determination that the Applicant has failed to establish by clear and convincing evidence his good character, honesty and integrity; and

IT IS FURTHER ORDERED that the application of James A. Jones for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: January 6, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5730-79

AGENCY DKT. NO. 79-EA-185

IN THE MATTER OF:

The Application of
James A. Jones for
Licensure as a
Casino Employee
(Floorperson)

Record Closed: September 8, 1980

Received by Agency:

Decided: October 21, 1980

Mailed to Parties:

APPEARANCES:

Joseph T. Wilkins, Esq., for Applicant, James A. Jones

Patricia J. Arons, Esq., Deputy Attorney General
for the Division of Gaming Enforcement
(John J. Degnan, Attorney General of New Jersey, Attorney)

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

On March 20, 1979, James A. Jones (Applicant) filed an application, including a Personal History Disclosure Form (PHD) with the Casino Control Commission (Commission) for licensure to work as a casino employee (Floorperson). The Applicant was advised by letter dated November 19, 1979 from the Commission's Senior Assistant Counsel, based upon information received by letter from the Division of Gaming Enforcement (Division), dated October 15, 1979, that there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing. The Applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 14, 1980. A hearing was held on July 21 and 29, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Arons on August 29, 1980 and from Joseph T. Wilkins, Esq., on September 8, 1980. The record was closed on the latter date.

Before proceeding with the testimony it can be stipulated that question 45 on the PHD asks: "Have you ever been arrested or charged with a juvenile offense whether in this State or in any other jurisdiction?" The Applicant placed an "X" in the block designated "Yes" and listed the charges of kidnapping, rape and assault and battery in Las Vegas, Nevada on July 18 and 19, 1976. The disposition of those charges was listed as "not guilty".

Question 46 on the PHD asks: "Have you or has any member of your immediate family (as defined on Page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?".

The Applicant placed an "X" in the block designated "Yes" and stated that Howard Grandberry, his deceased uncle, was found guilty in New York City, dated unknown, of assault and battery.

The Applicant failed to reveal in response to either question 45 or 46 that he was convicted for solicitation in California in November 1961; that he was arrested for forcible rape in California in November 1971; that he was arrested for forcible rape in California in August 1973; that he was arrested for forgery of a credit card in California, which offense was downgraded to petty theft in May 1974, and that he was arrested for forcible rape in California in December 1974.

The Division of Gaming Enforcement asserts that the Applicant failed intentionally to disclose his complete arrest and conviction record contrary to N.J.S.A. 5:12-86(b); that his fraudulent credit card offense, which is a violation of N.J.S.A. 2C:21-6, constitutes an offense that is inimical to the policies of the Casino Control Act and a per se disqualifier under N.J.S.A. 5:12-86(c); and that the Applicant's criminal record and his "less than candid response" at the hearing demonstrates a lack of the requisite good character, honesty and integrity under N.J.S.A. 5:12-90 and N.J.S.A. 5:12-89(b).

The Applicant testified that he was confused about the wording of questions 45 and 46 on the PHD, and he thought that question 45, which asks about juvenile arrests, applied to all arrests; and that question 46, which asks about adult arrests of the Applicant and/or his family, applied solely to the arrests of the Applicant's family.

He had no realization that he had been arrested or charged with the three unlisted rape offenses until he spoke to Detective James H. Harper, a Division investigator, on the telephone. The Applicant also contended that he thought the solicitation conviction and the credit card offense, which was downgraded to petty theft, had been expunged by his Nevada attorney, Theodore Manos, Esq., who represented him in the jury trial in Nevada which resulted in a finding of not guilty.

The Applicant submitted in evidence a letter (P-2) addressed to Joseph Wilkins, Esq., from Mr. Manos which states in part as follows:

> "It must be understood clearly at this time that I am licensed to practice law only in the States of South Carolina and Nevada, and am not licensed to practice in the State of California, where Mr. Jones had had, to my recollection, some prior misdemeanor arrests. I did discuss with him the aspect of sealing his records, however, because the conversation was on the telephone, looking back on my conversation with him, it becomes apparent that I did not make myself clear in that I would be unable to personally see to it that the California arrests were as well sealed."
>
> The letter also adds:
>
> "It is clear to me that Mr. Jones' actions in failing to list the California arrests was, in all probability, upon my misunderstood advice".

The Applicant also placed in evidence an Order to Seal the Records and Files (P-3), issued May 21, 1979 in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

The Applicant conceded that he did not call Mr. Manos to find out if, in fact, the convictions for solicitation and the credit card offense, downgraded to petty theft, had been expunged prior to filling out his PHD.

The Applicant denied that he ever attempted to or, in fact, did rape anyone. Finally, the Applicant discussed the background circumstances of his 1961 solicitation conviction, the charge of forgery involving a credit card, which was downgraded to petty theft, an altered California driver's license used to avoid bench warrants for outstanding traffic tickets and to obtain credit to purchase merchandise, and an unpaid bill to Zale's Jewelry Store which has been turned over for collection. This testimony will be commented on in more detail momentarily.

Detective James H. Harper, a Division investigator, testified, among other things, that when he interviewed the Applicant on the telephone he stated that he didn't disclose his entire criminal record because "all of the complaints were either dismissed or withdrawn". Detective Harper reviewed each arrest and conviction with the Applicant, but did not inquire into the background circumstances surrounding the rape arrests after he learned that the complaints had been either withdrawn or dismissed.

Detective Harper contacted Mr. Manos on July 28, 1980 and Mr. Manos informed him that he discussed with the Applicant the expungement of his record in December 1977; however there was some ambiguity about the fee arrangement regarding the expungement.

Finally, Detective Harper testified that the Applicant presently owes Zale's Jewelry Store $951.40, and that he has made no payment since October 1979. The matter has been referred to a collection agency.

FINDINGS OF FACT

Having canvassed the entire record, consisting of the testimony of the Applicant, Detective James H. Harper, and the exhibits marked into evidence, I make the following findings of fact:

1. The Applicant filed a Personal History Disclosure Form (PHD) with the Casino Control Commission on March 20, 1979.

2. The Applicant graduated from high school and has some college education.

3. Question 45 on the PHD asks: "Have you ever been arrested or charged with any juvenile offense whether in this State or any other jurisdiction?". The block designated "Yes" has an "X" marked next to it. The Applicant listed the offenses of kidnapping, rape and assault and battery with the disposition of not guilty.

4. Question 46 reads: "Have you or has any member of your immediate family (as defined on page IV of this application) ever been arrested, indicted or charged with or convicted of a criminal or disorderly persons offense in this or any other jurisdiction?". The Applicant placed an "X" after the block designated "Yes". He listed the name of his deceased uncle, Howard Grandberry, who was charged with assault and battery in New York City. The Applicant stated that his uncle was found guilty of that offense.

5. The Applicant's complete arrest and conviction record reflect the following:

OFFENSE	DATE	DISPOSITION	
Procuring for the purpose of prostitution	October 14, 1961	Dismissed	Cal
Pimping and placing wife in brothel	November 3, 1961	Convicted of pimping, 1 year suspended sentence and probation for 1 year	Cal
Forcible Rape California Penal Code 261.3	November 29, 1971	Dismissed	Cal
Carrying a concealed weapon, misdemeanor	July 4, 1973		New
Forcible Rape California Penal Code 261.3	August 6, 1973	Complaint withdrawn	Cal
Forgery involving a credit card, California Penal Code 261.3	May 16, 1974	Guilty - sentenced to fine of $100 or five years in jail and probation for two years.	Cal
Forcible Rape California Penal Code 261.3	December 28, 1974	Dismissed	Cal
Kidnapping	July 18, 1976	Not Guilty	New x
Infamous Crime Against Nature	July 18, 1976	Not Guilty	New
Rape	July 18, 1976	Not Guilty	New x
Battery with a deadly weapon	July 19, 1976	Dismissed	New x

6. The Applicant failed to reveal three arrests for rape and two convictions; one in 1961 for solicitation, and one in 1974 for forgery involving a credit card which was downgraded to petty theft.

7. The Applicant altered his California driver's license sometime in the 1960's to avoid bench warrants for unpaid traffic tickets and to obtain credit to purchase merchandise in various stores.

8. The Applicant presently owes Zale's Jewelry Store $951.40. He has made no payments on that account since October 1979, and the matter has been referred for collection.

9. When Detective James Harper interviewed the Applicant on the telephone and inquired about the three unlisted rape charges on his PHD, he told Detective Harper that the reason that he didn't disclose his entire criminal record was because "all of the complaints were either dismissed or withdrawn." When Detective Harper reviewed each rape arrest with the Applicant, he didn't evince surprise. The Applicant's testimony that he didn't know that he had been arrested for the three rape offenses in California is unworthy of belief.

10. The Applicant placed into evidence an Expungement Order from the State of Nevada, which indicates that his record was sealed in that jurisdiction. The Applicant notarized his PHD on May 13, 1979 and filed his application with the Casino Control Commission on March 20, 1979. The Applicant's Nevada attorney, Theodore Manos, Esq., applied for an expungement on May 18, 1979 and it was granted on May 21, 1979.

11. The Applicant did not contact Mr. Manos regarding any expungement of his California convictions prior to filling out his PHD.

12. Mr. Manos is licensed to practice law in the states of South Carolina and Nevada. The Applicant's testimony that he thought his convictions in California for solicitation and the offense of forgery of a credit card, downgraded to petty theft, were expunged by Mr. Manos prior to filling out his PHD strains credulity.

13. The Applicant's testimony of the circumstances surrounding the illegal credit card offense lacks credibility.

CONCLUSIONS OF LAW

I CONCLUDE that the Applicant intentionally failed to disclose his complete arrest and conviction record contrary to N.J.S.A. 5:12-86(b). The Applicant's contentions were that he didn't know that he was arrested in California for three unlisted rape offenses until he was informed of that fact by Detective Harper in a telephone interview and obtained his rap sheet from California. He also maintained that he thought his convictions involving solicitation and a credit card offense, downgraded to petty theft, were expunged by his Nevada attorney, Theodore Manos, Esq. A person employed by the Division of Gaming Enforcement informed him that he did not have to list expunged convictions.

I FIND that the Applicant's contentions are untenable. While it is possible that a person would not know that he had been charged with three separate rape offenses, it is not very probable. An arrest for an alleged rape is not such an offense that is easily forgotten. The complainant's names appear on the police arrest reports together with the statement that the Applicant was "advised of his rights", presumably given his Miranda warnings.

Moreover, questions 45 and 46 only ask if an Applicant has ever been arrested. It does not matter what the Applicant was arrested for, or what the Applicant thought he was arrested for.

Having observed the Applicant at the hearing, it is clear that he is an intelligent individual who is not inexperienced to police procedures. The Applicant knows what an arrest is. He knew that he was in police custody for a period of time on each of these episodes, and he was obligated to list those arrests on his PHD with any explanation that he might choose to give.

The Applicant's contentions that he thought Mr. Manos had expunged his record for solicitation and the credit card offense, downgraded to petty theft, is equally unconvincing. The Applicant didn't call Mr. Manos to verify that contention prior to filling out his PHD, and it seems unlikely that he believed his Nevada attorney, who was unlicensed to practice in California, could or would expunge his California convictions.

The inferences to be drawn with the testimony are that the Applicant failed to disclose his three unlisted rape arrests and his convictions in California because he thought that it would adversely affect his chances for licensure.

I CONCLUDE that the charge of forgery involving a credit card, which was downgraded to petty theft, is an offense of the fourth degree under N.J.S.A. 2C:21-6, and is not a per se statutory disqualifier under N.J.S.A. 5:12-86(c).

On May 16, 1974, the Applicant was arrested in California for forgery involving a credit card. He pled guilty to the downgraded offense of petty theft and was fined $100.

The Applicant related the following background circumstances of that matter. He was at a legalized poker parlor, the Rainbow Club, in Gardenia, California. A friend asked to borrow $150 from him. He told that person that he could not loan him that money because he needed some tires for his car. But this person stated that the Applicant could use his credit card to get the tires and requested him to bring back the receipt.

The Applicant loaned that person the money. He proceeded to a filling station and asked for two front tires to be placed on his car. The cost of tires was approximately $95 or $100. The service station attendant took the credit card and put it into a small computer. The service station attendant then told the Applicant that the credit card was "no good." The Applicant asked the service station attendant to hold his car as security until he returned with the money. The Applicant proceeded back to the poker parlor but was unable to locate the man who gave him the credit card.

The Applicant then proceeded back to the filling station to pay for the tires. His car was gone. The service station attendant stated that he had called the police because he believed that the credit card had been stolen.

The Applicant next proceeded to his lawyer's office. His lawyer called the police. The police stated that they were looking for the Applicant. The Applicant went to police headquarters and was charged with forgery involving a credit card. Upon the advice of counsel, he pled guilty to petty theft. The Applicant stated that he was alone at the time the episode occurred. He denied that he signed anything. He asserted that he did not leave the filling station with any merchandise that he did not pay for. The Applicant was surprised to learn that the credit card was stolen.

On cross-examination the Applicant did not know the name of the person who gave him the credit card, although he characterized him as a friend. The Applicant did not know where that person lived. The Applicant asserted that he had borrowed money from this person on prior occasions; however, he did not know how much money he had borrowed from him. The Applicant stated that he had known this person approximately one or two years at the poker parlor; and that he was white, and approximately 34-or 35-years-old. The Applicant could not describe the person's build. The Applicant didn't remember if he had a Bank of America credit card; however, he asserted that the credit card had not expired.

The Applicant's testimony lacks the ring of truth. The police report states that "defendant was accompanied by a female." The Applicant drove into a service station and complained that he had a bad tire. The service station attendant looked at the tire and told him that the tire was too worn to be repaired. The service station attendant then asked if he wanted to purchase a new tire and the Applicant stated "yes" - "and you might as well give me two of them." The service station attendant then checked the Bank of America credit card, number 4024-682-929-316, to see if it was good. A check revealed that the credit card had been stolen. When the service station attendant returned, the Applicant had left the gas station and was walking northbound. The service station attendant made some comment that he was going to call the police. The Applicant stated that he was going to get some money and asked the service station attendant not to call the police. The Applicant's car was raised on a lift with the female companion in it. The police were called, and ultimately the Applicant was placed under arrest for forgery of a credit card.

The unanswered questions are obvious. Who was the unnamed female in the police report in Jones' car; where did Jones get the stolen Bank of America credit card; who is the enigmatic Renee J. Smith mentioned on the police report; why did Jones give a sample of his handwriting to the police but refused to give one for Renee J. Smith; and whose name, if any, did Jones sign for the tires.

This matter cannot be pieced together from the police report. I would have to be either psychic or resort to conjecture and speculation to determine what actually transpired. It is sufficient to state that Jones' narrative is untruthful, and that the narrative reflects adversely upon his honesty, good character and integrity under N.J.S.A. 5:12-90 and N.J.S.A. 5:12-89(b).

I CONCLUDE that the Applicant has demonstrated a lack of the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-89(b).

In State v. Green, 62 N.J. 547, the Supreme Court stated:

> "to be emphasized is the point that many factors, including an arrest record, contribute towards the composite picture of 'the whole man' that the trial court should necessarily have to rationally sentence a defendant". At page 566 (emphasis added).

Likewise, that doctrine is applicable here. I am required to look at the "whole man" to determine if he is worthy of licensure in a highly sensitive industry. According to the rap sheet, Jones has a lengthy criminal record. The Applicant urges that it is unfair to consider rape arrests that have resulted in a jury finding of not guilty or dismissals or withdrawals by various complainants. I disagree. What is needed is total data about an Applicant to learn about his life-style and his character. Additionally, I see no merit in the assertion that the Applicant's conviction, for solicitation, the credit card offense, which was downgraded to petty theft, the altered California driver's license that was used to avoid bench warrants and to obtain credit, and the outstanding indebtedness to Zale's Jewelry Store are so trivial as to not warrant consideration. Cumulatively, these arrests, convictions and incidents lead to the conclusion that the Applicant is a fragile vessel to load with trust and confidence.

I CONCLUDE that the Applicant has not established by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 as incorporated by N.J.S.A. 5:12-90.

Finally, I CONCLUDE that the provisions of N.J.S.A. 5:12-90(h), the rehabilitation factors in the Act, apply only to criminal conduct, not to the failure to intentionally disclose material information on the Personal History Disclosure Form (PHD).

It is, therefore, my recommended decision that a casino license permitting the Applicant to work as a casino employee (Floorperson) be DENIED.

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

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

October 21, 1980
DATE

R. JACKSON DWYER, ALJ

Receipt Acknowledged:

October 23, 1980
DATE

CASINO CONTROL COMMISSION
Sr. Asst. Counsel.

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

gyd/sm

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-4170-80
CCC DOCKET NO. 79-EA-118

IN THE MATTER OF THE APPLICATION :
OF CAROL ANN KING FOR LICENSURE :
AS A CASINO EMPLOYEE (CRT :
OPERATOR) :

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting of November 5, 1980; and the Commission having carefully considered the entire record of these proceedings, the Initial Decision of the Administrative Law Judge in this matter in which it is found that the Applicant has abandoned her request for a hearing, and the written exceptions thereto filed by the Applicant; and the Commission having resolved at the said public meeting to adopt the Initial Decision and further, to deny the within application for licensure;

IT IS on this 25th day of November, 1980, ORDERED that the Initial Decision in this matter be and hereby is adopted by the Commission, and is incorporated herein by reference and made a part hereof

IT IS FURTHER ORDERED that the application of Carol Ann King for licensure as a casino employee be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated August 17, 1979, which is incor-

porated herein by reference and made a part hereof, and based further upon the Applicant's failure to fulfill her affirmative responsibility to establish by clear and convincing evidence her individual qualifications for licensure (N.J.S.A. 5:12-80(a); 89(b)(2); 90(b)); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: November 25, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:	)	INITIAL DECISION
THE APPLICATION OF CAROL ANN KING FOR LICENSURE AS A CASINO EMPLOYEE	)	OAL DKT. NO. CCC 4170-79 AGENCY DKT. NO. 79-EA-118

APPEARANCES:

John J. Degnan, Attorney General
by: Patricia J. Arons, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Carol Ann King to the Casino Control Commission for licensure to work in a casino as a CRT Operator. Applicant was advised by letter from the Casino Control Commission, dated August 30, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated August 17, 1979, there was a "substantial possibility" that the Commission would deny her application and that she had a right to a hearing.

Applicant requested a hearing on her application 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 December 3, 1979, at which time the specific issues to be resolved at the hearing were identified. After an adjournment was granted from the original hearing date of February 7, 1980, the matter was set down for hearing on July 1, 1980.

All parties were properly notified of the scheduled hearing by Notice of Hearing dated June 5, 1980. On the scheduled hearing date, no one appeared on behalf of the Applicant, Carol Ann King. Deputy Attorney General Patricia J. Arons appeared on behalf of the Division of Gaming Enforcement. The Office of Administrative Law procedures concerning the non-appearance of a party were explained to Deputy Attorney General Arons, who was then excused.

By letter to the Applicant dated July 16, 1980, a copy of which is attached hereto, Applicant was asked to submit her reasons for her non-appearance. No response was received from the Applicant.

Based upon the foregoing, I FIND:

1. No appearance was entered by the Applicant, Carol Ann King, or a representative on her behalf, on the scheduled hearing date.

2. The Office of Administrative Law has received no communication from the Applicant, or a representative on her behalf, offering an explanation for her failure to appear.

Based upon the foregoing discussion and the specific Findings of Fact, I CONCLUDE that the Applicant has abandoned her request for a hearing.

For the foregoing reasons, it is ORDERED that the proceedings in this matter before the Office of Administrative Law are 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 be law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE my Initial Decision with the Casino Control Commission for consideration.

August 11, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

August 12, 1980
DATE

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

cas

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4045-79
CCC DOCKET NO. 79-EA-117

IN THE MATTER OF THE APPLICATION OF :
JACK JONES KESSLER FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted on January 10 and 11, 1980 in the above-captioned matter before Adminsitrative Law Judge R. Jackson Dwyer of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision, and no exceptions or objections having been filed thereto by either the Applicant or the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of September 5, 1980 to adopt the Initial Decision of the the Administrative Law Judge and to deny the application for licensure,

It is on this 5th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Jack Jones Kessler for licensure as a casino employee (dealer) be and hereby is denied for the reasons stated in the Initial Decision which is incorporated herein by reference and made a part hereof, a

It is further ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement

within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____

JOSEPH P. LORDI
Chairman

DATED: 9/5/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF JACK JONES KESSLER FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)	:	INITIAL DECISION OAL DKT. NO. CCC 4045-79 AGENCY DKT. NO. 79-EA-117

APPEARANCES:

Howard G. Guggenheim, Esq. for the applicant, Jack Jones Kessler, (Harris & Guggenheim, attorneys)

John J. Degnan, Attorney General of the State of New Jersey by: Robert J. Melillo, Deputy Attorney General for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In January of 1979, Jack Jones Kessler, (Applicant), filed an application for a license as a casino employee (dealer). On August 20, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the applicant's licensure because he was dismissed from his employment as General Manager at South Jersey Radio Station (hereinafter SJR) which operates radio stations WOND-AM and WMGM-FM in Atlantic City, New Jersey. The President, Howard L. Green, asserted that the applicant was giving local sponsors free advertising time on the air in exchange for goods and services which was misappropriated for his personal use. Additionally, the applicant failed

to disclose in response to question No. 46 on his Personal History Disclosure Form (PHD) that he was convicted in Buffalo, New York of the possession of pornographic material. On August 30, 1979, the Commission informed the applicant that based upon information contained in a report from the Division of Gaming Enforcement, dated August 20, 1979, there is a substantial possibility that the Commission would deny his application. On September 10, 1979, applicant's counsel, Howard Guggenheim, 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. After notice, a prehearing was held on October 29, 1979 and a prehearing order issued on October 31, 1979, at which time the issues to be resolved at the hearing were set forth. A hearing was held on January 10 and 11, 1980.

Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on March 25, 1980 and from Howard Guggenheim on June 4, 1980. The hearing was officially closed on the latter date.

After having observed the witnesses for all parties and having considered the entire record, including the testimony and the exhibits submitted in evidence, together with memoranda of counsel, I make the following findings of fact:

1. Jack Jones Kessler, an applicant for licensure as a casino employee (dealer), filed a Personal History Disclosure form (PHD) in January of 1979 (J-1).

2. Question number 46 on the PHD asks: "Have you or has any member of your immediate family, (as defined on Page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" The applicant placed an 'X' after the word 'No' on his application.

3. The applicant was arrested and convicted in Buffalo, New York for the possession of several rolls of pornographic film. He pled guilty and was fined $50.00.

4. The applicant knowingly and intentionally failed to reveal that arrest and conviction on his PHD.

5. The applicant was employed as General Manager at South Jersey Radio, Inc. (hereinafter SJR) which operates radio stations WOND-AM and WMGM-FM, Atlantic City, New Jersey. That employment commenced in April, 1972 and terminated in February 1978, after the applicant's immediate superior, Howard L. Green, President and co-owner of SJR, asserted that the applicant used barter arrangements (advertising trades of goods and/or services) for personal use without authorization.

6. A letter from Howard L. Green, dated April 3, 1972 (J-2) reflects all of the terms of their oral employment contract with respect to the applicant's compensation from SJR as General Manager. That letter reads in pertinent part

> . . . "I thought I would take this opportunity to list the benefits that would available to you through your employment at WOND/WMGM.
>
> You would receive a weekly salary of $235.00, and a bonus payable the last week of December of 7½% of the gross collections' increase over the previous year. In any case, this figure would not be less than $750.00. Through a trade

deal we would arrange to move your family to the shore area, and through the same type of trade arrangement, we would supply all gas and oil, etc. for your automobile. Also, any legitimate travel expenses to New York, Philadelphia, etc. will be paid by WOND . . .".

7. The general manager of a radio station runs the day-to-day operations of the station. In that capacity, the general manager oversees the sales, programming and public relations departments, hires personnel and has some involvement in station policy, lease renewal and F.C.C. problems. A general manager reports to a superior or overseer, usually called an executive vice president, or in the instant matter, the president of the company, Howard L. Green.

8. A sale in the radio business is an agreement between and advertiser (sponsor) and the radio station to purchase certain time on the air.

9. Certain advertisers (sponsors) on radio station WOND (SJR) paid for their air time in money while others paid for their advertising in merchandise and services or a combination of money and merchandise and services.

10. The charge by radio station WOND (SJR) to an advertiser for a certain amount of air time would not necessarily be equivalent to the dollar amount of the merchandise and services traded. In many instances, the dollar value of the air time far exceeded the equivalent value of merchandise and services bartered.

11. Traffic sheets are logs that list all commercials run on the air. F.C.C. regulations mandate that all spot commercials run on the air be listed on such traffic sheets.

12. The traffic order, broadcast order, and time order are terms which have identical meanings. Such orders, which are ususally written up by a salesman of a radio station, reflect the agreement between the advertiser (sponsor) and the radio station with respect to the running of certain commercials. Among other things, these orders would reflect whether the purchase of air time was for cash or merchandise, the rate charged, the total cost and number of such commercials. Copies of such orders are then submitted to the traffic department, bookkeeping department and to the general manager of the radio station.

13. It is standard business practice in the radio industry that all trades (barter arrangements) on such time orders be submitted to the bookkeeping (accounting) department; otherwise, the radio station would not have accurate records on trade credits from the broadcasting of its advertisers (sponsors) commercials and the bookkeeping (accounting) department would be unable to accurately bill sponsors.

14. It is not a standard business practice or custom in the radio industry for the general manager of the station to accept merchandise or services for personal use without first receiving permission from his superior, the executive vice president of operations, or in the instant matter, the president of the company (SJR) Howard L. Green.

15. The applicant was not authorized by Howard L. Green to accept merchandise and services for his personal use by using the accumulated trade credits of the station (SJR). The applicant was required to obtain Green's approval of any purchases that he might make from advertisers (sponsors) with the stations accumulated trade credits.

16. It is not a business custom in the radio industry for an individual, who does use certain trade credits for his personal use, not to inform the book-keeping department of the utilization of those credits. The applicant was similarly required to inform the book-keeping department of any trade credits that he did utilize.

17. It is not a business custom in the radio industry for the general manager or an employee of a broadcasting station to request that the chief bookkeeper of that station destroy records of an account unless the advertiser (sponsor) has gone out of business.

18. With respect to the Midway Motors account, I FIND:

    A. The applicant utilized the station's trade credits with Midway Motors by having four tires placed on his wife's car.

    B. J-1, a letter from Howard L. Green, date April 3, 1972 reflects the terms of their oral contract and specifcally states that the applicant could utilize the station's trade credits for the purchase of oil and gas. That letter

does not give the applicant authorization to purchase new tires for a family car.

C. The applicant did not receive Howard L. Green's prior authorization for the purchase of the four new tires for his wife's car.

D. The applicant did not inform Mrs. Marie M. Bryan, the chief bookkeeper, at the station (SJR) of this trade.

E. Mrs. Bryan did not receive any statement from Midway Motors concerning any purchases made by the applicant.

F. Mrs. Bryan, under normal circumstances, would receive statements from advertisers (sponsors) of such purchases, and would credit their accounts accordingly.

G. On October 3, 1977, the applicant wrote a letter to Mr. Ed Hahn of Midway Motors (J-5) which read in pertinent part as follows:

> "As of this date (October 3, 1977) please consider all credits in full leaving a zero balance due Midway Motors. Conversely, all credits due WOND/WMGM will be considered paid in full leaving a zero balance due WOND/WMGM".

H. When the applicant wrote the aforementioned letter, he did not know whether the balance in the station's trade account with Midway Motors was zero; however, he wrote the letter at Mr. Hahn's request to assist him in the sale of the business to a prospective purchaser. When the purchase of the business

did not materialize, no arrangements were made by the applicant to have Midway Motors compensate the station (SJR) for the actual balance in SJR's trade credit account.

I. The applicant did not inform Mrs. Marie Bryan, the chief bookkeeper, of the letter to Mr. Hahn.

19. With respect to the trade credit account between Johann's Steak House and the station (SJR), I FIND:

A. The applicant dined there with family and friends on an indeterminated number of occasions and paid the bill by debiting the station's trade credit account.

B. He did not inform or obtain Howard L. Green's authorization for these meals.

C. The applicant failed to notify the chief bookkeeper, Mrs. Marie Bryan, of any meals that were paid for by the utilization of the station's trade credit account.

D. Mrs. Bryan did not receive any monthly billings from Johann's Steak House which reflecting any purchases made by the applicant.

20. With respect to the Mainland Travel Agency's account with the station (SJR), I FIND:

A. The applicant arranged a trade for the broadcast of Mainland Travel advertisements by the station.

B. J-18 is a traffic summary of all Mainland Travel advertisements which had been placed on the air by WOND between October 1976 and March 1978.

C. All sales orders for the broadcast of such commercials, as previously stated, were to be submitted to the bookkeeping/ accounting department.

D. The chief bookkeeper, Mrs. Marie Bryan, found, after a search, that only a single cash order was submitted by the applicant for a broadcast of ten Mainland Travel commercials in August of 1977 (J-4).

E. Mrs. Bryan, upon inquiry, found out that the applicant instructed Ms. Jan Baker of the WOND traffic department to broadcast hundreds of these commercials as set forth on J-18.

F. In exchange for the broadcast of these commercials, the applicant obtained from Mainland Travel, a travel package, including airfare and hotel accomodations for a close personal friend, Mrs. Joanne Spatola and her companion to Las Vegas, Nevada.

G. The applicant did not inform or receive Howard L. Green's approval for the trip. He did not inform Green of the trip until after his termination from the station (SJR).

H. The applicant did not inform the chief bookkeeper, Mrs. Marie Bryan, according to proper procedure. Mrs. Bryan did not receive any statements from Mainland Travel which would reflect any purchases with the station's accumulated trade credits. As a result of the absence of any trade orders

for the broadcast of Mainland Travel commercials, it did not have a trade credit account with the station (SJR).

21. With respect to the trade credit account between Scribner's Furniture and the station (SJR), I FIND:

A. The applicant utilized the station's trade credit to make furniture and appliance purchases from Scribner's. These purchases are reflected in a series of exhibits marked (J-3a through J-3d). The documents (J-3a through J-3d) were obtained by Howard L. Green after the applicant was terminated in 1978.

B. The applicant did not have Howard L. Green's authorization to make these purchases.

C. J-3d is an exhibit which reflects that the applicant used the trade credits of the station (SJR) to purchase furniture which was delivered to the home of Mrs. Joann Spatola.

D. The applicant testified that he "may have" instructed the chief bookkeeper, Mrs. Marie Bryan, to make deductions in the trade credit balance of Scribner's.

E. The applicant requested Mrs. Bryan to update the Scribner's Furniture account and to provide him with a full and current statement of the balances. After Mrs. Bryan performed this assignment, the applicant instructed her to destroy all the records of the Scribner's account.

F. The applicant came to Mrs. Bryan on several occasions in 1977 with checks from Scribner's. Although these checks did not equal the balance due in the Scribner's cash account with the station

(SJR), the applicant instructed her to reduce the cash balance in an amount greater than the value of the checks. On the last such encounter, the applicant instructed her to reduce the Scribner's cash balance to zero despite the fact that the Scribner's checks totalled some $430 less than the actual cash balance.

22. After the applicant's termination from the station (SJR) Howard L. Green filed a Proof of Loss Statement (J-15) with his insurance carrier, Travellers, on October 24, 1978 for $19,207 under section 5 (the employee dishonesty provisions of the contract).

23. The sum of $19,207 filed on the Proof of Loss Statement by Howard L. Green was arrived at by the station's personnel listening to its tapes over a period of time (at a certain cost per commercial) and then comparing those spot announcements with its trade credit in the bookkeeping department. Since trade dollars are not always traded on a one-to-one basis, Howard L. Green does not assert that the applicant misappropriated $19,207 worth of merchandise and services.

24. Travellers Insurance Company reimbursed Howard L. Green (SJR) for $5,000 on May 29, 1979 after its claims representative, Frank J. Gasperon, met with Howard L. Green, the chief bookkeeper, Mrs. Marie Bryan, the applicant, Ed Hahn, Midway Motors, a Mr. Hennesse at Scribner's Furniture and Marty Moss at Mainland Travel. Johann's Steak House, at the time, had gone out of business.

25. After Travellers settled the claim in the amount of $5,000 with Howard L. Green (SJR) the carrier was subrogated to Green's claim against the applicant. The applicant made

two setttlements to reimburse Green and Travellers Insurance Company for $5,000.

26. The applicant asserted that he felt that any repayment was unjustified; however, he agreed to such a settlement because he was afraid that Howard L. Green would use his influence to prevent him from obtaining other employment in the radio and broadcasting fields and possibly bring criminal action against him.

27. The applicant has been employed from May until September of 1979. From September of 1979 until the present he has been collecting unemployment. He has, at this time, made no payments to Travellers Insurance Company pursuant to his settlement agreement with them.

CONCLUSIONS OF LAW

N.J.S.2A:102-5, the applicable statute at the time this episode occurred, provides:

> "Any employee, agent, consignee, factor, bailee, lodger or tenant who embezzles or, with intent to defraud, takes money or receives, retains or approriates to his own use or the use of another any property or proceeds of the sale of the same, or any part thereof belonging to his employer, principal, consignor, bailor or landlord is guilty of a misdemeanor".

N.J.S. 2A:102-5, as re-enacted, as N.J.S. 2C:20-9, is a statutory disqualifying offense, even though the applicant was not prosecuted for the offense under N.J.S.A. 5:12-86(c) and N.J.S.A. 5:12-86(g).

I CONCLUDE that the applicants conduct, while employed at the station (SJR), constituted a form of embezzlement within the context of that statute. Under the statute, the applicant appropriated "to his own use or the use of another . . . the proceeds of the sale of property or a part thereof, belonging to his employer . . .". He utilized the trade credits of the station (SJR) with its various advertisers (sponsors) to pay for his personal purchases of merchandise and services.

The applicant's assertion that his utilization of trade credits for his own personal use was an unwritten fringe benefit of being a general manager, that Howard L. Green knew that he was utilizing the trade credits of the station and only pressed this matter after a deterioration of their relationship, strains credulity. The composite testimony of Joel Stevens, Ms. Nancy Law, Howard L. Green, and Mrs. Marie Bryan compels an opposite conclusion.

Moreover, I have no doubt that the applicant intended to defraud his employer. Whether the applicant, after his relationship with Howard L. Green deteriorated because of inadequate compensation, real or imagined, decided to utilize the station's trade credits as an added compensation, or whether he acted under an emotional attachment to a third party, or combination of both reasons, remains locked up in his own mind.

Concededly, there is ambiguity as to what trade credits were utilized at Midway Motors and Johann's Steak House. However, invoices from Scribner's furniture delivered to 555 Shore Road, Mrs. Spatola's residence, and a Mainland Travel package to Las Vegas for Mrs. Spatola and a companion, leave no doubt that the applicant misappropriated the station's merchandise and services.

Mrs. Marie Bryan, the chief bookkeeper, a person of obvious integrity, testified at length that all advertising orders were placed on her desk and designated whether they were cash or trade arrangements, merchandise or services. The trade order was placed in a trade journal book, and the sponsor would get a bill at the end of the month for the announcements run on the air. The sponsor would receive a

bill marked "paid" and the station would have a credit to correspond with the amount of the bill marked "paid". Mrs. Bryan was required to keep a running tally of these trade arrangements; otherwise, the station's credit accounts with its sponsors would be in a state of chaos.

When the applicant told Mrs. Bryan to destroy all of the station's accounting records on the Scribner's Furniture account, she became upset and suspicious of potential wrongdoing. Subsequent investigations revealed that the applicant had bypassed the bookkeeping and traffic departments and had placed some 1,029 ads or $7,385 of advertising on the air for Mainland Travel which was never entered as a credit in the station's trade books or ledgers.

The record, in my opinion, is permeated with the applicant's dishonesty and intent to defraud his employer.

Furthermore, despite the applicant's alleged reason for agreeing to reimburse Travellers Insurance Company $5,000 on its settlement to the station, I believe that the applicant should be estopped to deny his dishonesty.

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

> "The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria: (a) . . . . . (b) . . . failure of the applicant to reveal any fact material to qualification or misleading to the qualification criteria; . . .".

In response to question number 46 on the Personal History Disclosure form, the applicant failed to reveal that he was arrested and convicted in Buffalo, New York for the possession of several rolls of poronographic film, and that he was fined $50.

I CONCLUDE, after evaluating the applicant's credibility and demeanor, that he intentionally supplied false and misleading information on his PHD when he failed to list that arrest and conviction.

On the basis of the foregoing findings, that the applicant intended to defraud his employer of trade credits which he redeemed to finance his own personal purchases, and his intentional failure to reveal a prior arrest and conviction on his PHD, I CONCLUDE that the applicant's has failed to meet his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-90(b) and N.J.S.A. 5:89(b)2.

I further conclude that the applicant's failure to repay his former employer, Howard L. Green, and his carrier, Travellers Insurance Company, the agreed $5,000 settlement also reflects negatively upon the applicant's financial responsibility, integrity, honesty and good character under N.J.S.A. 5:12-89(b)1 which incorporates by reference N.J.S.A. 5:12-90(b).

It is, therefore, my recommended decision that a casino license permitting the applicant to work as a 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 is otherwise extended, this recommended decision shall become a final 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, 1980
Date

R. Jackson Dwyer
R. Jackson Dwyer, A.L.J.

July 9, 1980
Date

Receipt Acknowledged:

Casino Control Commission

Mailed to Parties:

Date

Office of Administrative Law

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO.CCC-1482-79
CCC DOCKET NO. 79-EA-57

IN THE MATTER OF THE APPLICATION :
OF STUART M. KRAFT FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER). :

This matter, having been opened to the Casino Control Commission at its public meeting on July 24, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Stuart M. Kraft's application for licensure,

It is on this 5th day of August 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Stuart M. Kraft be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated May 4, 1979, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: August 5 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:)

THE APPLICATION OF)
STUART M. KRAFT
FOR LICENSURE AS A CASINO)
EMPLOYEE)

INITIAL DECISION

OAL DKT. NO. CCC 1482-79
Agency Dkt. No. 79-EA-57

APPEARANCES:

John J. Degnan, Attorney General of New Jersey
By: Joseph A. Mussomeli, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Stuart M. Kraft to the Casino Control Commission for licensure to work as a casino employee. Applicant was advised by letter from the Casino Control Commission, dated May 24, 1979, that based upon the information received by letter from the Division of Gamin Enforcement dated May 4, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on September 13, 1979, at which time the specific issues to be resolved at the hearing were identified. After an adjournment was granted from the original hearing date of October 24, 1979, due to the identification of material issues not previously raised, the matter was rescheduled for hearing on February 19, 1980.

Due to illness, the Applicant failed to appear on the rescheduled hearing date. The opportunity for a new hearing date was granted the Applicant, and the matter was set down for hearing on May 14, 1980, at the Office of Administrative Law, Trenton, New Jersey. All parties were notified of the rescheduled hearing date by the Office of Administrative Law. On the scheduled hearing date, no one appeared on

behalf of the Applicant, Stuart M. Kraft. Deputy Attorney General Joseph A. Mussomeli appeared on behalf of the Division of Gaming Enforcement. No communication has been received from the Applicant, or a representative on his behalf, with regard to his failure to appear.

Based upon the foregoing, I FIND:

1. No appearance was entered by the Applicant, or a representative on his behalf, on the rescheduled hearing date.

2. The Office of Administrative Law has received no communication from the Applicant, or a representative on his behalf, explaining his failure to appear at the rescheduled hearing.

Based upon the foregoing discussion and the specific Findings of Fact, I CONCLUDE that the Applicant has abandoned his request for a hearing.

For the foregoing reasons, it is ORDERED that the proceedings in this matter are 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

June 2, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

June 4 1980
DATE

AGENCY HEAD

Mailed to Parties:

June 9, 1980
DATE

Ronald L. Parker BA
OFFICE OF ADMINISTRATIVE LAW

esk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-3
OAL DOCKET NO. CCC-4066-80

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Charging Party,	FINAL ORDER
v.	
RESORTS INTERNATIONAL HOTEL, INC., and DAVID LANDO,	
Respondent.	

This matter having been opened to the Commission by way of the Complaint filed by the Division of Gaming Enforcement on March 14, 1979; and an Initial Decision rendered by Administrative Law Judge Richard Voliva of the Office of Administrative Law having been filed with the Commission on September 10, 1980 recommending adoption of the settlement reached between the parties; and the Commission having considered the Initial Decision of the Administrative Law Judge and the Stipulation of Settlement embodying the terms and conditions consented to by the parties; and the Commission having resolved at its public meeting of October 22, 1980 to affirm and adopt the Initial Decision and the said Stipulation of Settlement and to dismiss the instant Complaint;

IT IS on this 11th day of December 1980, ORDERED that the Initial Decision in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the Complaint in this matter be and hereby is dismissed; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 11, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4066-80

AGENCY DKT. NO. 79-3

IN THE MATTER OF:

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

v.

RESORTS INTERNATIONAL HOTEL, INC.
AND DAVID LANDO,
Respondents.

Record Closed: September 3, 1980
Agency Received: 9-10-80

Decided: September 9, 1980
Mailed to Parties: 9-17-80

APPEARANCES:

Raymond J. Marquez, Deputy Attorney General for the Department of Law and Public Safety, Division of Gaming Enforcement (John J. Degnan, Attorney General of New Jersey, attorney)

Richard K. Weinroth, Esq. for Resorts International Hotel, Inc. (Sterns, Herbert and Weinroth, Esqs., attorneys)

Donald G. Targan, for David Lando

BEFORE RICHARD L. VOLIVA, JR., ALJ:

The Department of Law and Public Safety, Division of Gaming Enforcement (Division), charging party, by complaint filed against Resorts International Hotel, Inc. (Resorts), and David Lando, respondents, alleged violations of the Casino Control Act and the regulations promulgated thereunder. N.J.S.A. 5:12-90; N.J.A.C. 19:45-1, et seq. The respondents 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 matter was scheduled for a prehearing conference on September 3, 1980.

The parties have negotiated and submitted a stipulation of settlement (see Stipulation of Settlement Order attached hereto). The essential terms of the settlement are that the respondents have acknowledged the alleged violations of the Casino Control Act and accompanying regulations, Resorts took immediate disciplinary action against Mr. Lando and the respondents have agreed in the future to abide by the rules and regulations of the Casino Control Act.

I FIND and CONCLUDE that the settlement, as attached, is reasonable. Therefore, I ORDER that it be adopted.

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

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

September 9, 1980
DATE

Richard L. Voliva J.
RICHARD L. VOLIVA, ALJ

Receipt Acknowledged:

September 10, 1980
DATE

David Amaji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

September 17, 1980
DATE

Ronald J. Parke /BA
OFFICE OF ADMINISTRATIVE LAW

ms

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

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

Plaintiff-Charging Party,

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

vs.

Defendant--Respondent,

RESORTS INTERNATIONAL HOTEL, INC.
and DAVID LANDO.

Docket No. 79-3

CIVIL ACTION

STIPULATION OF SETTLEMENT ORDER

This matter having been opened to the Commission, acting by and through its duly designated Hearing Examiner, by John J. Degnan, Attorney General of New Jersey and attorney for charging party, Fredric E. Gushin, Deputy Attorney General, appearing, in the presence of Richard K. Weinroth, Esquire, attorney for respondent, Resorts International Hotel, Inc. (hereinafter "Resorts" and Donald G. Targan, Esquire, attorney for respondent, David Lando,

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

STIPULATED AND ORDERED on this day of , as follows:

1. Respondent Resorts is the holder of a plenary casino license issued to it by the Casino Control Commission on February 16, 1979. Prior to that date and on November 6, 1978, Resorts had been the holder of a temporary permit entitling it to operate a casino hotel in accordance with the provisions of the Casino Control Act as amended, and regulations promulgated thereunder, including, but not limited to compliance with N.J.A.C. 19:45-1 et seq., relating to accounting and internal controls.

2. Respondent Lando filed Personal History Disclosure Form #4 with the Casino Control Commission as a casino hotel employee, which application is still pending, and on November 6, 1978 was working for Resorts as Assistant Manager of the hotel under a temporary permit.

3. At approximately 6:00 P.M., prevailing time, on November 6, 1978, Respondent Lando assisted in having a check in the amount of $5000.00 drawn by a hotel patron, Mr. David Zarin, cashed at the casino cashier's cage of Respondent Resorts.

4. Respondent Resorts, having determined that said transaction was outside the scope of Respondent Lando's duties and responsibilities, and was violative of company rules and

policies, suspended Respondent Lando without salary for a period of eight days ending November 30, 1978 and placed him on probation for a period of six months from that date.

5. On March 14, 1979, the Division of Gaming Enforcement filed a Complaint charging Respondent Lando in Count I with having performed work on the casino floor without a casino employee license, in violation of N.J.S.A. 5:12-90, and with having cashed a check in violation of N.J.A.C. 19:45-23(a) (c) and also charging Respondent Resorts in Count II with having wrongfully allowed David Lando to work on the casino floor.

6. The parties have amicably disposed of all issues relating to the allegations in the Complaint filed by the Division of Gaming Enforcement, and the defendants, Resorts and Lando, have filed Answers denying any violations of the provisions of the Casino Control Act and Regulations, and it appears that all parties have agreed that an Order is to be entered pursuant to the provisions of the Stipulation of Settlement provided herein.

7. Respondent Lando agreed to abide by all the rules and regulations of the Casino Control Act, and agrees to refrain from procuring the cashing of any checks for hotel patrons at the casino cashier's cage, and hereby acknowledges that his actions in procuring the cashing of a check for a hotel patron at the casino cashier's cage were inappropriate to his position as a holder of a temporary casino hotel employee permit.

8. Respondent Resorts acknowledges that involvement in the check cashing procedures of the casino cashier's cage is inappropriate to the function of a holder of a temporary casino hotel employee permit, and agrees to refrain from allowing, and to affirmatively preclude, such inappropriate procedures in the future.

9. In return for the acknowledgements and agreements of each of the Respondents contained herein, the Division of Gaming Enforcement agrees that this Stipulation of Settlement be entered and that the Complaint be dismissed against both Respondents.

DATED: September 3, 1980

Richard L. Volpe P.
Hon.

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

RICHARD K. WEINROTH,
Attorney for Respondent,
Resorts International Hotel, Inc.

By: _____
Richard K. Weinroth
Dated:

DONALD G. TARGAN, P.A.
Attorney for Respondent,
David Lando

By: _____
Donald G. Targan
Dated:

JOHN J. DEGNAN, Attorney General of N.J.
Attorney for Charging Party

By: _____
Raymond J. Marquez
Deputy Attorney General
Dated:

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3715-79
CCC DOCKET NO. 79-EA-79

IN THE MATTER OF THE APPLICATION :
OF LOUIS M. LARVO FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (FLOORPERSON) :

A hearing having been conducted in the above-captioned matter before the Honorable Norman D. Smith, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by either party, and the Commission having resolved at its public meeting of November 5, 1980 to adopt the Initial Decision and to deny the application for licensure;

IT IS on this 25th day of November 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission.

IT IS FURTHER ORDERED that the application of Louis M. Larvo for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision, 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 Applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: Nov. 25, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3715-79
AGENCY DKT. NO. 79-EA-79

IN THE MATTER OF:

LOUIS LARVO,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: August 12, 1980 Decided: September 16, 1980

Agency Received: Mailed to Parties:

APPEARANCES:

Kenneth F. Hense, Esq., for the Petitioner (Reed and Hense, attorneys)

Patricia J. Arons, Esq., Deputy Attorney General, for Respondent (John J. Degnan, Attorney General of New Jersey, attorney)

BEFORE NORMAN D. SMITH, A.L.J.:

This matter concerns the application of Louis Larvo to the Casino Control Commission for a license as a casino employee (floor person) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement objected to petitioner's licensure and the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The facts upon which the Division bases its objection to the petitioner's licensure have been stipulated by the parties. Based on that stipulation, I find that from 1941 to 1973, except for three scattered years, petitioner earned his livelihood as a dealer and box man in illegal gambling operations in the State of Kentucky. Since 1973 he has been lawfully engaged in gambling in the State of Nevada.

The petitioner did not testify. He has pursued a course of criminal behavior as a means of livelihood for over 30 years. Such conduct inherently raises strong negative implications concerning his good character, honesty and integrity. The Appellate Division has observed that "the epithet 'honest' implies a sense of general probity which is the antithesis of criminal tendency or conduct, and which certainly, we think, would imply 'law abiding' man." State v. Micci, 46 N.J. Super 454 (App. Div. 1957). The record is devoid of evidence that could challenge the clear implications arising from petitioner's stipulated conduct. The petitioner's argument rests on his lawful employment in Las Vegas, Nevada for the past seven (7) years, which is supported in the record, and the alleged innocent and socially acceptable nature of Kentucky gambling casinos, which is without any support in the record.

I CONCLUDE that the petitioner has failed to demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b2 as incorporated in N.J.S.A. 5:12-90.

Therefore, IT IS HEREBY ORDERED that petitioner's application for licensure IS DENIED.

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

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

9/16/80
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

9/17/80
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

September 18, 1980
DATE

Ronald J. Parka/bf
OFFICE OF ADMINISTRATIVE LAW

ij

LIST OF WITNESSES:

James M. Harper

LIST OF EXHIBITS:

J-1 Personal History Disclosure Form of Louis Larvo

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-930-80
CCC DOCKET NO. 79-EA-136

IN THE MATTER OF THE APPLICATION :
OF ROBERT A. LYONS FOR LICENSURE : FINAL ORDER
AS A CASINO HOTEL EMPLOYEE :

This matter, having been opened to the Casino Control Commission at its public meeting on July 24, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Robert A. Lyons' application for licensure,

It is on this 5th day of August 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Robert A. Lyons be and hereby is denied based upon the reasons set forth in the report of the Division of Gaming Enforcement dated August 23, 1979, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: August 5 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF	)	INITIAL DECISION
THE APPLICATION OF	)	OAL DKT NO. CCC 930-80
ROBERT A. LYONS FOR LICENSURE	)	AGENCY DKT. NO. 79-EA-136
AS A CASINO HOTEL EMPLOYEE	)	

APPEARANCES:

John J. Degnan, Attorney General, State of New Jersey
By: **MICHAEL GRODJESKI,** Deputy Attorney General,
Division of Gaming Enforcement

BEFORE THE HONORABLE **JACK BERMAN,** A.L.J.:

The matter commenced when petitioner, Robert Andre Lyons, applied to the Casino Control Commission for licensure as a casino hotel employee and was subsequently denied application.

Upon receipt of the petitioner's request for a hearing, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A Pre Hearing Conference was scheduled for 2:00 P.M., on April 10, 1980, at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey.

All parties were properly notified of the scheduled Pre Hearing Conference by the Office of Administrative Law. On the scheduled date, the petitioner failed to appear and no one else appeared for or on the petitioner's behalf.

The Deputy Attorney General representing the Division of Gaming Enforcement was instructed to wait until one hour had elapsed from the scheduled hearing time before being excused.

By letter dated April 17, 1980 the petitioner, Robert Andre Lyons, was given opportunity to submit reasons for the nonappearance.

No correspondence has been received from the petitioner or anyone else on his behalf.

I FIND:

No appearance having been made by the Petitioner, Robert Andre Lyons, and the Office of Administrative Law having received no communication from him giving a satisfactory explanation for his failure to appear,

I CONCLUDE:

The petitioner has abandoned his request for a hearing. For the foregoing reasons, **IT IS ORDERED THAT** the petitioner's request for a hearing is considered **ABANDONED** and his petition is hereby dismissed.

This decision may be affirmed, modified or rejected by the Director of the Division of Casino Control Commission , who by law is empowered to make a final decision in this matter. However, if the Director of 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-1 et seq.

I HEREBY FILE with the Director of the Division of Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

June 2, 1980
DATE

Jack Berman
JACK BERMAN, A.L.J.

Receipt Acknowledged:

June 4 1980
DATE

AGENCY HEAD

Mailed to Parties:

June 5, 1980
DATE

Ronald L. Parker/BS
OFFICE OF ADMINISTRATIVE LAW

thf

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 2653-79
CCC DOCKET NO. 79-EA-81

IN THE MATTER OF THE APPLICATION	:	
OF PATSY N. MARINO FOR LICENSURE	:	FINAL ORDER
AS A CASINO EMPLOYEE (DEALER).	:	

A hearing having been conducted in this matter on October 9, 1979 and November 5, 1979 before the Honorable Joseph F. Fidler, A.L.J. of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge filed on January 22, 1980 and the exceptions thereto filed on behalf of the Applicant; and the Commission having resolved at its public meeting of April 9, 1980 to reject the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

IT IS on this 22nd day of April, 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby rejected by the Commission; and

IT IS FURTHER ORDERED that the application of Patsy N. Marino for licensure as a casino employee be and is hereby granted based upon the Commission's findings that: (1) the Applicant did not intentionally or with conscious disregard for the regulatory process fail to disclose a portion of his

arrest record; (2) the Applicant has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h); and (3) the Applicant has established his reputation for good character, honesty and integrity by clear and convincing evidence; and

IT IS FURTHER ORDERED that the Chairman is hereby authorized to issue a Final Commission Decision stating specifically the Commission's findings of fact and conclusions of law in this matter; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: April 22, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-2653-79
CCC DOCKET NO. 79-EA-81

IN THE MATTER OF THE APPLICATION :
OF PATSY N. MARINO FOR LICENSURE : FINAL COMMISSION DECISION
AS A CASINO EMPLOYEE (DEALER) :

Lindsay L. Burbage, Esq., appeared for the Applicant.

Gary L. Ehrlich, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

I. INTRODUCTION

In December 1978, Mr. Patsy N. Marino [hereinafter: the Applicant] filed with the Casino Control Commission [hereinafter: the Commission] an application for licensure as a casino employee (dealer). The application was duly forwarded to the Division of Gaming Enforcement [hereinafter: the Division] for the requisite background investigation.

On June 19, 1979, the Division informed the Chairman of the Commission, by way of letter-report, of its objection to the Applicant's license application. Specifically, the Division took exception to the Applicant's failure to disclose two (2) assault and battery arrests occurring in 1951 and 1953. In both instances the charges were dismissed. The Division also urged that the Applicant's two convictions for gaming in violation of N.J.S.A. 2A:117-3 would render his licensure inimical to the policies of the Act and casino operations pursuant to N.J.S.A. 5:12-86(c). By letter dated July 13,

possibility of adverse Commission action on his license application based on the allegations contained in the June 19, 1979 letter-report submitted by the Division. The Applicant was further advised of his right to request a hearing on this matter prior to final action by the Commission. The Applicant thereupon 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 August 29, 1979, and the matter was formally heard by the Office of Administrative Law, Trenton, New Jersey, on October 9, 1979 and November 5, 1979.

Administrative Law Judge Joseph F. Fidler filed an Initial Decision in this matter on January 18, 1980 wherein he recommended that the instant license application be denied. A copy of the Initial Decision is appended hereto at A-1 through A-8. Receipt of same was acknowledged by the Commission legal staff on January 22, 1980. Copies were thereafter mailed to the parties by the Office of Administrative Law on January 25, 1980. As required by N.J.S.A. 52:14B-10(c), the parties were allowed ten (10) working days from the date of receipt of the Initial Decision within which exceptions thereto could be filed with the Commission.

The Applicant filed a letter of exception to the Initial Decision on February 7, 1980, wherein counsel argued that: (1) the Applicant's incomplete disclosure of his arrest record was unintentional and inadvertent, and therefore is not a basis for disqualification pursuant to N.J.S.A. 5:12-86(b); and (2)

the Applicant has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h) thereby overcoming disqualification on the basis of N.J.S.A. 5:12-86(c).

At its public meeting of April 9, 1980, the Casino Control Commission, basing its decision upon an independent review of the record, voted to reject the Initial Decision of the Administrative Law Judge, and grant the within application for licensure for the reasons expressed below.

II. The Applicant Neither Intentionally nor with Conscious Disregard for the Regulatory Process Failed to Totally Disclose His Criminal Record.

The Commission has interpreted Section 86(b) of the Casino Control Act (N.J.S.A. 5:12-86(b)) on several previous occasions. See In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Docket No. 79-CL-1 (1979); In the Matter of the Application of Albert G. Washington for Licensure as a Casino Employee (Bulk Coin Handler), Docket No. 78-EA-18 (1979); In the Matter of the Application of Christine W. Paul for Licensure as a Casino Employee (Dealer), Docket No. 79-EA-48 (1979); In the Matter of the Application of Angelo J. Ruggiero for Licensure as a Casino Employee (Gaming School Instructor), Docket No. 79-EA-69 (1979); In the Matter of the Application of John T. Daniels for Licensure as a Casino Employee (Dealer), Docket No. 78-EA-13 (1979); In the Matter of the Application of John William Monahan for Licensure as a Casino Employee (Alcoholic Beverage Employee), Docket No. 79-EA-47 (1980); In the Matter of the Application of Robert

J. Alois for Licensure as a Casino Employee (Gaming School Instructor), Docket No. 78-EA-8 (1980); In the Matter of the Application of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), Docket No. 79-EA-34 (1980); In the Matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), Docket No. 79-EA-70 (1980).

In each case, the Commission was called upon to evaluate the Applicant's intent and purpose at the time of the apparent failure to provide information requested by the Commission. The Commission has held that disqualification will not ensue when it has been demonstrated that the Applicant's failure to provide requested information was inadvertent, ignorant or absent bad faith. See, Resorts, Washington, Monahan and Smith, supra. The Commission has been equally emphatic that any attempt to circumvent the full disclosure requirements of the Casino Control Act (N.J.S.A. 5:12-80(a),(d), 86(b) and 89(b)(2)) will not be countenanced and will result in disqualification from licensure. See Paul, Daniels, Alois and Cooper, supra.

In the case at hand, the record reveals a number of circumstances which bear on the Applicant's state of mind when preparing his application form. In our judgment, these circumstances establish that the Applicant completed his application form in good faith, and his omission of information was a result of his misunderstanding of legal requirements and misapprehensio. of legal jargon, rather than a resolve to intentionally mislead the Commission or the Division.

However, in addition thereto, the Division's initial investigation unearthed two (2) undisclosed arrests. In August 1951, the Applicant was arrested for assault and battery in violation of N.J.S.A. 2A:110-1. The charge was ultimately dismissed. The Applicant was again arrested for aggravated assault and battery in December 1953. This charge was also dismissed. Accordingly, the Division enlarged its basis of objection to include disqualification pursuant to Section 86(b) based upon this undisclosed information.

At the hearing herein, the Applicant denied that he intended to conceal the information concerning these arrests from the Commission (T22-6 to 24).[3] In explanation of the omission of this information, the Applicant testified that in 1969 he had sought removal of his statutory disqualification from licensure in the alcoholic beverage industry due to his criminal history. In order to accomplish this, the Applicant engaged a private attorney to represent him in this matter. The attorney compiled a list of arrests and convictions and submitted it to the Division of Alcoholic Beverage Control. Based on this submission, the Division of Alcoholic Beverage Control granted the petition and removed the Applicant's statutory disqualification.

---

[3] "T" refers to the transcript of the first day of hearing (10-9-79) conducted by the Office of Administrative Law in this matter.

"2T" refers to the second and final day of the hearing (11-5-79).

It appears that the Applicant is offering his reliance on the advice of counsel sought in another matter for justification of his incomplete disclosure of information requested by the Commission. In this regard, "we reiterate that we will not permit applicants to rely upon a third party for the accuracy and completeness of personal history disclosure forms, as a means of avoiding the requirement of full and complete disclosure." In the Matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), Docket no. 79-EA-10 at 10 (1980).

Nevertheless, the fact that the Applicant, albeit 10 years previously, paid an attorney $1500.00 to seek out and compile his criminal record is indicative of the reasonableness of the Applicant's belief that as of 1969, the compiled criminal record was exhaustively complete and diligently prepared. Reliance on this reasonable belief is precisely the opposite of "careless disregard" of which the Administrative Law Judge found the Applicant culpable. The Applicant further testified that knowing he had not had any encounters with the criminal justice system since 1969, he submitted the identical compilation of his criminal history to the Commission as part of his license application. We find that his reliance upon its completeness and accuracy, however misplaced, was not entirely unreasonable.

While it is true that the disclosures of criminal conduct required by the Division of Alcoholic Beverage Control in a proceeding to remove statutory disqualification and the infor-

mation required by question 46 of the Personal History Disclosure Form are not identical, it is also undeniable that the Applicant's reliance on this information, although misguided, was not intentionally misleading. In any case, we find that this reliance, misguided as it may have been, does not evidence careless or willful failure to disclose.

More importantly, this Commission's finding is based upon the fact that the Applicant did include in his license application offenses far more serious than those which he failed to disclose, i.e., two convictions for bookmaking contrary to N.J.S.A. 2A:112-3. It is illogical to assume that a person would freely and openly disclose these possibly disqualifying offenses while at the same time attempting to conceal a number of minor and inconclusive encounters with the law. The Commission has held in the past that the disclosure of such information is "strongly probative of the Applicant's intent to in good faith comply with the Commission's full disclosure requirement." In the Matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), Docket No. 79-EA-10 at 9-10 (1980).

During the hearing, the Applicant testified with candor and remorse concerning the difficulties he encountered in his unhappy first marriage which he claimed led to his brushes with the law. He was twice arrested in 1951 and once in 1953

on various assault charges. In each case the Complainant was his former spouse, and in each case the Applicant pleaded guilty and paid a fine. According to the Applicant's testimony these physical confrontations came about as a result of locating his former wife in various local "gin mills" in the company of other men (T25-2 to T26-7); T30-11 to T31-6).

And finally, a local store owner signed a complaint which culminated in the Applicant's arrest in 1958 because of the Applicant's use of loud and abusive language in his store. This complaint was immediately dismissed by a local magistrate.

This is the sum of Applicant's undisclosed criminal record. We note the Administrative Law Judge's impression that "the Applicant's confused explanations as to the omissions from his Personal History Disclosure Form were attributed to his surprise at having been confronted with such a problem." This impression is entirely consistent with the Applicant's contention that he was unaware of any incompleteness or inaccuracy in the information submitted to the Commission on his Personal History Disclosure Form, and therefore, did not intentionally omit or attempt to conceal information requested by the Commission. In light of the foregoing, we find that under the particular circumstances of this case the Applicant neither intentionally nor with conscious disregard of the regulatory process failed to disclose information requested by the Commission. Accordingly, we hold that the Applicant is not disqualified from licensure pursuant to N.J.S.A. 5:12-86(b).

III. The Applicant Has Affirmatively Demonstrated His Rehabilitation Pursuant to N.J.S.A. 5:12-90(h).

The Applicant was twice convicted of bookmaking contrary to N.J.S.A. 2A:112-3. The Applicant sustained his first conviction of this charge on February 19, 1954, and his second on February 18, 1960. At the time of the filing of the within application, this offense was not specifically listed as a disqualifying offense in Section 86(c) of the Act. (N.J.S.A. 5:12-86(c)). Therefore, the Division contended that the Applicant's conviction of this gaming offense would render his licensure inimical to the policy of the Act and to casino operations thereby disqualifying him from licensure. See N.J.S.A. 5:12-86(c).

In his Initial Decision, the Administrative Law Judge did not address the above issue as framed by the Division. We can only assume that he declined to do so in light of then recent amendments to the Casino Control Act. See P.L. 1979, c.282, approved January 9, 1980.

As a result of the amendment process, Section 86(c) of the disqualification criteria was entirely revised. Presently, the Commission must deny licensure to any applicant who is disqualified on the basis of a conviction of a listed offense, at or prior to the time of application, if such conviction occurred within the ten years immediately preceding application.

If, however, more than ten years have elapsed since the conviction of an enumerated offense has been sustained by an applicant, automatic disqualification might not follow, provided that the applicant can make a clear and convincing demonstration that such automatic disqualification would not be justified. N.J.S.A. 5:12-86(c)(4).

As amended, N.J.S.A. 5:12-86(c)(2) now lists conviction of N.J.S.A. 2A:112-3 as a disqualification. This being the case, it is unnecessary to determine whether licensure of this applicant would be otherwise "inimical" to the policies of the Act and casino operations within the meaning of N.J.S.A. 5:12-86(c)(4).

Having established the Applicant's apparent disqualification, his convictions of an offense now listed as a disqualifier, we must now proceed to determine whether this Applicant has clearly and convincingly demonstrated that automatic disqualification would not be justified, and whether the Applicant is rehabilitated as required by N.J.S.A. 5:12-90(h).[4] It is readily apparent within the context of the facts of this case, that a demonstration of rehabilitation would necessarily preclude the necessity of any separate finding whether the offense should be an automatic disqualifier despite the passage of more than 10 years. This follows because rehabilitation would allow licensure of a casino employee even prior to such ten-year period. Therefor

---

[4] N.J.S.A. 5:12-90(h) provides in pertinent part:
***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;

we hold, under the specific circumstances of this case, that if the Applicant affirmatively demonstrates his rehabilitation, he will have demonstrated that automatic disqualification would not be justified.

In assessing the Applicant's rehabilitation, the Administrative Law Judge reviewed the evidence concerning the Applicant's conduct in the 20 years since his last encounter with the criminal justice system. The Administrative Law Judge stated:

* * * *

> The Applicant's latest conviction is nearly twenty years old, and the evidence presented establishes that Applicant has since that time been a good worker and family man, respected by his friends and associates. Although the position of dealer is a sensitive one, and the Applicant's illegal gambling activities continued from 1953 to 1959, the passage of nearly twenty years since his last criminal involvement weighs strongly in the Applicant's favor. (See A-5)

* * * *

However, the Administrative Law Judge went on to find that two factors negated the Applicant's ability to affirmatively establish his rehabilitation. The first factor, the Applicant's failure

---

Footnote 4 con't.

(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.

to totally disclose his arrest record, has been found by this Commission not to have been intentional or to evidence a lack of good faith which would hamper the investigatory process. See Section II. Such an ignorant or inadvertent abridgement of the disclosure requirement neither forms an independent basis for disqualification nor reflects adversely on the Applicant's ability to demonstrate rehabilitation.

The second factor was an apparent conflict between the Applicant' testimony at the hearing herein concerning his 1953 bookmaking activities and his 1953 statement to police investigators (Exhibit R-3).

During the hearing the Applicant testified extensively as to his 1953 wagering activities (T27-9 to 12; T28-9 to 16; T29-9 to T30-10; T37-6 to 8; T37-20 to 23; T40-23 to T41-6; T39-1 to 6; T40-8 to 10; T51-14 to T52-1). The conflict seems to have manifested itself in terms of whether the Applicant made a financial gain on out-of-state bets. Exhibit R-3, a copy of which is attached hereto, is an unsworn statement voluntarily given to detectives by the Applicant without the advice or assistance of counsel at the County Detectives' Office, Mt. Holly, N.J., on October 30, 1953. According to that statement, the only time the Applicant could have obtained personal financial gain from his gambling activity was when he took personal responsibility for payment of out-of-state bets by "sitting on them".[5] Exhibit R-3 states as follows:

---

[5] "Sitting on a bet" is a term of common usage amongst bookmakers. When a person"sits"on the bet of another, he does not place a wager with a third party (a bookmaker), he takes the risk of being personally liable for payment of the wager if the bettor wins. Of course, if the bettor loses, the "sitter" retains the wagered money.

* * * *

BY CAPT. ZELLER:

Q. Would you take the Garden State plays down each day?
A. Every day, yes, sir. If I didn't go, we - there was always some one going.

* * * *

Q. If you were too busy, what happened?
A. Somebody was always going to the track.

Q. In other words, you didn't sit on any of the local bets?
A. No, never.

Q. Only sat on bets that were made out of State?
A. Out of State is right.

Q. What was your percentage on the local bets? How did you come out financially?
A. No finance. Just being a good Joe.

Q. The only financial gain you could make then, would be on those you sat on for out of State bets?
A. That is right.

Q. You booked yourself on them?
A. If I lost --

Q. You made them good yourself?
A. That is right.

Q. But as you sat on none that were bet on the Jersey tracks?
A. No, sir.

Q. You always got them to the track, or sent them by some one else?
A. That is right. We would get them there.

Q. When you say "we", if you didn't go, "we"?
A. Some one from Wrightstown is always going.

Q. Anyone else who had a part of the book with you - that made any money out of it?
A. No, sir.

Q. Did you turn, or place any of the bets through anyone else other than set on them yourself?
A. The others, for other bets, no, sir.

Q. You laid off?
A. No. Only Two dollar bets. The biggest was maybe Five dollars.

Q. Did you have a limit your book would pay on the outside bets?
A. I didn't state anything like that. It was started as a gesture to take bets to the track when we started Atlantic City, Monmouth or Garden State.

Q. When a person would have a win on an outside track, would you pay them track prices?
A. No, sir.

Q. What price would you derive at?
A. Never no set price on it because they wouldn't play a long shot, either a favorite or second choice.

Q. When you say they wouldn't play it, would you refuse?
A. No. I know just about how a person would play. He is not a person who would play a sixty to one shot, or anything like that.

Q. Know what the longest shot was, on the outside track, you had to make good?
A. No. I think the long shot would be Sixteen dollars. The reason a guy would play on another track, if they moved it from Jersey to another track and he liked to follow it, because there are a lot of fellows who like to play a horse like that.
[Exhibit R-3 in Evidence. Emphasis added.]

* * * *

However, during examination at the present hearing, the Applicant testified as follows:

* * * *

Q. Sticking with the first bookmaking conviction, were you making any money out of this operation?

A. No, definitely not. I was a loser.

Q. You were a loser?

A. When you go to the race track every day, you have to be a loser (T30-4 to 10).

* * * *

Q. Did you make any kind of money at all from your business? In other words, did you place bets for people, go to the track for people, completely as a courtesy all during this period of time?

A. As a courtesy.

Q. With no reward at all?

A. As a courtesy because I knew maybe would go

were going. That's all it was, a courtesy. (T40-23 to T41-6).

Our reading of R-3 reveals that the Applicant did acknowledge a situation in which he could make a financial gain, however, he never specifically admitted therein that he had done so.

The lack of specificity implicit in the question as posed by Captain Zeller is the source of a problem which has only been exacerbated by the 27 years intervening since the 1953 interview as memorialized in Exhibit R-3. It is not especially clear what was meant by the phrase "financial gain." Nor is it clearly discernible what information the Applicant understood the question concerning financial gain to elicit. We are not certain whether either Captain Zeller or, later, the deputy attorney general intended to ask whether the Applicant made any profit whatsoever as a result of his wagering activities, or whether the Applicant supported himself from these activities, or derived significant income therefrom.

In any event, unable to find a direct conflict between the testimony given at the hearing and Exhibit R-3, we find that the nature of any inconsistency that might exist is not such as would reflect adversely on his demonstration of rehabilitation. Accordingly, we hold that the Applicant has affirmatively established his rehabilitation pursuant to N.J.S.A. 5:12-90(h).

IV. The Applicant has Clearly and Convincingly Established his Good Character, Honesty and Integrity

The only issue remaining for resolution is whether the Applicant has clearly and convincingly established his qualifications for casino licensure pursuant to N.J.S.A. 5:12-89(b)(2), 90(b). We think he has.

The Applicant appears to have replaced bursts of temper that inevitably lead to physical confrontation, with an almost philosophic equanimity. In short, the evidence before us leads us to conclude that the Applicant has gained control over his life. He has been a law-abiding citizen for the past 20 years (2T29-14 to 2T30-9). He has worked steadily and is known in the community as a conscientious worker, and a good family man (2T5-4 to 8). The Applicant testified at length about his past fascination with wagering on horse races, and it appears that he "changed [his] life completely around" after his last conviction for bookmaking which was entered some 20 years ago (T44-15 to 23). Therefore, we are clearly convinced that the Applicant has met his burden of establishing his good character, honesty and integrity, which are qualifications for licensure pursuant to N.J.S.A. 5:12-89(b)(2), 90(b).

V. SUMMARY

Having previously resolved the issue of the Applicant's candor and good faith in his dealings with the Commission in the Applicant's favor, and upon the basis of the positive evidence of rehabilitation and good character, we are satisfied that: (1) The Applicant is not disqualified on the basis of N.J.S.A. 5:12-86(b) in that his failure to totally disclose his criminal record was neither intentional nor evidence of a careless disregard of the regulatory process; and (2) the Applicant has overcome his disqualification on the basis of his convictions of N.J.S.A. 2A:112-3, an offense specifically listed in Section 86(c) of the Act (N.J.S.A. 5:12-86(c)), by an affirmative demonstration of his rehabilitation as required by N.J.S.A. 5:12-90(h); and (3) the Applicant has clearly and convincingly established his good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89(b)(2), and 90(b). In light of the foregoing, we find the Applicant, Mr. Patsy N. Marino has clearly and convincingly established his qualifications for licensure and, accordingly, we grant his application for licensure as a casino employee (dealer).

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: June 30 1980

IN THE MATTER OF
THE APPLICATION OF PATSY N. MARINO
FOR LICENSURE AS A CASINO
EMPLOYEE (DEALER)

INITIAL DECISION

OAL DKT. NO. CCC 2653-79
Agency Dkt. No. 79-EA-81

APPEARANCES:

Destribats and Hamilton
By: Jay G. Destribats, Esq.
for the Applicant, Patsy N. Marino

John J. Degnan, Attorney General of New Jersey
By: Gary A. Ehrlich, Deputy Attorney General
for the Division of Gaming Enforcement,
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the application of Patsy N. Marino to the Casino Control Commission for licensure to work in a casino as a dealer. His application, including a Personal History Disclosure Form, was filed with the Commission in December of 1978. Applicant was advised by letter from the Casino Control Commission, dated July 13, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated June 19, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application 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 pre-hearing conference was held on August 29, 1979, and the hearing was held on October 9, 1979, and November 5, 1979, at the Office of Administrative Law, Trenton, New Jersey. The final supplemental paper of the parties was received on December 6, 1979, which is deemed to be the concluding date of the hearing.

Counsel for the Applicant and the Division of Gaming Enforcement were requested to prepare post hearing briefs which would discuss the effect of enactment of proposed amendments to the Casino Control Act (N.J.S.A. 5:12-1 et seq.), upon the circumstances of the instant matter. The contemplated amendments were in fact approved January 9, 1980, as P. L. 1979, c. 282, and shall be applicable to the determination herein.

At issue is whether Applicant should be disqualified from licensure as a casino dealer on the grounds that he has failed to reveal a fact material to his qualification criteria. Also at issue is whether Applicant has qualified for licensure by sustaining his burden of demonstrating his rehabilitation pursuant to section 90h of the Casino Control Act, despite his two convictions of an offense which is an enumerated statutory disqualifier for licensure within the meaning of section 86c(2) of the Act. Applicant's demonstration of his rehabilitation by clear and convincing evidence would necesarily sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity as required by section 89b, as incorporated in section 90 of the Act.

In addition to incorporating the affirmative criteria of section 89, section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying information which is false or misleading as to a material fact pertaining to the qualification criteria. N.J.S.A. 5:12-86c, as amended, provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. However, section 86c (4) provides that the automatic disqualification provisions of 86c shall not apply with regard to any conviction which did not occur within the ten year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to section 86c. In essence, the demonstration required of the Applicant pursuant to section 86c(4) is the same as that required of him pursuant to the rehabilitation provision of section 90h of the Act.

It is undisputed that Applicant successfully completed a craps course at the East Coast Gaming and Electronics School. Applicant testified that he is presently a heavy equipment mechanic at Marshall Maintenance, Trenton, New Jersey, and has been so employed for the past eight years. From 1968 to 1970, Applicant was concessionaire at the former Arrowbrook Country Club in Bordentown, New Jersey. For many years prior to 1968, Applicant was the self employed owner of Pat's Garage, in Wrightstown, New Jersey. Applicant has produced ten letters of recommendation (Exhiibt P-1) from employers, business associates, friends and others. Mr. Abraham Young, owner of the Public Meat Market, Trenton, New Jersey and Mr. Robert J. Costigan, a retired chief of collection and enforcement for the Division of Taxation, both testified as to their recommendation of Applicant for

a position as a dealer in a Casino, and as to the Applicant's favorable and long standing reputation for good character, honesty and integrity.

The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b of the Casino Control Act arises from Applicant's arrest in 1951 for assault and battery (R.S. 2:110-1), and his arrest in 1953 for atrocious assault and battery (N.J.S.A. 2A:90-1). Both of these charges were "no billed" by the Grand Jury, and Applicant testified that he entered guilty pleas (presumably to some lesser charge) in both cases and paid a $50.00 fine both times. Applicant admitted his omission of any mention of these two arrests and convictions in his answer to question number 46 of his personal history disclosure form, which requires complete disclosure of an Applicant's criminal and disorderly persons arrest and conviction record. During the hearing, Division of Gaming Enforcement Investigator Roger W. Heilemann testified concerning two other matters uncovered in his investigation of Applicant which were not disclosed by Applicant in response to question number 46. Applicant was arrested in 1951 for the disorderly person offense of using abusive language and assaulting his wife; to which charge the Applicant pleaded guilty and was fined $10.00 and $5.00 costs. Applicant was also arrested in 1958 on the disorderly persons charge of using loud and offensive language against a local store owner. This charge was subsequently dismissed.

When Applicant was asked to explain the reason for his failure to disclose his 1951 and 1953 assault and battery arrests, Applicant testified that he had in 1969 sought removal of his statutory disqualification from licensure in the alcoholic beverage industry due to his conviction record, and had at that time submitted a list of his arrests and convictions to the Division of Alcoholic Beverage Control. According to the Applicant, the Division of ABC accepted his petition based on the arrests and convictions he had set forth, and removed his statutory disqualification. It was the Applicant's testimony that he submitted precisely the same list of his arrests and convictions with his application to the Casino Control Commission for licensure as a dealer, and it was not until he was interviewed by the Division's Investigator that he remembered his 1951 and 1953 arrests for assault and battery. Applicant testified that he did not intentionally omit disclosure of the 1951 and 1953 assault and battery incidents from his personal history disclosure form, but rather had been relying upon the records previously utilized by the Division of Alcoholic Beverage Control. When asked on direct examination if he had made all other necessary disclosures, the Applicant replied that he did. However, after the Division's Investigator revealed during the Division's case that Applicant had failed to disclose his 1951 assault and 1953 offensive language arrests, no additional explanation for this failure to disclose was forthcoming from the Applicant.

Concerning the Applicant's non-disclosures, Investigator Heilemann testified that the Applicant explained to him that he didn't think he had to disclose the matters because they were disorderly persons arrests, involving marital disputes between himself and his ex-wife. When he was asked on direct examination if the Applicant told him that the Applicant had forgotten about the arrests, the investigator's response was somewhat equivocal compared to his other responses when he stated, "I don't believe so, no." The impression strongly gained from the testimony of both the Applicant and the investigator is that the Applicant's confused explanations as to the omissions from his personal history disclosure form were attributable to his surprise at having been confronted with such a problem. Accepting the Applicant's explanation, albeit poorly articulated to the Division Investigator, of reliance upon the list of arrests and convictions set forth in the order of the Division of Alcoholic Beverage Control, such reliance reveals a lack of diligence in providing necessary information to the Commission, for which the Applicant must bear responsibility. Pursuant to N.J.S.A. 33:1-31.2, the Division of Alcoholic Beverage Control is concerned with crimes of moral turpitude, and disorderly persons offenses do not present a statutory disqualifiction for licensure in the Alcoholic Beverage Industry. Applicant's reliance on his criminal record as disclosed in the order of the Division of Alcoholic Beverage Control removing his statutory disqualification for convictions involving moral turpitude is at best a careless disregard of his disclosure requirements pursuant to the Casino Control Act, and it reflects adversely upon the Applicant's good character, honesty and integrity.

The Applicant herein has twice been arrested for, and convicted of, bookmaking, in violation of N.J.S.A. 2A:112-3. Pursuant to section 86c(2), a conviction for bookmaking under N.J.S.A.2A:112-3 is an automatic disqualifier for licensure, unless, pursuant to section 86c(4), the conviction did not occur within the ten year period immediately preceding application for licensure, and the Applicant can demonstrate by clear and convincing evidence that automatic disqualification is not justified. Applicant's two convictions for bookmaking, upon his pleas of guilty, were entered in 1954 and 1960.

Pursuant to section 90h of the Act, Applicant shall not be denied a casino employee license on the basis of his bookmaking convictions, provided that he had affirmatively demonstrated his rehabilitation. In determining whether the Applicant has affirmatively demonstrated his rehabilitation, the following factors should be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the Applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

Applicant's latest conviction is nearly twenty years old, and the evidence presented establishes that Applicant has since that time been a good worker and family man, respected by his friends and associates. Although the position of dealer is a sensitive one, and the Applicant's illegal gambling activities continued from 1953 to 1959, the passage of nearly twenty years since his last criminal involvement weighs strongly in the Applicant's favor.

The candor and credibility of the Applicant within the context of his application for licensure and the hearing process must also be examined in order to determine whether he has sustained his burden of demonstrating his rehabilitation. The Applicant's aforementioned lack of diligence in providing a complete record of his arrests and convictions to the Commission reflects adversely upon his demonstration of rehabilitation. A conflict between the Applicant's testimony concerning his 1953 bookmaking activities and his 1953 statement to police investigators reflects adversely upon the Applicant's affirmative demonstration of his rehabilitation and his present qualification for licensure. At the hearing, the Applicant denied that he held any of the bets of his fellow gamblers himself, or made any profit on the bets of his fellow gamblers. This testimony is contradicted at page 4 of Exhibit R-3, which is the Applicant's statement to the police investigating his 1953 bookmaking arrest. In this statement, the Applicant clearly admitted that he had been holding bets on out-of-State races and had been making a financial gain thereon. The Applicant's testimony in contradiction to this statement given to the police in 1953 evidences a lack of candor which clearly does not demonstrate his rehabilitation sufficiently to overcome his two convictions for a specifically enumerated disqualifier under section 86c(2) of the Act.

Having reviewed the testimony and other evidence offered in this matter (see inventory of exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I find:

1. Applicant has applied for a license to permit him to work in a casino as a dealer.

2. Applicant successfully completed a course in craps offered by the East Coast Gaming School.

3. Applicant failed to disclose on his personal history disclosure form his 1951 and 1953 assault and battery arrests pursuant to R.S. 2:110-1 and N.J.S.A. 2A:90-1, respectively, and his subsequent convictions upon downgraded offenses for which he paid $50.00 fines.

4. Applicant failed to disclose on his personal history disclosure form any information concerning his 1951 arrest and conviction for the disorderly persons offense of using abusive language and assaulting his wife; and failed to disclose his arrest in 1958 for the disorderly persons offense of using offensive language, which complaint was subsequently dismissed.

5. The arrest and conviction information which Applicant failed to disclose on his personal history disclosure form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

6. Applicant's failure to disclose any information concerning the aforementioned arrests and convictions evidences a careless disregard of the disclosure requirements under the Casino Control Act, and it reflects adversely upon Applican s good character, honesty and integrity.

7. Applicant was convicted in 1954 and 1960 of bookmaking, in violation of N.J.S.A. 2A:112-3.

8. N.J.S.A. 2A:112-3 is a specifically enumerated automatic disqualifier for licensure under section 86c(2) of the Act.

9. Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

10. Applicant has failed to overcome his disqualification from licensure on the basis of his convictions of an offense enumerated under section 86c(2) of the Act by demonstrating his rehabilitation pursuant to section 90h of the Act by clear and convincing evidence.

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

An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and tru the regulatory provisions of this Act are designed to extend strict State regulation to all persons, locations, practices and associatic related to the operation of licensed casino enterprises and all

related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has failed to demonstrat by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino employee dealer license based upon his conviction of an offense which is an enumerated disqualifier for licensure pursuant to N.J.S.A. 5:12-86c(2). It is, therefore, ORDERED that the application of Patsy N. Marino 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 agency 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 with the Casino Control Commission my Initial Decision in this matter and the record in these proceedings.

January 18, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

January 22, 1980
DATE

AGENCY HEAD

Jan 25, 1980
DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

esk

INVENTORY OF EXHIBITS

For the Applicant:

P-1 Packet of ten letters of recommendation

P-2 Division of Alcoholic Beverage Control Order dated May 15, 1969

For the Division of Gaming Enforcement:

R-1 1951 and 1958 arrest reports

R-2 1953 and 1958 arrest reports

R-3 1953 bookmaking arrest report

R-4 1959 bookmaking arrest report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 78-EA-21

IN THE MATTER OF THE APPLICATION OF MARTIN MARTIN, MARTHA STRETTON: ALDONA MIDDLESWORTH, JOHN B. KINIRY, JOSEPH PALLONE, AND ATLANTIC INDUSTRIAL HARDWARE CO., INC., a New Jersey Corporation, FOR RELIEF.	:	FINAL ORDER

This matter having been brought before the Casino Control Commission as a challenge to the utility and facial validity of several questions and other items in the application forms which must be completed and submitted by applicants for casino employee licensure and casino hotel employee licensure; and the Commission having designated R. Benjamin Cohen to serve as Hearing Examiner and to conduct appropriate proceedings; and the said Hearing Examiner having recognized the challenge as a petition under Section 69(c) of the Casino Control Act (N.J.S.A. 5:12-69(c)) for the amendment or repeal of certain Commission regulations, to wit, the application forms adopted pursuant to Section 70(a) of the Casino Control Act (N.J.S.A. 5:12-70(a)); and a plenary hearing having been conducted by the said Hearing Examiner on issues of both law and policy regarding the challenged items; and the Commission having considered the record of these proceedings,

the Hearing Examiner's Report and Recommendation and the Applicants' Statement of Exceptions thereto; and the Commissio having heard oral arguments by counsel for the Applicants and counsel for the Division of Gaming Enforcement at the Commission's public meeting of August 7, 1980;

It is on this 14th day of August, 1980, ORDERED that the Report and Recommendation of the Hearing Examiner be and hereby is adopted by the Commission; and

It is FURTHER ORDERED that the petition for amendment or repeal of the challenged items in the application forms be and is hereby denied except for the specific modifications recommended by the Hearing Examiner for the reasons set forth in the Report and Recommendation; and

It is FURTHER ORDERED that the Commission staff promptly draft appropriate amendatory language to effectuate the specific modifications recommended by the Hearing Examiner and present the amendatory language to the Commission for consideration and approval; and

It is FURTHER ORDERED that the Commission staff and the Division of Gaming Enforcement staff jointly review the application forms in light of the Division's accumulated investigative experience to determine whether the forms may be made less burdensome to applicants without impairing the efficiency and completeness of the investigative process; and

It is FURTHER ORDERED that the Commission staff promptly report to the Commission any suggested amendments, modifications or deletions arising from the joint staff review; and

It is FURTHER ORDERED that a copy of this Order be served on the parties within five days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

By: _____

Joseph P. Lordi, Chairman

DATED: AUGUST 14, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 78-EA-21

IN THE MATTER OF THE APPLICATION OF MARIA MARTIN, MARTHA STRETTON, ALDONA MIDDLESWORTH, JOHN B. KINIRY, JOSEPH PALLONE, AND ATLANTIC INDUSTRIAL HARDWARE CO., INC., A NEW JERSEY CORPORATION, FOR RELIEF.	:	HEARING EXAMINER'S REPORT AND RECOMMENDATION

Arlene Gilbert Groch, Esq., appeared for the Applicants.

Patricia J. Arons, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter involves numerous challenges to questions, waivers and consents in the forms which must be filed by applicants who seek casino employee or casino hotel employee licenses from the Casino Control Commission [the Commission].[1] More particularly, the objections pertain to several questions in the personal history disclosure form - 2 (PHDF-2) which is required of casino employee license applicants; the consent to inspections,

1. At one point, the challenge included the application requirements imposed upon companies intending to conduct regular business, not directly related to gaming, with casino hotels. This aspect of the challenge was abandoned at the hearing. See infra.

searches and seizures included in the PHDF-2; the waiver of official liability for certain informational disclosures, which waiver is included in both the PHDF-2 and the personal history disclosure form - 4 (PHDF-4) which pertains to casino hotel employee license applicants; and the release authorization included in both forms. The objections are based on alleged violations of several statutory and constitutional rights, including the First Amendment right of association, the "right to privacy," the right to be free from unreasonable searches and seizures, and the Fourteenth Amendment guarantee of due process. Before addressing these issues and the standing of these individuals to raise them, it is first necessary to understand the nature of this action and the events which preceded it.

I. PROCEDURAL HISTORY

Under section 70(a) of the Casino Control Act,[2] the Casino Control Commission is required to promulgate regulations "prescribing the methods and forms of application which any applicant shall follow and complete prior to consideration of his application by the Commission." In keeping with this obligation, the Commission duly adopted regulations pertaining to applications. N.J.A.C. 19:41-1 et seq. Specifically, no application shall be "deemed filed"

---

2. The Casino Control Act is codified as N.J.S.A. 5:12-1, et seq., and hereafter will be referred to as "the Act." References to sections of the Act herein will refer only to section number. For example, "section 70(a) of the Act" refers to N.J.S.A. 5:12-70(a).

with the Commission until the applicant satisfies the Chairman that all appropriate business entity disclosure and personal history disclosure forms have been "properly completed and presented" and that "all required consents [and] waivers" have been properly presented. N.J.A.C. 19:41-8.2(b) and (c).

As a further part of its required regulations under section 70 of the Act, the Commission adopted a number of application forms which consist of questions, requests for information, waivers, consents and releases. These forms differ in content and scope depending on the type of activity or employment for which Commission approval is sought and depending on the nature of the applicant, i.e., a business entity or a natural person. More particularly, the Commission requires persons seeking to be licensed as casino employees[3] to file a PHDF-2. Casino service industries[4] which intend to provide goods and services not directly related to gaming are required to obtain a casino service industry license under section 92(c) of the Act. In such cases, the entity itself must complete and file a

---

3. A "casino employee" is defined in section 7 of the Act. Essentially, it includes all personnel employed in the operation of the casino itself, including boxmen, dealers, floormen and croupiers, but excluding supervisory personnel classified under section 9 of the Act as "casino key employees."

4. Section 12 of the Act defines a "casino service industry" as essentially any enterprise which does business with licensed casinos on a regular or continuing basis.

business entity disclosure form - 3 (BED-3) and certain key personnel in the entity must individually complete and file a PHDF-4. Persons who seek licensure as casino hotel employees must also complete and file a PHDF-4.[5]

On or about April 14, 1978, the Commission received a PHDF-2 from Martha Stretton. On or about April 21, 1978, the Commission received a PHDF-2 from Maria Martin. Both women sought to be licensed as casino employees in order to be employed as dealers. On each form, the following questions and items were not answered or completed: questions number 8, 16 (partial); 17,18,19,20,21,22 (partial), 23,26 (partial), 27,28,29,30,32,35,36,37,40,41,42,43,45,46,47,48, 49,50,51,52,53,54,55; the attorney certification and the consent to search. The release authorization in each form was signed but was first modified to restrict its effectiveness. The incomplete forms were accompanied by lists of the unanswered items and reasons why they were not completed. (A-1; A-2).[6]

On or about April 17, 1978, the Commission received a letter dated April 12, 1978, from Arlene Gilbert Groch, Esq., indicating that she represented both Ms. Stretton and Ms. Martin and requesting a determination whether their

---

5. A "casino hotel employee" is defined in section 8 of the Act as one who performs service or custodial duties for a licensed casino hotel "but whose employment duties do not require or authorize access to the casino."

6. This notation refers to documents and exhibits introduced at the hearing. "A" refers to Applicants and "D" refers to the Division of Gaming Enforcement.

applications were deemed filed pursuant to N.J.A.C. 19:41-8.2 and 8.3, and, if so, whether the omitted items were grounds for denial of licensure. By letter of May 1, 1978, Chairman Lordi advised Ms. Groch that he refused to accept for filing the applications of Ms. Stretton and Ms. Martin due to their refusal to provide requested information. The Chairman further advised these applicants of their rights to a hearing and the responsibility to request a hearing. By letter of May 3, 1978, these applicants requested a hearing on these matters.

On May 22, 1978, Ms. Stretton and Ms. Martin graduated from Resorts International Dealers School after having successfully completed the prescribed course of study and practices as casino dealers specializing in blackjack.

On or about May 25, 1978, the Commission and the Division of Gaming Enforcement [the Division] were served with a complaint, brief and supporting papers in Martin, et al. v. State of New Jersey, et al. (Superior Court of New Jersey, Appellate Division, Docket No. A-3764-77). This action sought temporary restraints to prohibit the Commission from requiring applicants to complete certain of the above-listed questions on PHDF-2, the waiver of liability, the consent to search and the release authorization. Plaintiffs requested a hearing and ultimately a declaratory judgment that the complained of questions and requirements are facially unconstitutional. In their court action, Ms. Martin and Ms. Stretton were joined by other plaintiffs who also sought

to challenge portions of the Commission's forms. These additional plaintiffs were Joseph Pallone, John B. Kiniry, Atlantic Industrial Hardware Co., Inc., and Aldona Middlesworth.

On May 26, 1978, representatives of the Commission and Division appeared before the Honorable Herbert Horn, J.A.D., in response to plaintiffs' application for emergent relief. Judge Horn denied the emergent relief. Thereafter, the plaintiffs agreed to dismiss their court action and to seek an initial review before the Commission. By letter of June 2, 1978, the Commission notified Ms. Stretton and Ms. Martin that a hearing had been scheduled for these matters. That letter advised that the other plaintiffs who had joined in the court action should apply to the Commission in writing if they also desired hearings. By letter of June 9, 1978, Ms. Groch requested delcaratory rulings from the Commission with regard to all plaintiffs who had participated in the dismissed court action.

On June 15, 1978, a prehearing conference was held. At that conference, representatives of the applicants and the Division agreed to the specific questions and forms which were being challenged, the basic issues to be determined and the scope of discovery necessary to prepare for the hearing. (See Parts A and B of the Prehearing Conference Order, attached hereto). Additionally, the order determined the nature of the proceeding to be a petition requesting the Commission to amend or repeal a regulation pursuant to

section 69(c) of the Act. Further, the Order reflected the Division's statement that, in its experience, some of the challenged questions were not essential and others could be modified. (See Part B(4)(b), (c) and (d) of the Order).

Although the Prehearing Conference Order limited the challenged items to those which had been the subject of the dismissed court action,[7] the applicants subsequently moved to expand the number of questions at issue. By letter of June 19, 1978, the undersigned granted this motion with respect to all but two of the additional questions requested. As a result of this grant, the applicants were permitted to add the following questions on PHDF-2 to their challenge: 8, 16 (partial), 22 (partial), 26 (partial), 29, 30, 35, 36, 37, 47, 50, 53, 54 and 55. Thus, the challenge encompasses no less than 27 of the 55 questions on the PHDF-2.[8]

On July 27, 1978, Martha Stretton, who had previously submitted an incomplete PHDF-2 (A-1), filed a completed form with the Commission. In her completed PHDF-2 (D-1), Ms. Stretton responded to all questions. She also signed the waiver of liability, the consent to inspections, searches

---

7. In the court action, the applicants challenged the following questions in PHDF-2: 17,18,19,20,21,23,32,40,45,46, 49,51 and 52. (See Part B(4)(a) of the Prehearing Conference Order).

8. A blank copy of PHDF-2 is appended hereto for reference to the exact language of the challenged items.

and seizures and the release authorization without modification. However, on the waiver, the consent and the release she wrote the words "signed under protest" under her signature. After being duly investigated by the Division, Ms. Stretton was licensed by the Commission as a blackjack dealer on November 8, 1978. On November 20, 1978, a work permit was filed for Ms. Stretton in accordance with section 106 of the Act. The permit indicated that Ms. Stretton was employed as a dealer by Resorts International Hotel, Inc.

The hearing in this matter was held on July 31, August 1, 2, 6, 7 and 8, 1979.[9] Shortly before the start of the hearing, a letter dated July 27, 1979, was received by the undersigned. The letter was from John B. Kiniry, President of Atlantic Industrial Hardware Company, Inc., who indicated a desire to withdraw from the proceeding. At the outset of the hearing, counsel for the petitioners acknowledged receiving a copy of the letter and agreed that John B. Kiniry and Atlantic Industrial Hardware, Inc. were no longer parties. (1T9-4 to 10-9).[10]

---

9. The substantial time between the prehearing conference and the hearing was occasioned by several procedural matters which required several adjournments of scheduled commencement dates. The applicants requested or agreed to each of these adjournments.

10. References to the transcript of the hearing will use the following system of notation:

    1T refers to the transcript for July 31, 1979, morning session;
    2T refers to the transcript for July 31, 1979, afternoon session;
    3T refers to the transcript for August 1, 1979, morning session;
    4T refers to the transcript of August 1, 1979, evening session;
    5T refers to the transcript for August 2, 1979;
    6T refers to the transcript for August 6, 1979, morning session;

II. HEARING

A. NATURE AND JURISDICTION

From the foregoing recitation of events, it clearly appears that the present proceeding is not a hearing on the denial of a license application. See N.J.A.C. 19:42-3. The regulations plainly anticipate that such a hearing should be granted when a license application may be denied following the investigation of the applicant by the Division and its report to the Commission. See N.J.A.C. 19:42-3.1, 3.2 and 3.3. None of the petitioners sought this hearing as an opportunity to demonstrate that they are qualified for casino employee licenses. N.J.A.C. 19:42-3.4. Actually, Ms. Stretton has received such a license. (1T97-17 to 98-16). With regard to Ms. Martin, the only other applicant for licensure among the petitioners, no question has ever been raised about any fact specifically concerning her as an individual. Rather, her application form was rejected by the Chairman solely because it was largely incomplete, a fact which is hardly contested. As for the other petitioners, Ms. Middlesworth and Mr. Pallone, no application for licensure has ever been filed on their behalf (2T22-15 to 25; 11T101-2 to 19).

FOOTNOTE 10 CONTINUED

7T refers to the transcript for August 6, 1979, afternoon session;
8T refers to the transcript for August 7, 1979, morning session;
9T refers to the transcript for August 7, 1979, afternoon session;
10T refers to the transcript for August 8, 1979, morning session;
11T refers to the transcript for August 8, 1979, afternoon session.

For similar reasons, it would be improper to consider this a "contested case" within the meaning of the regulations.

> "Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by the Commission by decisions, determinations, or orders addressed to them or disposing of their interests, after opportunity for a hearing. N.J.A.C. 19:42-1.2.

This definition repeats the definition of "contested case" set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-2(b). The thrust of the definition is to require adjudicative hearings only where the rights of specific parties are required by constitutional right or by statute to be settled by orders addressed to them after an opportunity for a hearing. In re Department of Environmental Protection, 139 N.J.Super. 514 (App. Div. 1976).

Procedural due process requires an adjudicative hearing to be conducted when two prerequisites are met:

> Contested factual issues which may be presented in an evidential manner in proceedings which are targeted at a person satisfy the first prerequisite for a hearing. [citation omitted]. In such cases adjudicative, as opposed to legislative, facts will usually be at issue. The second prerequisite is that the party affected by the administrative outcome have a safeguarded interest. Particularized property rights or other special interest must exist. [Cunningham v. Dept. of Civil Service, 69 N.J. 13, 23-24 (1975)]. (emphasis added).

Thus, under the first prerequisite, there must exist contested issues of adjudicative rather than legislative fact.

In Cunningham, the Court quoted approvingly from

Professor Davis who wrote:

> ***Adjudicative facts are facts about the parties and their activities, businesses, and properties, usually drawing the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy and discretion. ["The Requirement of a Trial-Type Hearing," 70 Harv. L. Rev. 193, 199 (1956), quoted in Cunningham v. Dept. of Civil Service, supra at 22].

The Court further explained that where an administrative agency acts "in a general capacity, such as rule making, so that the direct effect of its factual conclusions will be imposed on a class or group, as distinguished from some specific person or persons, then it may well be that such a hearing is not necessary." Id. As examples, the Court indicated that setting standards to practice before an agency would require no hearing, though a hearing would be required to find someone deficient in meeting those standards. Id. at 22-23.

In the instant matter, none of the petitioners wishes to contest any issue of adjudicative fact as pertaining to their particular qualifications or the rejection of their applications. Rather, the plain purpose of this proceeding is to overturn certain regulations of the Commission which apply generally to the entire class of license applicants. The absence of any need to adjudicate particular facts is further demonstrated by the brief and supporting papers filed by these petitioners in the Appellate Division and

refiled with the Commission as part of this proceeding. In those documents, the petitioners assert that the issue is solely one of law, i.e., the facial validity of the forms, and no issue of fact is involved. (See pp. 6,7 of plaintiff's brief in Martin et al. v. State of New Jersey). This position was expressly restated by the petitioners' counsel at the hearing. (1T19-21 to 20-11). Plainly, this is not a "contested case" within the meaning of either the regulations of the Commission or the Administrative Procedure Act. Any contrary conclusion would effectively provide a right to a full evidentiary trial-type hearing to every person affected by an administrative rule of general applicability. See United States v. Storer Broadcasting Co., 351 U.S. 192 (1956). Such an unwieldy and unnecessary procedure was never contemplated. See Motyka et al. v. McCorkle, et al., 58 N.J. 165, 180-81 (1971).

For similar reasons, the present proceeding is not a declaratory ruling within the meaning of the Commission's regulations. N.J.A.C. 19:42-2.13 provides that a hearing shall be afforded to interested parties prior to the rendering of any declaratory ruling by the Commission "with respect to the applicability to any person, property or state of facts of any provision of the Act or of any regulation of the Commission." It would simply ignore reality to argue that there is a serious question of the applicability of the application regulations to these persons. They have not inquired into the wording of a particular question or

the proper way to respond. Nor have they asserted a special, factual reason why they should not be required to answer any inquiry. Their attack is broad and frontal. They assume the applicability of the regulations and assail their validity not as applied but on their face. Hence, no declaratory ruling under the cited regulation is appropriate or necessary.

The nature of the present issues, the manner of their presentation and the relief requested make clear that these petitioners seek to overturn, repeal or, at least, modify the application regulations of the Commission. The Act provides specifically for such challenges in section 69(c) which states:

> Any interested person may file a petition with the Commission requesting the adoption, amendment or repeal of a regulation. Such petition shall state clearly and concisely:
> (1) The substance and nature of the regulation, amendment or repeal requested;
> (2) The reason for the request; and
> (3) Reference to the authority of the Commission to take the action requested.
>
> Upon receipt of the petition, the Commission shall schedule the matter for hearing within 90 days and shall render a decision within 30 days after the completion of said hearing.

Although this section would require the Commission to provide a "hearing" to "interested persons" who request repeal of particular regulations, there is no indication in the Act or the regulations (N.J.A.C. 19:42-7.2) of the type of hearing required. However, section 69(c) hearings would appear to be primarily "legislative" since the type of information or data produced would usually be "legislative

fact" bearing on the wisdom or efficacy of the regulation. See Cunningham v. Dept. of Civil Service, supra at 22-23; In re Matter of Public Hearings, 142 N.J.Super. 136, 151-52 (App. Div. 1976); Public Interest Research Group v. State, 152 N.J.Super. 191, 206-08 (App. Div. 1977).

"Merely because the duty is imposed on the agency to receive and consider evidence in connection with a hearing provided for in the statute, it does not per se signify that the hearing is to be of the trial -type." Public Interest Research Group v. State, supra at 206; In re Matter of Public Hearings, supra at 151. Rather, where the agency considers action which applies to a general class and which will have continuing effect, such quasi-legislative action need not be preceded by an adjudicative hearing and specific fact finding; permitting interested parties to present information, data and views will normally suffice. Consolidation Coal Co. v. Kandle, 105 N.J.Super. 104, 117-18 (App. Div. 1969), aff'd o.b. 54 N.J. 11 (1969).

While there is no obligation to afford a full-blown adjudicative hearing to all interested persons challenging Commission regulations on their face, the scope and tenor of such hearings should be flexible. Despite the "quasi-legislative" label, such hearings may involve contested issues of material "adjudicative facts." See Cunningham v. Dept. of Civil Service, supra. When that occurs, the petitioners should be permitted to present proof and to challenge adverse witnesses more in the judicial fashion. Id. So here, the petitioners allege that the application

requirements infringe upon basic constitutional rights. There appear no material issues of contested fact as to the alleged infringement since these petitioners assert no special status or factual situation, i.e., they attack the regulations facially, not as applied to them. Thus, the initial and basic question may be resolved without a formal trial-type proceeding. However, against the possibility that petitioners would succeed in demonstrating an infringement of basic rights, the State would be obliged to come forward with proof to demonstrate a substantial relationship between the required disclosure and an overriding or compelling state interest. Gibson v. Florida Legislative Committee, 372 U.S. 539, 546 (1963). Indeed, the Division did produce evidence and testimony at the hearing to demonstrate the utility and purpose of the challenged questions and forms. As to such proofs, the hearing was conducted in a trial-like manner and the parties were afforded an opportunity to cross-examine or rebut any disputed facts.

One further point should be made as to the nature of this hearing and the jurisdiction of the Commission to conduct it. Petitioners seek repeal of these application requirements based on their alleged unconstitutionality. A number of courts have stated that an administrative agency is incompetent to pass upon the constitutional implications of either its enabling statute or its own administrative rulings. See, e.g., Montana Chapt. of Ass'n of Liv. Tech. Inc. v. Young, 514 F. 2d 1165, 1167 (9 Cir. 1975); Finnerty v. Cowen, 508

F.2d 979, 982 (2 Cir. 1974); Downen v. Warner, 481 F. 2d 642, 643 (9 Cir. 1973). While the rule prohibiting an agency from declaring its own enabling statute unconstitutional is undeniable, the Commission is authorized to interpret the Act and would naturally seek an interpretation which would avoid constitutional pitfalls. Our courts have recognized the value of an interpretation of a regulatory statute by the agency authorized to administer it, especially where the statute is new and its meaning not fully developed. New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978).

The nature of the present hearing and the existence of the Commission's jurisdiction are even more obvious as to the regulations themselves since the Commission is empowered to repeal a regulation whether the constitutional challenge is valid or not. In other words, the agency need not decide the regulation to be firm or infirm but may determine that it is simply undesirable, unnecessary or both. Moreover, even if the agency refuses to repeal a rule, the holding of a hearing serves a valid purpose in providing the reviewing court with a full record, including resolution of contested facts. See R. 2:5-5(6). Thus, the Commission has legitimate reasons and authority to entertain this challenge under section 69(c), notwithstanding that its legal opinion as to the unconstitutionality of the statute or regulations are entitled to no special deference by a reviewing court except to the extent that the expertise or specific knowledge of

the Commission is relevant. See Essex Council v. N.J. Civil Service, 118 N.J.Super. 583 (App. Div. 1972). Petitioners' objection to the jurisdiction of the Commission is not well taken. (1T19-21 to 24-19).

B. SUMMARY

Petitioners presented seven witnesses, three of whom were admitted as experts on law enforcement or legal matters or both. Given the legislative nature of the hearing, both lay and expert witnesses were afforded wide latitude in expressing opinions or reactions to the challenged items and in suggesting alternatives. The Division produced three witnesses. Of those, one was qualified as an expert on law enforcement and background investigations and another was accepted as an expert on legal issues, law enforcement techniques and casino regulation. Because of the large number of items being challenged and the broad scope of the inquiry, a detailed recitation of the record is neither warranted nor feasible. Rather, an overview of the testimony is appropriate here. Pertinent testimony will be specifically considered in discussing the legality or value of particular questions and consents. However, it should be emphasized that the full record has been carefully reviewed and that each comment, criticism and opinion has been studied.

Martha Stretton testified as to why she initially refused to answer the challenged questions on the PHDF-2,

refused to sign the consent to inspections, searches and seizures, and signed the release authorization only as modified to restrict its use to verifying information contained in the PHDF-2. (See A-1). Ms. Stretton stated that many of the questions "pried into my personal life." (1T63-8 to 22). With regard to certain of the challenged questions, she claimed an invasion of privacy. (See 1T66-22 to 66-6; 1T67-21 to 69-17; 1T76-21 to 71-24).

As a lay witness, Ms. Stretton could not identify specific legal rights implicated by the questions. She did indicate, however, that one of her primary concerns was the effect of the information on other members of her family or close associates. She generally feared the possibility of an adverse impact on her family if the background investigation included her relatives. (See 1T127 to 130). Nevertheless, Ms. Stretton did not identify a single negative consequence which occurred following her submission of a completed PHDF-2, her investigation by the Division and her licensure by the Commission. (See 1T119; 2T9 and 10). She asserted her anxiety that her home would be searched by the Division since she believed the consent to inspections, searches and seizures would authorize such a search. (1T91-14 to 92-6).

Maria Martin also testified concerning her reasons for refusing to complete the PHDF-2 which she submitted to the Commission. (A-2). Ms. Martin refused to answer the same questions as Ms. Stretton and provided the same list of reasons. (Compare A-1 and A-2). When asked about the

questions, Ms. Martin generally asserted that she acted on advice of counsel and on her own feeling that her privacy was being invaded. (2T41-15 to 43-15). She refused to sign the consent to inspections, searches and seizures because she was not sure of its scope and she would not waive her Fourth Amendment rights. (2T43-20 to 25; 2T71-3 to 19). She stated that she would be "offended" by the consent form even if it were limited to searches on the premises of the casino hotel. (2T73 -4 to 74-3).

Aldona M. Middlesworth testified that she was a free-lance writer and that she had intended to apply for a position in public relations with a casino hotel. (2T21-17 to 21-7). She never filed an application for an employee license because she reviewed the PHDF-2 and found it to violate her privacy and the privacy of her family and friends. She also would not waive her Fourth Amendment rights nor authorize release of information to the Division. (2T22-8 to 25). Ms. Middlesworth also stated that she would not submit a PHDF-4 for a casino hotel employee license since that form also required a waiver of liability and a release authorization. Further, she would not subject herself to the search and seizure provisions of the Act. (2T28-11 to 32-10). Although she would provide certain basic information requested by the PHDF-4, Ms. Middlesworth indicated that she saw no point to filing a partially completed form. (2T32-13 to 33-20).

Deborah Lee Hartwell related that, while she did not seek employment with a casino, her former roommate did.

Because of a question (17) on the PHDF-2, the roommate provided Ms. Hartwell's name, address and date of birth to the Division. This disturbed Ms. Hartwell who feared she would be subject to a background investigation as an associate of a potential casino employee. (11T103-11 to 106-17). Additionally, Ms. Hartwell was under the impression that the applicant's signing of the consent to inspections, searches and seizures would subject their shared residence to warrantless searches. (11T110-23 to 112-14; 11T119-5 to 123-9). Ms. Hartwell stated that the existence of her roommate was not a secret. Rather, she feared being investigated. She saw no lessening of harm if the Division learned of her association independently of the form and then investigated her. (11T132-9 to 133-13).

Inspector William B. Clayton, Jr., a 30 year veteran of the Atlantic City Police Department, was admitted as an expert in investigative techniques and background checks for police applicants. (4T76-1 to 77-22). In addition, Inspector Clayton was knowledgeable of the general reaction to the license application forms, since he supervised the community relations section of the police department. (4T71-5 to 16). He testified that the information supplied in the PHDF-2 would be helpful in conducting the investigation but not necessary. In his opinion, only certain basic material such as name, date of birth, address, employment data, vehicle registration, social security number, military service serial number and fingerprints were needed. From that, an

investigator could obtain additional material. He could further garner information by speaking with neighbors and others who are familiar with the individual. (4T87-17 to 90-14; 4T123-23 to 125-5). Inspector Clayton expressed concern that the information and authority given to a police officer by the PHDF-2 could lead to abuses. (4T96-18 to 97-7). As to the community's reaction to the forms, Inspector Clayton stated that people reluctantly filed the form to obtain employment and that the minority community fears rejection and loss of rights by reason of the forms. (4T108-12 to 112-3; 4T114-8 to 116-2).

Former United States Attorney General Ramsey Clark offered his views on the legitimacy of requiring informational disclosure from prospective casino employees and casino hotel employees. Although he recognized the interest of organized crime in casino operations and the possibility of skimming or other unlawful practices, Mr. Clark contended that investigation and screening of anyone except "key" people was completely unnecessary and inappropriate. Accordingly, Mr. Clark could perceive no justification for the challenged inquiries and waivers in the PHDF-2. (3T20-3 to 21-15). More particularly, he found any review of associates, military history or drug use of casino employees and casino hotel employees to be worthless and unconstitutional. (3T29-18 to 24; 3T38; 3T42 and 43; 3T45 and 46; 3T47-1 to 23). He further comdemned the release authorization and the consent to inspections, searches and seizures as being

invasive of privacy and wholly improper. (3T32-16 to 36-17). However, Mr. Clark acknowledged that the Legislature could validly seek to have persons of honesty and good character serve in casino positions. (3T85-6 to 86-22). With regard to key personnel, Mr. Clark would apparently recommend a screening procedure because the State would want "to know who we are doing business with." (3T71-12 to 21). In place of the present procedure, Mr. Clark suggested "good law enforcement." (3T23-3 to 14).

Charles H. Rogovin, a law professor and associate dean at Temple University Law School, testified as an expert in law enforcement and constitutional law. (3T91-9 to 93-15; 3T96-24 to 98-6). Professor Rogovin stated that in his experience as a criminal law enforcement officer and as a former administrator of the Law Enforcement Administration Agency, he had not encountered disclosure forms, waivers or releases as extensive as PHDF-2. (3T108-12 to 109-25). Generally, Professor Rogovin felt that the form was overly broad, that it served no legitimate law enforcement purpose and that it was coercive. (3T101-15 to 24). Professor Rogovin explained his understanding of the right to privacy and the right of association (7T72-2 to 73-5; 7T77-13 to 78-8; 7T121-20 to 24; 7T97-7 to 103-1) and proceeded to consider each of the challenged questions and items on the form. In several instances, the professor agreed with the objections asserted in the incomplete disclosure forms of Ms. Stretton (A-1) and Ms. Martin (A-2) and in the

petitioners' brief.[11] In other instances, he discerned additional legal difficulties not previously raised. In yet other instances, he either found no reason to object to a particular question or disagreed with the contention previously made by petitioners.

The professor's testimony was lengthy and frequently consisted of legal debate with counsel as to the meaning and content of certain rights and privileges. While this Hearing Examiner appreciates the insights and assistance provided by Professor Rogovin, it would serve no purpose to now restate his testimony at length. Ultimately, the law must be ascertained by resort to the relevant cases, statutes and constitutional provisions. As with all the testimony, however, the professor's remarks and learned views have received thorough consideration. It should be noted that, while he found the PHDF-2 to be generally overbroad, unnecessary and unduly invasive of protected rights, Professor Rogovin conceded that it is reasonable to require casino employees to be persons of honesty and integrity. (6T33-8 to 34-4). However, he could not conceive of a case where a person should be denied licensure because of associations with unsuitable individuals. (6T50-9 to 52-14). In place of the disclosures and waivers now required, the professor suggested reliance on the testimony of character witnesses to determine whether an applicant possesses the statutorily required personal attributes. (4T64-1 to 67-8).

For its part, the Division presented testimony to establish that the inquiries and waivers in the forms are

---

11. The petitioners' brief is the brief which was filed in the Appellate Division of the Superior Court, as part of the declaratory judgment action which was voluntarily dismissed prior to the commencement of the instant administrative proceeding. The brief and complaint in that action were considered as part of the instant matter. To date, the brief is the only one filed by petitioners on the merits of the challenge.

authorized by the Act, reasonably related to legitimate investigative needs, and consistent with constitutional law and principles. One of the Division's witnesses, Steven V. Ocksrider, presented statistical information regarding the volume of applications and investigations so far processed and to be processed by the Division. (11T3-11 to 4-23; 11T35-2 to 36-19; 11T36-20 to 42-17). While petitioners questioned the accuracy of these figures and projections, it appeared beyond dispute that the Division must efficiently investigate a large number of casino employee and casino hotel employee license applicants.

Assistant Attorney General Alfred J. Luciani, the Deputy Director of the Division of Criminal Justice, provided expert testimony on law enforcement, investigative techniques and legal issues. (7T161-10 to 162-18). As with Professor Rogovin, Mr. Luciani's considered opinions on constitutional and statutory law are greatly appreciated, but the validity of those opinions must ultimately be determined by resort to the law itself. However, Mr. Luciani brought an added dimension to his testimony.

As a member of the Governor's Staff Policy Group on Casino Gambling, Mr. Luciani had studied the regulations imposed by virtually every other jurisdiction in the world where casino gaming was allowed. He had visited several of those jurisdictions to obtain the cumulative experience and advice of the regulatory authorities and of the industry. Moreover, he directly participated in the creation of the

Casino Control Act by formulating policies to be pursued and by actually drafting proposed statutory language. Most of the policies and much of the language suggested by the Staff Policy Group were incorporated into the Act. (7T163-5 to 164-21). Mr. Luciani stressed that the Act was intended to establish the strictest controls for casino gaming and that the instant challenges must be assessed in the context of a highly regulated industry. He posited that the State has a compelling interest in assuring such comprehensive and effective control and in maintaining public confidence in the regulatory process. (7T169-11 to 170-24; 7T172-4 to 173-7).

Against this background, Mr. Luciani considered the challenged items. Essentially, he found a proper law enforcement purpose for the questions and saw no real infringement of constitutional rights. As to the consent to inspections, searches and seizures, he observed that the consent is limited to those searches and inspections authorized by section 79 of the Act. Having participated in the drafting of that section, Mr. Luciani asserted that it was not intended to allow searches of the homes of applicants or licensees. Rather, it permits only regulatory or administrative inspections. (7T181-2 to 186-12; 7T188-15 to 191-2).

Similarly, the waiver of liability for disclosures made by agency officials mirrors the statutory provision (§80(b)). Mr. Luciani advised that this section was designed to allow such officials to function without fear of being

sued for unintentional and good faith disclosures. (7T177-12 to 180-25). The purpose of the release authorization is to enable Division investigators to obtain relevant information from various institutions. In Mr. Luciani's experience, it is the policy of this State to require a release before it will divulge any information about an individual. (7T270-20 to 273-7). Concerning the confidentiality of material obtained by the Division, Mr. Luciani stated that the intent of section 74(e) of the Act is to mandate confidentiality with only few controlled exceptions. (7T194-5 to 195-10).

Det. John M. Hooven has been a member of the State Police since 1965. In 1975 and 1976, he spent 19 months with the Special Investigation Unit which does background examinations on potential government appointees. In February 1978, Det. Hooven was assigned to the Division where be served as assistant supervisor of the background investigations unit. (5T12-7 to 13-23; 8T5-22 to 6-7).

As an expert in conducting such investigations, Det. Hooven explained the purpose and use of the challenged questions on the PHDF-2 for ascertaining whether an applicant meets the licensing standards. He related that the questions in the form seek the same type of information which is normally obtained in background checks on government appointees. (5T13-24 to 14-10; 10T171-2 to 21). While the investigation could be conducted without the form, the information would have to be obtained in any event. Otherwise, the typical

investigation might take months instead of a week. (8T117-1 to 21; 8T119-14 to 120-18; 10T31-12 to 32-16; 10T100 -14 to 16; 10T125-12 to 133-25). Det. Hooven indicated that the consent to inspections, searches and seizures had no applicability to the background check of an applicant and that members of the investigation unit were so advised. (5T86-2 to 17; 8T78-4 to 80-5). However, he considered the release authorization to be an "absolutely necessary tool" for an effective investigation. Without it, the investigator would be unable to obtain relevant information from employers, schools, banks, courts, probation departments or law enforcement agencies. (5T86-18 to 87-13).

Det. Hooven was cross-examined extensively regarding the investigative process and the confidentiality of the application forms. As to the process, he acknowledged that the investigation supervisors exercised a degree of discretion in deciding whether an investigation was complete, whether further information should be garnered and whether information should be reported as derogatory. However, the Division's legal staff ultimately decides whether to object to an applicant based on the statutory criteria. (8T12-9 to 14-24; 8T67-19 to 71-23).

As to confidentiality, Det. Hooven advised that each investigator is instructed that the forms and any other information pertaining to an applicant may not be released to anyone except authorized personnel of the Division or Commission. (8T3-13 to 24). Although the investigator

assigned to the case may take a file out of the office, Det. Hooven was not aware of any allegations that information had been improperly revealed. (9T24-2 to 28-11; 10T114-14 to 18). Further, Det. Hooven detailed the system whereby application files are filed, routed and maintained in the Division's secured building. (9T11 to 49). While the file cabinets are unlocked during the business day and accessible to Division personnel, no instance of a lost or stolen file had been reported. (9T17-7 to 18-10; 9T61-15 to 63-17).

III. STANDING

Section 69(c) of the Act affords a hearing to any "interested person" who files a proper petition for repeal of a regulation. The Commission's hearing regulations define an "interested person" as:

> any person whose specific legal rights, duties, obligations, privileges, benefits or other specific legal relations are affected by the adoption, amendment or repeal of a specific regulation of the Commission. N.J.A.C. 19:42-1.2.

The emphasis on specificity as to the particular legal relation affected and the specific regulation affecting it is heightened by N.J.A.C. 19:42-7.2 which basically implements section 69(c) of the Act. Under that regulation, any party seeking a hearing must allege his specific interests in the initial petition. The purpose of this requirement is to assure that a real need exists for the hearing and to limit the issues to those which are presently in controversy between the parties. These same considerations underlie the traditional

standing requirements for declaratory judgment actions in the courts. E.g., Bergen County v. Port of N.Y. Authority, et. al., 32 N.J. 303, 307 (1960); Lucky Calendar Co. v. Cohen, 20 N.J. 451, 454 (1956); Hammond v. Dean, 127 N.J. Super. 67 (Law Div. 1974); N.J.S.A. 2A:16-53.

In the present matter, the original petitioners were Ms. Martin and Ms. Stretton, both of whom sent incomplete forms (PHDF-2) to the Commission in an effort to obtain casino employee licenses as blackjack dealers. The Chairman refused to accept the incomplete forms for filing. Subsequently, while this matter was pending, Ms. Stretton filed with the Commission a fully completed PHDF-2 which was docketed by the Commission staff and forwarded to the Division for investigation. In a letter prior to this action, counsel for petitioners asserted that Ms. Stretton took this action under protest and under economic compulsion. At the hearing, Ms. Stretton repeated this assertion. (1T97-17 to 98-16).

With regard to Ms. Martin, there can be no question that she is an "interested person" under section 69(c) and the regulation. Having actually sought to file for a license and having refused to answer specific questions or complete specific forms for stated reasons, she is currently affected by those specific regulations and a true controversy exists.

Ms. Stretton's position, however, is no longer so clear. Although protesting, Ms. Stretton has now provided the very information which she had previously refused to disclose on alleged constitutional grounds. Thus, the

constitutional harm, if any, has already occurred. At least with regard to the information disclosed through answers on her completed PHDF-2 (D-1), her interest in the disclosed information is difficult to comprehend. Admittedly, one court ordered expungement of information obtained through overbroad questionnaires. American Fed. of Gov. Emp. v. Schlesinger, 443 F. Supp. 431 (D.D.C. 1978). However, that court offered no analysis nor reason for its broad remedy. Since Ms. Stretton's answers to the challenged questions are now, however, known to the Commission, analysis of the danger posed by her answers can be directed to the actual information disclosed. The waiver of liability, consent to search and release authorization are perhaps still in dispute since they are subject to future use by the Commission or Division. In any event, it is hardly necessary to decide whether Ms. Stretton would individually have the requisite interest to maintain this challenge where Ms. Martin advances precisely the same objections to the same questions and waivers. See In re Matter of Public Hearings, supra at 147-148; Young v. Byrne, 144 N.J.Super. 10 (Law Div. 1976). If any questions or other aspects of the forms are found to be improper, the appropriate relief can be formulated at that point.

John B. Kiniry is the president, director and registered agent of Atlantic Industrial Hardware Company, Inc., a New Jersey corporation doing business at 24 North Carolina Avenue, Atlantic City. In the past, the corporation supplied hardware to Resorts International Hotel, Inc., a then temporary

casino permittee. On or about April 18, 1978, Resorts filed a contract approval form with the Commission pursuant to section 104(b) of the Act. The approval form related that Resorts had an agreement to obtain hardware from Atlantic Industrial Hardware Company, Inc.

In order to continue doing such business on a regular basis with Resorts, Atlantic Industrial Hardware sought a casino service industry license from the Commission in accordance with section 92(c) of the Act. To that end, the company was required to submit a business entity disclosure form -3 and certain key personnel, including Mr. Kiniry, were required to submit a PHDF-4. Although the company and Mr. Kiniry initially refused to complete certain aspects of these forms, they subsequently chose to do so. At the hearing, it was agreed that those persons were no longer party to the hearing. (1T9-4 to 10-9).

Joseph Pallone is the spouse of Michele A. Pallone who has applied to the Commission for licensure as a casino employee. The Pallones reside together at 2 Lagoon Court, Brigantine, New Jersey. On or about March 31, 1978, Michele A. Pallone submitted a fully completed and signed PHDF-2, including the consent to search form, release authorization and waiver of liability. Through pleadings filed in this proceeding, Mr. Pallone asserts that his Fourth Amendment right to be free from unreasonable searches and seizures is directly imperiled by the existence of the allegedly coerced signing of the consent to search form by his wife. Mr. Pallone did not appear at the hearing despite requests from

petitioners' counsel. (5T6-12 to 7-23; 11T101-2 to 19). However, similar contentions were advanced by Deborah Hartwell who did testify. In any event, it is apparent that the standing of Mr. Pallone depends on resolution of the substantive question of the validity and scope of the consent to inspections, searches and seizures. If no area where Mr. Pallone or Ms. Hartwell has a legitimate privacy expectation is subject to improper search or inspection, then the consent form is of no concern to them. Further, the consent form is under attack by other complainants, including Ms. Martin. Thus, the issue will be addressed regardless of Mr. Pallone's standing.

Aldona Middlesworth has not applied for any license or approval from the Commission. Ms. Middlesworth testified that she intended to obtain employment in the public relations department of a casino hotel. She refused to file an application because she feared violation of her constitutional rights. Although she had only seen a PHDF-2 prior to the hearing, she asserted that she would also refuse to submit a PHDF-4 for a casino hotel employee license after she examined that form. She did admit that she would provide certain basic information on PHDF-4, but she saw no purpose to filing an incomplete form. (2T22-8 to 25; 2T28-11 to 33-20).

While unwilling to even file a partially completed form as evidence of her interest in employment in the casino industry, Ms. Middlesworth essentially asserts the right to challenge all or part of the forms promulgated by the

Commission. She perceives herself as a complainant for all seasons. However, she has failed utterly to demonstrate her particular concern for the repeal of any specific regulation of the Commission. Her bland assertion of intent to be employed in the casino hotel industry places her in a position no different from much of the population of the Atlantic City region. Her blanket objection to questions on the PHDF-2 and PHDF-4, not only prevents the careful consideration of concrete issues but severely tests credibility. As noted, Ms. Middlesworth testified that she would not object to disclosing at least some of the information requested in the Commission's forms.

In Szamec v. Secretary of State of New Jersey, 130 N.J.Super. 333 (App. Div. 1974), the plaintiff alleged that he aspired to be an independent candidate for governor. He filed a complaint in Superior Court claiming that an election statute was violative of his First Amendment and Due Process rights because it required a candidate's petition to be filed 40 days in advance of the election and to be signed by 800 signatories each of whom must sign a pledge to vote for the petitioner. Plaintiff did not attempt to file with the election board a partially completed petition, without the challenged pledge, before commencing the law suit.

Citing Moritt v. Rockefeller, 346 F. Supp. 34 (S.D. N.Y. 1972), aff'd 409 U.S. 1020 (1972), the Appellate Division affirmed the dismissal of the complaint:

> Plaintiff should have filed a petition in such form as would have met his concession

> as to a proper constitutional requirement for signatories [citation omitted], and then expeditiously challenged in court any rejection thereof by the election authorities. There is nothing before us justifying any view that plaintiff was a serious candidate for the 1973 election. Id. at 336.

So too, here. Ms. Middlesworth has taken no action to demonstrate the sincerity of her intentions or of her alleged constitutional objections. In contrast, Ms. Martin followed the very procedure outlined in Szamec. It is unreasonable and unfair to permit Ms. Middlesworth to challenge any regulation at will where she has done nothing to demonstrate her interest or to narrow the contested matters. She is no more an "interested person" in this matter than any other member of the public who entertains hopes of a lucrative, fulfilling position in the casino hotel industry.

IV. RIGHT OF ASSOCIATION

A. GENERALLY

Petitioners assert that many items in the disclosure forms are violations of their right of association. They correctly observe that the First Amendment provides a right of free association and that such right often requires "associational privacy" in order to protect First Amendment values from infringement by compelled disclosure. Tearing the concept of "associational privacy" from its First Amendment moorings, petitioners contend that the Commission may not inquire into any "personal, familial and financial

associations," absent an affirmative showing by the Commission or Division that each such inquiry is necessary to advance a compelling state interest. (See petitioners' brief, pp. 35,36). In the belief that no such showing can be made, petitioners conclude that the challenged inquiries are constitutionally prohibited.[12]

To properly assess these contentions, it is necessary to understand the nature and purpose of "associational privacy." As indicated, this concept is derived from the First Amendment guarantee of freedom of association which safeguards the right of the people to organize into groups for "effective advocacy" and for "the advancement of beliefs and ideas." N.A.A.C.P. v. Alabama, 357 U.S. 449, 460 (1958).

---

12. Petitioners do not question the statutory authority of the Commission to make these inquiries as part of the application process. Indeed, they acknowledge the existence of those sections of the Act which require investigation of the applicant's background including his family, financial, business and personal associations to determine whether the applicant is qualified for licensure. (See Complaint, pp. 6 to 9; Sections 86,89, 90, 91 and 92 of the Act). In addition, each applicant for licensure or qualification is expressly required to produce all information required by the Commission or Division; to waive liability for any disclosure of information other than a willfully unlawful disclosure; and to consent to inspections, searches and seizures and the supplying of handwriting examplars as authorized by the Act and regulations. Section 80(b),(c) and (d). These sections will be discussed in more detail infra. Petitioners did assert at the hearing that the statutory requirements of investigation and cooperation are themselves unconstitutional. This contention, however, is not within the scope of the present proceeding which is concerned with particular items on the Commission's application forms. For that reason also, the general authority of the Division to investigate license applicants and the inquiries which investigators may make during such investigations are not at issue here. (See 10T16-19 to 22-8). Compare Shuman v. City of Philadelphia, 470 F. Supp. 449 (E.D. Pa. 1979).

In certain circumstances, preservation of the freedom of association requires that membership in an association be kept confidential, especially where the association espouses dissident beliefs. Id. at 462; Bates v. City of Little Rock, 361 U.S. 516, 523 (1960). Thus, there may be instances where "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64 (1976). In other words, the doctrine of "associational privacy" protects the individual's First Amendment rights of free expression, speech or belief where those rights are exercised through group advocacy and where revelation of the individual's affiliation with that group would substantially deter or inhibit such exercise. E.g. Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Baird v. State Bar of Arizona, 401 U.S. 1 (1971).

The present petitioners err by ignoring the history and meaning of "associational privacy." Once severed from its roots, this abstract verbiage forms the foundation for petitioners' sophistic argument that "associations" are constitutionally protected from state inquiry. A review of the leading cases, including those on which petitioners rely, will demonstrate that both the nature of the association and the effect of compelled disclosure are critical to determine whether a particular inquiry invades the First Amendment protected area.

The seminal case explicating and applying the right of associational privacy is N.A.A.C.P. v. Alabama, supra. During the most turbulent period of the civil rights movement in the deep South, Alabama filed suit against the N.A.A.C.P. for its alleged failure to register as a foreign corporation doing business in Alabama. In response to a broad discovery request, N.A.A.C.P. acknowledged the factual assertions in the complaint and described the nature of its activities in Alabama. However, the association refused on constitutional grounds to submit a list of its membership. In support of its refusal, the association made an uncontested showing that on past occasions revelation of the identity of its members resulted in economic reprisals, loss of employment, threats and harrassment.

On appeal, the Supreme Court observed that group association is sometimes necessary for full exercise of the First Amendment rights of speech and assembly.

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. Id. at 460.

The Court then declared that there is a "freedom to engage in association for the advancement of beliefs and ideas" guaranteed by the Due Process Clause of the Fourteenth Amendment "which embraces freedom of speech." Id. Recognizing that this right of association might be infringed by indirect interference as well as direct prohibition, the

Court stated that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" as in cases of more obvious restrictions. Id. at 462 (emphasis added).

After specifically referring to the N.A.A.C.P.'s uncontested demonstration of prior harrassment and retaliation, the Court found:

> Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure. Id. (emphasis added).

This finding, that protected First Amendment rights would be infringed by the compelled disclosure of the association's membership list, did not conclude the matter. The Court proceeded to consider whether Alabama could justify the infringement by showing that the disclosure was necessary to effectuate a compelling state interest. Upon examination, the Court determined that the names of the association's members were irrelevant to a determination whether the association's activities brought it within the registry law. Thus, no justification for this broad infringement of the right of association was shown.

In a line of cases following N.A.A.C.P. v. Alabama, the Court applied the legal reasoning of that case to other efforts by southern states to obtain information regarding

membership in civil rights organizations. Bates v. City of Little Rock, supra, involved the validity of an occupational licensing ordinance which had been amended to require each organization to provide the city with information, including the names of all contributors and members. Information so provided was expressly made public and open to inspection at the town hall. At the trials of two local N.A.A.C.P. leaders for refusing to provide the names of contributors and members on constitutional grounds, the defense adduced evidence showing harrassment of individuals whose affiliation with the association became known to the public and showing a sharp decline in the number of individual contributors because of fear of public disclosure under the ordinance.

Characterizing this evidence as "substantial" and "uncontroverted," the Court ruled that application of the compelled public disclosure section of the ordinance would significantly infringe the First Amendment protected right of association.

> And it is now beyond dispute that freedom of association for purposes of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States. Id. at 523 (emphasis added).

The Court noted that the city might have a real need to know membership and contributors in order to assure that groups claiming exemption as charities were not evading the license tax. Id. at 527. However, since the N.A.A.C.P. had claimed no such exemption and its activities would not

fall within the ordinance if it operated for profit, the Court discerned no substantial or compelling reason for the infringement which would be caused by the compelled disclosure.

In Gibson v. Florida Legislative Investigation Committee, supra, the Supreme Court was asked to decide whether a state legislative committee investigating alleged Communist infiltration of legitimate groups could require the president of the local N.A.A.C.P. chapter to produce the membership list for use in his examination by the committee. The Court pointed out that the investigating committee intended to make public the membership information so obtained. Relying heavily on N.A.A.C.P. v. Alabama, supra, the Gibson Court found that the requested disclosure would infringe the First Amendment protected area. Although the Court recognized the broad power of government to investigate in order to inform itself so that it may act to protect its legitimate and vital interests, the mere existence of that power does not automatically validate every question, subpoena or documentary demand. Id. at 544-45. Where the investigation "intrudes into the area of constitutionally protected rights of speech, press, association and petition," it is incumbent on the State to "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." Id. at 546.

Since the N.A.A.C.P. was concededly a lawful organization engaged in the exercise of First and Fourteenth

Amendment rights, disclosure of its membership involved a question wholly different from compelling organizations such as the Communist Party to disclose such information. Id. at 549; compare Communist Party of U.S. v. Subversive Activities Control Board, 367 U.S. 1 (1961) [upholding federal registration requirement which included public disclosure of membership of Communist Party based on the menacing nature of the group] and New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928) [upholding New York statute aimed at the Ku Klux Klan and requiring both registration and membership disclosure based on nature of organization and danger inherent in its covert operation]. The Gibson Court found no strong indication of a substantial relationship between the N.A.A.C.P. and subversive activities, and, therefore, the public disclosure could not be compelled. Id. at 550, 557; compare Uphaus v. Wyman, 360 U.S. 72 (1959) [where the Court affirmed an order by the New Hampshire Attorney General to compel disclosure of the names of persons who attended a gathering of the World Fellowship, Inc., in part because the attorney general had valid reason to believe that guests and speakers at the gathering might be subversives].

Shelton v. Tucker, supra, concerned official inquiries directed not at an organization but at the individual himself. An Arkansas statute compelled every teacher in a state supported school or college to annually file an affidavit listing every organization to which that teacher

belonged or regularly contributed for the past five years. The record showed that the teachers who were party to this case were not members of any subversive group but that one was a member of the N.A.A.C.P. The Supreme Court recognized that the state had a legitimate interest in the competency and fitness of its teachers. However, the Court also found that compelled disclosure of all associational ties would damage the teacher's right to free association, "a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." Id. at 486.

This infringement was greatly enhanced by the fact that Arkansas teachers serve at the absolute will of those to whom disclosure must be made and who may terminate the teacher's employment at any time without charges, notice, a hearing or an opportunity to explain. Id. Further, the Court pointed out that the statute contained no provision for confidentiality, that public disclosure was a real possibility and that such disclosure would increase public pressure on school boards to discharge teachers belonging to unpopular or minority organizations. Id. at 486-87. Given the severe interference with fundamental rights created by indiscriminate disclosure of all affiliations and associational ties, the Court ruled that the statutory requirement was invalid since much of the information was clearly irrelevant to the preservation of the state's interest in competent and fit teachers. "The breadth of legislative abridgment must be

viewed in the light of less drastic means for achieving the same basic purpose." Id.at 488.

The same principles enunciated in the foregoing cases were applied by the Court to a variety of governmental efforts to protect against so-called subversives. For example, the Court ruled that an individual could not be denied employment in a defense facility merely because he was a member of a communist action organization where the prohibition was not limited to active members who shared the organization's illicit goals and thus directly penalized First Amendment protected associations. United States v. Robel, 389 U.S. 258 (1967). Similarly, the Court struck down as needlessly overbroad a New York law which required all teachers to avoid membership in organizations advocating the overthrow of the government and to avoid making any "treasonable" or "seditious" utterences on pain of being barred from public employment. Keyishian v. Board of Regents, 385 U.S. 589 (1967). Emphasizing that academic freedom is "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom," Id. at 603, the Keyishian Court ruled that the New York scheme unduly stifled the exercise of the rights of association and speech and that the state must achieve its legitimate purpose of excluding subversives by more narrowly drawn means.

The character and fitness criteria imposed by most states for admission to the legal profession have been a

fertile source of litigation in this area. In Konigsberg v. State Bar of California, 366 U.S. 36 (1961), the bar committee inquired whether the applicant was a member of the Communist Party. Although he stated unequivocally that he did not believe in the violent overthrow of the government and that he had never knowingly been a member of an organization which advocated such action, the applicant refused on constitutional grounds to answer the inquiry as to Communist Party membership. Based solely on this refusal, the applicant was denied admission to the bar on the grounds that he had obstructed a full investigation into his character.

The Supreme Court held that the bar committee had a right to investigate the applicant. This right of investigation did not have to cease where the applicant flatly asserted the ultimate conclusion that he did not actively espouse the overthrow of the government. Rather, the question of Communist Party membership might lead to other questions or sources of information helpful to a proper investigation. Id. at 46-47. Citing N.A.A.C.P. v. Alabama, supra, the Konigsberg Court acknowledged the need to balance competing interests where a statute or regulation incidentally limits the unfettered exercise of First Amendment rights. Id. at 50-51. Despite the relationship of the inquiry to protected associations, the Court concluded that it was justified. In reaching this conclusion the Court relied on these factors:

1. Unlike N.A.A.C.P. v. Alabama, there was no likelihood of deterence of the right of association from foreseeable

public response since the interrogation was conducted in confidence; 2. there appeared no real possibility of sly or subtle discrimination by the state in light of the opportunity for judicial review; and 3. unlike Speiser v. Randall, 357 U.S. 513 (1957), there was no burden placed on the applicant to disprove improper associations so that the applicant would avoid associations which were within the First Amendment protection. Id. at 51.

The continuing vitality of Konigsberg was brought into question by a string of decisions in which the Court struck down statutes penalizing or prohibiting Communist Party membership. E.g., Keyishian v. Board of Regents, supra; Elfbrandt v. Russell, 384 U.S. 11 (1966); Aptheker v. Secretary of State, 378 U.S. 500 (1964); United States v. Brown, 381 U.S. 437 (1965). However, as our own Supreme Court observed, these cases dealt with situations where the nature of a person's political associations and speech was itself the subject of statutory consequences whereas in Konigsberg the inquiry was merely incidental to a proper investigation of the bar applicant's overall fitness. In re Application of Marvin, 53 N.J. 147 (1969).

The permissible scope of inquiry as to past associations of bar applicants was questioned again in three cases decided on the same day. Baird v. State Bar of Arizona, 401 U.S. 154 (1971); Application of Stolar, 401 U.S. 23 (1971); Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971). In Baird, the applicant

provided a list of all organizations to which she belonged since the age of 16 but refused to respond to the question whether she had ever been a member of the Communist Party or any group "that advocates the overthrow of the United States Government by force or violence." The bar committee then declined to process her application. In a plurality opinion, four justices declared that the First Amendment prohibits a state from excluding an individual from the legal profession solely because of membership in a particular political organization or because of the holding of certain beliefs. "Broad and sweeping State inquiries into those protected areas...discourage citizens from exercising rights protected by the Constitution." Id. at 6. Recognizing the legitimate interest of the state in the character of its bar, the plurality found no real need for the challenged inquiry in light of the other information provided by the applicant.

> Without detailed reference to all prior cases, it is sufficient to say we hold that views and beliefs are immune from bar association inquisitions designed to lay a foundation for barring an applicant from the practice of law. Id. at 7-8. (emphasis added).

Justice Stewart concurred in the result because the challenged question was not limited to knowing and active membership in a subversive organization and because the denial of this application was apparently based solely on the applicant's beliefs.

In Stolar, an Ohio bar applicant refused to answer three inquiries on the application form: (1) whether he had ever been a member of an organization which advocates the

violent overthrow of the government; (2) the names and addresses of all clubs, societies or organizations to which he belonged; and (3) the names and addresses of all clubs, societies or organizations to which he belonged since registering as a law student. In a plurality opinion, the Court held that questions (2) and (3) were invalid on the authority of Shelton v. Tucker, supra, since such blanket probing into all affiliations would deter exercise of the First Amendment right of association by pressuring a prospective applicant to avoid any association that might displease the bar examiners who control the applicant's professional future. As to question (1), the plurality held that the inquiry was overly broad and improper under Baird. Application of Stolar, supra at 30. The plurality noted that the state's need to press these inquiries was greatly lessened because the applicant provided: nine character references, two of whom knew the applicant for 20 years; the applicant's "criminal record;" his employment record; and the names, address and occupations of parents. Using this information, the state could effectively investigate the applicant's character without directly prying into his beliefs and protected associations. Justice Stewart concurred in the result.

Although Baird and Stolar might otherwise cast considerable doubt on the vitality of Konigsberg, the third case in the triology expressly reaffirmed the Konigsberg decision. In Law Students Civil Rights Research Council, Inc. v. Wadmond, supra, several prospective bar applicants

challenged the New York bar screening process. In particular, they objected to: (1) the requirement of an affidavit from two persons attesting to the applicant's good moral character and (2) certain inquiries concerning association on the application questionnaire. As to the first, the objection was aimed at so much of the affidavit as required the affiant to state whether he had visited the applicant's home and, if so, how often. The Court in its five justice majority opinion, quickly disposed of this complaint.

> We think it borders on the frivolous to say that such an inquiry offends the applicant's "right to privacy protected by the First, Fourth, Ninth and Fourteenth Amendments." It is the applicant who selects the two people who will sign affidavits on his behalf, and the Committee may reasonably inquire as to the nature and extent of an affiant's actual acquaintance with the applicant. Id. at 160.

With regard to the questionnaire, it inquired of an applicant (1) if he ever organized or belonged to an organization which he then knew to be advocating the overthrow of the government by violence and (2) if so, whether during his association with such organization he shared the specific intent to accomplish that purpose. Relying on Konigsberg, the Court found these questions to be permissible.

> It is also well settled that Bar examiners may ask about Communist affiliations as a preliminary to further inquiry into the nature of the association and may exclude an applicant for refusal to answer. Id. at 165-66.

Taken together, Baird, Stolar, Law Students, and Konigsberg, indicate that an inquiry into protected beliefs

and associations will not be permitted where the inquiry is unduly broad and where it appears that exclusion will be based on the mere beliefs or membership of the applicant. However, where the ultimate standard for acceptance is legitimate and not premised on the fact of protected, though unpopular, associations, the state may pursue its investigations by way of reasonable preliminary inquiries which may touch upon protected association. The key seems to be in the nature of the qualification criteria and the relationship of the investigative probe to those criteria. Thus, in Law Students, the Court permitted a question as to association which was hardly distinguishable from those condemned in Baird and Stolar. However, in Law Students the question was merely a reasonable investigative step toward determination of whether the applicant actively shared the illicit purpose of violently overthrowing the government. Since the ultimate standard was narrowly circumscribed and did not penalize protected First Amendment associations, the screening process, including the preliminary question, did not unduly deter the associational freedom of prospective applicants. See In re Application of Marvin, supra, 53 N.J. at 150-51.

The present petitioners rely heavily on the more recent decision in Buckley v. Valeo, supra. In that case, the Court considered a wide ranging challenge to the constitutionality of several sections of the Federal Election Campaign Act. In particular, the Court assessed the propriety of those sections of the law which require the reporting and public disclosure of the names of all persons con-

tributing $10 or more to a candidate's election campaign. Citing the N.A.A.C.P. cases (see above), the Court reiterated that compelled disclosure may infringe on the First Amendment rights of belief and association and that any such infringement must be justified by a "relevant correlation" or "substantial relation" between the information to be disclosed and a subordinating interest which itself must be subject to "exacting scrutiny." Id. at 64. After acknowledging that group association is protected because it enhances "effective advocacy," the Court observed that advocacy may often require the pooling of monetary contributions to be truly effective. Thus, revelation of an individual's contributions to a political cause may undermine the right of association as much as revelation of actual membership in a political organization. Id. at 65-66.

Nevertheless, the Court upheld these broad disclosure requirements because they would (1) advise the electorate of a candidate's campaign fund sources; (2) deter corruption and diminish the appearance of corruption; and (3) aid in the detection of violations of the campaign act generally. As to the contention that public exposure of individual contributors would subject them to reprisal and retaliation, the Court responded that such consequences were "highly speculative" and unlike the situation in N.A.A.C.P. v. Alabama, supra, where there was an uncontroverted showing to that effect. Buckley v. Valeo, supra at 69. Even as to minority parties whose views are not popular, the Court refused to grant a blanket exemption but required each to

demonstrate a "reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harrassment or reprisals from either Government officials or private parties." Id. at 74.

From these cases, certain basic concepts emerge. The First Amendment intends to protect the essential rights of belief and speech from government control. "And included within the protection of the First Amendment is the right of association; the right to join organizations which themselves advocate ideas." Law Students Civ. Rights Res. Council, Inc. v. Wadmond, supra at 176 (Black, J. dissenting). Thus, the right of association does not mean that every associational tie between and among individuals ascends to the status of a constitutionally protected freedom. Rather, the First and Fourteenth Amendments extend their shelter to associations which seek to advance ideas and advocate beliefs, i.e., those associations having as a purpose the exercise of First Amendment protected rights.

The protective barrier of "associational privacy" serves to prevent indirect abridgement of the right of association. E.g., Buckley v. Valeo, supra at 65. It is at once evident then that this associational privacy may attach only to associations which are themselves within the First Amendment ambit. Moreover, it is critical to distinguish between the concept of associational privacy and the underlying right of association itself. Although compelled disclosure of information regarding protected associations

may in some circumstances result in an infringement of the right of association, such is not always the case. For example, where a governmental inquiry is conducted in confidence without public disclosure and where there is no real possibility of official discrimination against an individual based on his beliefs or ideas, the governmental inquiry itself poses no demonstrable likelihood of substantial damage or deterrence of the right of association. Compare, Konigsberg v. State Bar of California, supra, with N.A.A.C.P. v. Alabama, supra. However, this distinction between the mere inquiry and its probable consequences has not always been sharp.

In Application of Stolar, supra, where the Court condemned a requirement that the bar applicant list all organizations to which he belonged since registering as a law student, the Court simply stated that such requirement would unduly pressure prospective applicants to avoid all associations, including protected ones, which might displease the bar committee. The Stolar Court cited Shelton v. Tucker, supra, as being dispositive of the issue. An examination of Shelton reveals that a non-tenured teacher had to reveal all of his associations to superiors empowered to terminate the teacher's employment without notice or opportunity for hearing and further that the required information was not necessarily considered confidential, two factors emphasized by the Shelton Court. It is unclear whether the plurality in Stolar sought to establish an absolute prohibition against associational

inquiries and to discard the need for a showing of probable infringement under the circumstances. Cases decided simultaneously with and subsequent to Stolar have apparently recognized the continuing need to consider the probable effects of a particular compelled disclosure on the exercise of the right of association. See Buckley v. Valeo, supra at 64-66, 74; Law Students Civ. Rights Res. Council v. Wadmond, supra at 165-66.

Even assuming that every compelled disclosure of a First Amendment protected association incidentally infringes to some degree upon the rights of free speech and association, an examination of the circumstances surrounding the disclosure is necessary to ascertain the extent of the resulting infringement. Buckley v. Valeo, supra; Konigsberg v. State Bar of California, supra. The greater the infringement, the stronger must be the subordinating interest of the State. See Application of Marvin, supra. Admittedly, the Supreme Court has at times stated that only a "compelling state interest" will justify an intrusion into the area of constitutionally protected speech and association. E.g. Gibson v. Florida Legislative Investigation Committee, supra at 546; N.A.A.C.P. v. Alabama, supra. However, this terminology does not mean that the degree of infringement caused by a compelled disclosure is irrelevant. Rather, the "compelling state interest" test requires a balancing of the governmental need for the required information against the consequences of that disclosure. Buckley v. Valeo, supra; Konigsberg v.

State Bar of California, supra at 50-51; see also Application of Marvin, supra, 53 N.J. at 153. Hence, a particular state interest in compelled disclosure may be "compelling" or not depending on the magnitude of the resulting infringement on Frist Amendment rights. Or, as stated in Buckley the subordinating interest must survive "exacting scrutiny." Id. at 64. Of course, there must also be a "substantial relation" or "relevant correlation" between the subordinating interest and the particular information to be disclosed. Id.; see also Bates v. City of Little Rock, supra. Where possible, the State should utilize "less drastic means" to accomplish its purpose without unnecessarily impeding protected speech and association. See Shelton v. Tucker, supra at 488.

In each of the cited cases, the government sought to compel information directly related to protected First Amendment associations. The possibility that such compulsion might deter the free exercise of the underlying constitutional right is readily perceived. However, those cases should not be interpreted to render constitutionally suspect an inquiry which is not directed at protected associational activity but which may in some instances incidentally reveal such activity. This is especially true where, as here, the inquiry is assailed as being facially invalid.

For example, in Plante v. Gonzalez, 575 F. 2d 1119 (5 Cir. 1978), the court considered the constitutionality of public financial disclosure requirements imposed by Florida

on its elected officials. Although the so-called Sunshine Amendment was primarily assailed on "privacy" grounds, the Plante court also raised the First Amendment issue and resolved it with little difficulty. Contrasting those decisions where disclosure of associational ties was specifically required, the court stated:

> Here, memberships, associations, and beliefs are revealed, if at all, only tangentially. The [Sunshine] Amendment calls for disclosure of assets, debts, and sources of income, each to be identified and valued. Although in some particular situations, rigorous application of the Amendment might implicate first amendment freedoms, when considering the Amendment on its face this threat is too remote to raise the issue. [Id. at 1132-33].

See also O'Brien v. DiGrazia, 544 F. 2d 543 (1 Cir. 1976), cert. den. 431 U.S. 914 (1977) [where, in holding that financial disclosure requirements for certain public officers did not violate "privacy," the court noted that the First Amendment could have been invoked if the disclosure requirements were being used to punish or deter protected activity]. There is no need to engage in strict scrutiny of an inquiry which on its face does not call for information regarding protected associations and which is not designed or used to subvert the exercise of First Amendment freedoms. The possibility that such an inquiry might actually reveal protected conduct and that, in turn, the incidental revelation would have a significant detrimental impact on the constitutional right itself is too speculative to warrant consideration. See Anderson v. Sills, 56 N.J. 210, 220-21 (1970). Simply stated, circumstances could be imagined wherein virtually any inquiry no matter how innocuous and routine would fetch a response

implicating constitutionally protected rights or activities. Where the challenged regulation does not immediately concern pure speech or other essential First Amendment rights, the time to entertain a possibly unconstitutional application of the regulation is when the application occurs and the "interested person" objects. See N.J.A.C. 19:42-1.2; Broadrick v. Oklahoma, 413 U.S. 601, 610-16 (1972).

B. THE PRESENT MATTER

Petitioners Martin and Stretton, as prospective applicants for licensure as casino employees (dealers) each submitted an incomplete PHDF-2 in which they refused to answer 27 of the 55 questions on various alleged constitutional and statutory grounds.[13] These petitioners also refused to sign the release authorization as written but did sign the authorization after modifying it to authorize release of "only such information...as is necessary to verify the information contained" in the PHDF-2.[14] With regard to the

---

13. As previously noted, Ms. Stretton subsequently submitted a superseding PHDF-2 (D-1) while attempting to reserve her right to challenge the initially omitted items. In the revised submission, however, Ms. Stretton signed the waiver of liability, consent to search and release authorization with the words "signed under protest."

14. These complainants also refused to sign the waiver of liability and consent to search forms appended to the PHDF-2. However, these refusals appear to have no bearing on any alleged infringement of the right of association. They will be discussed later.

omitted questions on PHDF-2, petitioners Martin and Stretton included a list of objections to these questions which list was attached to each of the partially completed forms. On that list, these petitioners asserted that several questions "involve compelled disclosure of associational ties and for that reason violate my freedom of association under the 1st Amendment." Those questions were nos. 17,18, 19,20,23,32,35,40 and 42. In the complaint which was filed in the Superior Court and which was subsequently filed with the Commission as part of the present proceeding, petitioners omitted questions 35 and 42 but added question 21 as being objectionable on the above stated basis. (Complaint, p. 10, para.13A). As a result of the prehearing conference and subsequent requests by petitioners, question 35 was again challenged. At the hearing, Professor Rogovin asserted that question 53 was also violative of the right of association. (4T12-7 to 13-12).[15]

As demonstrated above, associational privacy is a safeguard of the individual's right to join organizations or associate with others for the purpose of exercising protected

---

15. At the prehearing conference, the Division asserted that all of the challenged items were lawful but that, in its experience to that point, certain questions were not essential. These included numbers 17 and 21. Further, the Division indicated that question 23 might be limited. (Prehearing Conference Order, Part B14(b) and (c)). At the hearing, however, the Division introduced testimony in support of all questions. In any event, the legality and utility of each question will be discussed herein, since it is the Commission which must decide whether to retain, repeal or modify the forms.

First Amendment rights, i.e., to advance ideas and advocate beliefs. Thus, the first and most basic issue is whether the challenged questions request information concerning First Amendment protected associations. If a question on its face does not delve into this constitutional zone, then there can be no claim that the question is invalid on this ground. To properly resolve this issue, a brief re-examination of each question is necessary.

Question no. 17 requests the name, date of birth and occupation of any non-relative with whom the applicant resided during the past ten years, and the dates of such co-residence. While there may be many reasons for sharing a residence, group advocacy of beliefs or advancement of ideas is not normally one of them. An individual need hardly live with others to express shared beliefs or ideas. Moreover, the mere fact that two or more persons reside together reveals nothing about those persons' thoughts. Significantly, the question does not inquire into the purpose of sharing the residence.[16]

---

16. Of course, one could hypothesize a situation where an individual shared a residence because of commonly held beliefs and ideas, e.g., a monastery or other idealogically based commune. However, as noted above, the question would not require revelation of the basis for the shared residence and could be answered without disclosing that fact. Petitioners may not attack the question on the speculative basis that the answer might in turn lead to discovery of the common idealogy by further investigation. See Plante v. Gonzalez, supra. Moreover, such an attack would be so marginal and suppositious that it should not be entertained unless presented by a proper "interested person." N.J.A.C. 19:42-1.2; see Broadrick v. Oklahoma, 413 U.S. 601, 610-16 (1972); Laird v. Tatum, 408, U.S. 1 (1972). Of course, the Division's witnesses testified that the intent of the question is merely to indicate the existence of persons who may be able to provide relevant information regarding the suitability of the applicant. (5T61-13 to 62-3). Protected beliefs and associations are in no way the object of this information.

While it is undoubtedly true that co-residents exchange ideas and views, this does not raise a living arrangement to the dignity of a First Amendment protected association. In any event, the question does not call for the revelation of any communications among the co-residents or any beliefs which they might share. Thus, question 17 on its face demands no disclosure concerning protected associations or beliefs.[17]

Questions 18 through 23 pertain to family and personal relations. Petitioners challenge all but question no. 22 based on alleged infringement of the right of association. Question 18 requests the applicant's marital status. Question 19 asks how many times the applicant has been married and seeks to know when and where each marriage occurred, whether annulled or divorced, and the names of any spouses. In Question 20, the applicant is asked for the name and address of present and former spouses. Question 21 inquires whether the applicant was ever the parent of a child. If so, the applicant is requested to list the name, date and place of birth, and present address of each child. Question 23 requires the applicant to provide to the best of his or her ability the name, date of birth, address, telephone number and parents' names of the applicant's and applicant's spouse's parents, aunts, uncles, brothers, sisters, brother-in-law, sisters-in law, children and children's spouses.

---

17. This same analysis applies to question 53 which was challenged by Professor Rogovin because it requests identification of any vehicles owned by persons living with the applicant. (4T12-25 to 13-5).

From the foregoing recitation, it is immediately evident that nothing in these questions at all implicates the right of association. The information pertains to either biological relationships or marital ones. As to blood relatives, it need hardly be said that no element of choice is involved much less an exercise of First Amendment rights. Revelation of the identity of one's relatives of itself provides little indication of one's personal beliefs. If it did, one can scarely contend that the compelled revelation would deter the continuation of the blood relationship. As to marital relationships, the same is true. Perhaps, it is best to choose a mate who shares the same values and ideals or who approaches life with a similar philosophy. Nevertheless, it is sheer nonsense to assert that marriages exist for the purpose of effective advocacy or group expression. Even if husband and wife do jointly espouse a particular cause, their marriage is hardly a necessary or even appropriate mechanism for the expression of their beliefs. Thus, these questions are totally unrelated to the constitutionally protected area of free speech and association. On the other hand, the law enforcement purpose for this information is clear. The identification of family members is important to determine whether the applicant is subject to the influence of unsuitable persons and to provide sources of further information about the applicant's character and responsibility. (5T62-4 to 64-10; 5T67-7 to 24).

Question 32 pertains to business associations. The applicant is required to provide the names and addresses of

all sole proprietorships, partnerships and closed corporations in which the applicant held an ownership interest. If such an interest was held in a partnership or closed corporation, the names and addresses of each partner or shareholder must be provided. Plainly, question 32 is restricted to financial interests held by the applicant in certain forms of commercial enterprise. It is difficult to perceive any potential intrusion on the right of association arising from this inquiry. Certainly, participation in a business venture is not the type of association protected by the First Amendment; and no reason appears to believe that revelation of such participation would also reveal an applicant's social, political, cultural, economic, religious or other beliefs.

In American Fed. of Gov. Emp. v. Schlesinger, 443 F. Supp. 431 (D.D.C. 1978), the Court considered a First Amendment challenge to disclosure forms required to be completed by employees of the federal Department of Energy. Based on the right of association, the Court struck down that portion of the form which pried "into religious, social, political, educational, and fraternal associations both of the employee, the employee's spouse, his minor children and dependents." Id. at 434. However, the Court refrained from also condemning the very next section of the form which entailed disclosure of all financial interests held by the employee, the employee's spouse, minor child or dependent in any corporation, partnership, business enterprise, company,

or firm. Observing that more tolerance is allowed in gathering financial data, the Court remanded the matter to the Civil Service Commission for an initial determination whether the disclosure forms were properly authorized and adopted. Id. at 435.

Illinois State Employees Association v. Walker, 57 Ill. 2d 512, 315 N.E. 2d 9 (Sup.Ct. 1974), addressed the validity of a very extensive financial disclosure requirement imposed by Illinois on public employees whose position is subject to undue influence. Among other things, the disclosure form required the employee to list "each partnership, trust, political organization, local governmental unit, professional service corporation, or other (including non-profit) association of which you personally have been an officer, employee, director, trustee or partner since April 1, 1972." Id., 315 N.E. 2d at 18. The trial court had found the question overly broad on the ground that it went beyond economic associations. The Illinois Supreme Court disagreed and held that the sense of the question was that it be limited to economic interests. "We hold therefore that these questions must be construed as referring only to economic associations. As so limited they are consistent with the executive order and violate no constitutional rights." Id.

To similar effect is Plante v. Gonzalez, supra. As discussed above, Plante concerned public disclosure of financial statements which Florida's elected officials were required to submit. The Circuit Court found any possibility

of First Amendment invasions to be too remote to merit serious consideration in the context of a facial assault on the disclosure law. Id., 575 F. 2d at 1132-33. The court reached this determination despite the fact that the required financial disclosure was quite detailed including each asset and liability in excess of $1,000 and either the individual's federal income tax return or a sworn statement identifying the source and amount of any income over $1,000. Id., 575 F. 2d at 1123.

These cases illustrate that financial interests are not themselves encompassed by the First Amendment right of association. Of course, a financial contribution to a particular organization, such as a political party, may be within the protected area. Buckley v. Valeo, supra. But the holding of an ownership interest in a commercial entity hardly bespeaks one's beliefs or advances one's ideas. By its terms, question 32 avoids any intrusion into non-commercial associations. Thus, no possible First Amendment infringement appears. [18]

---

18. Financial disclosure requirements have more often been challenged as unduly invading the "right of privacy." See Lehrhaupt v. Flynn, 140 N.J.Super. 250 (App. Div. 1976), aff'd 75 N.J. 459 (1978); Plante v. Gonzalez, supra; Fritz v. Gorton, 83 Wash. 2d 275, 517 P. 2d 911 (Sup. Ct. 1974); Stein v. Howelett, 52 Ill. 2d 570, 289 N.E. 2d 409 (Sup. Ct 1972); Illinois State Employees Ass'n v. Walker, supra; County of Nevada v. MacMillen, 114 Cal. Rptr. 345, 522 P. 2d 1345 (Sup. Ct 1974); City of Carmel-by-the-Sea v. Young, 85 Cal. Rptr. 1, 466 P. 2d 225 (Sup. Ct 1970). The privacy challenge will be considered in Part V, infra.

Question 35 requests the applicant to provide the following information regarding compensated employment held by the applicant's spouse or children during the previous 12 month period: name of the spouse or child, dates of employment, name and address of employer, position held, name of supervisor and reason for leaving. As previously discussed, the identity of one's spouse or child indicates nothing about any protected association. The petitioners may not assert that the revelation of employment held by a spouse or child implies anything about an applicant's beliefs or ideas. In fact, revealing compensated employment discloses nothing about the beliefs of the spouse or child. It merely shows that the spouse or child had an economic relationship of employee to employer.

For similar reasons, petitioners may not tenably maintain that question 40 poses any threat of intrusion into the First Amendment area. Question 40 inquires whether the applicant has any relatives associated with or employed in the gambling or liquor industries. If so, the applicant must indicate which industry and must provide the relative's name, his employer's name and address, and the position held. Once again, the applicant can claim no right to conceal the names of relatives and certainly no right to withhold the fact that the relative is employed in the liquor or gaming industry. Given the highly regulated nature of both these industries, the relative's participation in one of them is probably already a matter of public record in the appropriate jurisdiction.

One searches in vain for any possible First Amendment interest in such familial and commercial relationships.

As noted above, petitioners challenge not only the enumerated questions but also the release authorization contained in the PHDF-2 and PHDF-4. In their complaint and brief, petitioners assert generally that the release authorization is overbroad and violates the due process guarantee. However, petitioners seemingly include the release authorization in their conclusory assertion that the disclosure requirements violate both the "right of privacy" and the right of association. (see Petitioner's brief, pp. 40,45-46). During the hearing, the petitioners' expert witnesses were specifically asked about the release authorization. While they assailed the release as overbroad, open-ended and violative of privacy, the right of association was not invoked. (See 3T32-16 to 34-5; 4T51-15 to 54-18). Nevertheless, in order to accord petitioners a fair and full review, it will be assumed they specifically object to the release authorization on both First Amendment and right to privacy grounds. The latter ground will be discussed with other privacy contentions in the next section.

The release authorization recites that the applicant has authorized the Commission and the Division to conduct "a full investigation into my background and activities." The form then declares that the applicant has authorized the release of any and all information pertaining to the applicant. This authorization is addressed:

> To all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions, and all governmental agencies--federal, state and local, without exception, both foreign and domestic.

The question is whether by requiring this release the Commission is effectively compelling disclosure of information regarding protected associations. If the released information could not be directly obtained from the applicant because it would violate the associational privacy attendant to such protected associations, then petitioners would seemingly conclude that indirect disclosure is equally violative of their rights and that such violation cannot be justified because the release sweeps too broadly into the protected zone.

The scope of the release authorization is of paramount importance. The above-quoted portion indicates that the release is addressed primarily to courts and public agencies. In addition, it encompasses "employers, educational institutions, banks, financial and other institutions." Plainly, one cannot "join" a public agency or court for the purpose of expressing particular ideas or beliefs. As for the remaining entities, most of them are either commercial or financial and one's relationship to them will presumably be economic or business. No First Amendment protection seems to surround the mere revelation of such a relationship. Cf. California Bankers Association v. Shultz, 416 U.S. 21 (1974). However, the release also includes "other institutions." Based upon the nature of the described entities preceding it, the phrase must be read to include only such institutions

as generally partake of a commerical, business or public nature. See Resnick v. E. Brunswick Tp. Bd. of Ed., 77 N.J. 88, 100-101 (1978). To broadly interpret the phrase to include institutions of any type, including social, religious, fraternal or political groups, would needlessly bring the release into potential conflict with First Amendment rights. As discussed above, compelling the protected organization itself to disclose an individual's affiliation may violate the constitutional guarantee. E.g., N.A.A.C.P. v. Alabama, supra. Were such a waiver of a First Amendment privilege intended, the release would have addressed it in clearer terms. Moreover, there is no indication that the Division ever understood the waiver to be so broad. Rather, the testimony of Det. Hooven indicates that the release has been used to obtain information from the type of agencies, businesses or "institutions" described in the release itself. (See 5T86-18 to 87-13). The validity of the release must be considered in this light.[19]

---

19. The release does include educational institutions which, of course, enjoy First Amendment protection. However, inquiry into an individual's education is routine and no reasonable expectation of privacy would include one's choice of schools. Thus, the association between applicant and educational institution may be constitutionally protected but is is hardly private. The present petitioners do not challenge question 24 on the PHDF-2 which requests identification of each "college, school or training course" attended by an applicant. Indeed, both Ms. Martin and Ms. Stretton responded to that request. (See A-1 and A-2). Further, the release authorization as modified and signed by petitioners would allow the Division to obtain any information necessary to verify the information contained in the form. Thus, even under petitioners' formulation, the release could be applied to educational institutions.

There can be no tenable claim that mere association with a public agency or court is protected by the First Amendment. So too, a relationship to a commercial or business organization, which relationship is strictly economic, would itself have no aspects of constitutionally guaranteed speech or expression. However, both public agencies and commercial enterprises may have occasion to receive, gather, obtain or store information regarding many aspects of an individual's life. See California Bankers Association v. Shultz, supra at 55-57, 75-76. It may be that one or more of these many agencies or institutions possess data indicating the associations of an individual and that some of these associations are of the protected type. Id. If such information exists, the manner in which it was obtained may become important. Compelled disclosure may give rise to a constitutionally cognizable claim, whereas voluntary disclosure or independent investigation may not. Compare Shelton v. Tucker, supra, with Laird v. Tatum, 408 U.S. 1 (1972), and Reporters Com. v. American Telephone & Telegraph, 593 F. 2d 1030 (D.C. Cir. 1978), cert. den. 440 U.S. 949 (1979).

It is impossible to intelligently address these questions in a vacuum. To construct a hypothetical situation where the release authorization could be used to obtain protected information from a public agency or commercial institution would require the rankest speculation. Petitioners have yet to allege that the release authorization could be so used as to them. In the absence of any concrete assertions

to this effect, the issue is not presented in justiciable form on this record. See Szamek v. Secretary of State of New Jersey, supra; Plante v. Gonzalez, supra.

Nevertheless, it will be assumed solely for the sake of argument that petitioners are engaged in protected associations, that information concerning these affiliations is possessed by public agencies, commercial institutions, education or "other institutions," and that the release authorization may be used to obtain this information. The issue becomes whether the potential use of the authorization violates the right of association itself. Should such infringement appear, the ultimate issue is whether the extent of the burden is outweighed by a substantial or compelling state need for access to the information. [20]

As to the invasion of associational privacy, it will be helpful to bear in mind the distinction between information possessed by public bodies or commercial enterprises and information possessed by organizations which are themselves engaged in protected activities and which are the subject of the protected association. The release authorization pertains essentially to the first type of information.[21] Such information is created and gathered where

---

20. Although not expressly included, the challenged questions on the PHDF-2 are subject to the same analysis, if it is assumed that any of those questions may intrude on this constitutionally protected area. In the belief that even such an assumed intrusion has been demonstrated above to be minimal, it is submitted that any lingering doubts regarding those questions are resolved by the statutory standards and compelling need discussion below.

21. As noted above, the release includes educational institutions. For the reasons already stated, there does not appear to be any real issue in that regard.

the individual has not become affiliated with the agency or entity for First Amendment reasons. Any data possessed by such an agency or entity concerning protected information or belief must have been the result of an earlier disclosure either directly by the individual himself or indirectly through investigation or other means. This raises a serious question whether the individual retains any First Amendment privacy interest in the information.

The Supreme Court has on at least two occasions deferred this question on the ground that it was not properly presented. California Bankers Association v. Shultz, supra; United States v. Miller, 425 U.S. 435 (1976). In Miller, the Court held that a defendant in a criminal case could assert no Fourth Amendment privacy interest in financial records of transactions seized from a bank because the defendant had chosen to disclose the information to a third party when he dealt with and through the bank. Even if the defendant thought the bank would not reveal that information to the government, he took the risk that it would. In a footnote, the Court stated that no First Amendment challenge was raised but observed that there was no blanket reporting required as in Buckley v. Valeo, supra, "nor any allegation of an improper inquiry into protected associational activities of the sort presented in Eastland v. United States Serviceman's Fund, 421 U.S. 491, 95 S. Ct.

1813, 44 L.Ed. 2d 324 (1975)." Id. at 444 n.6.[22]

This observation creates considerable uncertainty whether a First Amendment privacy expectation survives where the pertinent information has been revealed to a third party other than the First Amendment organization itself. If the Fourth Amendment analogy is applied, Miller would seem to indicate that it does not. Accord Smith v. Maryland, - U.S. -, 99 S.Ct. 2577 (1979). However, the footnote in Miller appears to recognize the possibility of a First Amendment privilege where the request to the third party is an "improper inquiry" into protected group activities. Assuming that this may be so, such an improper inquiry would appear to be one which is intentionally designed to delve into the protected activities of the group, its membership and its contributors. See Eastland v. United State Serviceman's Fund, supra. In Miller itself, the investigating officers were permitted by the bank to examine all records of the defendant's transactions, including checks and deposit slips. Apparently, the officers would incidentally have discovered any associational information contained in those records, but the Court approved the procedure, albeit in the Fourth Amendment context.

---

22. Eastland involved a challenge to a congressional subpoena which demanded all bank records maintained by the United States Serviceman's Fund. The subpoena was part of a direct probe into the activities of the named organization. The Court did not reach the First Amendment arguments because it felt constitutionally constrained not to interfere with the legislative branch in this context.

The issue of First Amendment protection for information in the possession of third parties was recently explored in Reporters Com. v. American Telephone & Telegraph, supra. There, a group of journalists claimed that their ability to effectively gather news was undercut by the actions of law enforcement agents who subpoenaed the journalists' toll call records from the telephone company. The journalists asserted that the First Amendment guarantees the right to obtain news as well as publish it. Thus, they argued that they were entitled to prior notice and opportunity to contest the right of law enforcement to obtain the toll records. The District of Columbia Circuit Court of Appeals rejected this argument but the three judges differed in their views. Judge Wilkey authored the court's opinion; Judge Spotswood concurred in most of Judge Wilkey'sopinion and concurred in the result; and Chief Judge Wright dissented.

Citing United States v. Miller, supra, Judges Wilkey and Spotswood agreed that the journalists could claim no Fourth Amendment privacy expectation in the toll records created and maintained by the telephone company. Moreover, both judges concluded that the journalists were not entitled to notice and hearing prior to government acquisition of the toll records at least where the government was engaged in good faith criminal law enforcement. Judge Wilkey noted that a "bad faith" investigation into First Amendment related activities would be those activated by actual intent to hinder the protected conduct or those "that probe at will

without relation to law enforcement needs and that expose for the sake of exposure. See Branzburg v. Hayes, 408 U.S. 665, 700, 92 S.Ct. 2646, 23 L.Ed. 2d 646 (1972)." Id., 593 F. 2d at 1047 n. 52. (emphasis in original).

Significantly, Judges Wilkey and Spotswood refused to presume that a criminal investigation was wrongly motivated without specific evidence of such bad faith in the record. Rather, the judges recognized that any other decision could embroil the courts in a virtually unlimited task of determining the propriety of law enforcement actions. As Judge Spotswood stated:

> If judicial prescreening of governmental operations is justified by no more than a possibility of harassment of a legitimate confidential alliance susceptible to impairment, a wide range of investigative pursuits would become subject to a general requirement of prior authorization. For quite often investigation into criminality unavoidably touches on sensitive noncriminal associations, and any such enterprise could have been initiated in bad faith. [Id., 593 F. 2d at 1074 (Spotswood, Jr., concurring)].

So here, it would seem that use of the release authorization to examine third party records would violate no First Amendment privilege where the purpose of the examination was a legitimate one and not a probe directed at protected activities themselves. Although the court in Reporters Com. was concerned with criminal law enforcement, the nature and policies of casino regulation indicate that the investigation of potential licensees is more akin to a criminal investigation than to the usual administrative law process. Further, there is no reason to believe that those investigations are prompted by wrongful motivations

or "without relation" to legitimate regulatory interests. While the investigation may unavoidably discern information about protected associations, this alone does not condemn the release or the investigative effort. As will be shown, the State has a compelling interest in a thorough examination of each license applicant. That interest easily outweighs any subjective, unsubstantiated apprehension that the investigative authority may be abused. Until such abuse is shown, the investigative process should not be hampered by the need for prior authorization in each case.

An argument might be constructed that information obtained in violation of the First Amendment is tainted and should be expunged. See American Fed. of Gov. Emp. v. Schlesinger, supra. A refinement of this hypothetical would be one where a third party governmental agency lawfully compelled disclosure under a statutory promise of confidentiality. In that case, the contention might be that the confidentiality was a constitutional prerequisite to the compelled disclosure and that a breach or required waiver of that confidentiality retroactively illegitimates the initial compelled disclosure. These possible arguments are noted only in passing. The petitioners have not asserted that any third party has so obtained information concerning petitioners' protected activities. In the absence of such assertion, it must be presumed that any information was lawfully gathered and thus obtainable without prior notice and hearing.

Assuming that some information in the possession of third party agencies or institutions retains its constitutionally protected status, access to that material is not foreclosed. Rather, the analysis turns to the effect of access on the individual's right of association and need of the Commission or Division for such access. As previously noted, the analysis is also the same for questions on the PHDF-2 which may invade, however minimally, the protected zone.

In considering whether a particular disclosure requirement significantly inhibits First Amendment associational or other rights "we must bear clearly in mind just what the pertinent statutory requirement is aimed at and precisely what it does and does not entail." Application of Marvin, supra, 53 N.J. at 150. Generally, all individuals employed in the gaming industry must meet the standards of section 86. That section excludes persons: who have committed certain offenses; who pursue economic gain in an occupational manner which is in violation of criminal or civil public policies where such pursuit creates a reasonable belief that the person's participation in regulated activity would be inimical to the policies of the Act or to legalized gaming; or who are associated with a "career offender" or a "career offender cartel" in such a manner as creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Act or

legalized gaming.[23] In addition to meeting these minimum standards, applicants for casino employee licenses and casino hotel employee licenses must satisfy the pertinent criteria set forth in sections 89, 90 and 91 of the Act. Basically, those sections require the applicant to provide information to establish: financial stability, integrity and responsibility; and, reputation for good character, honesty and integrity.[24]

These qualification standards reflect the overall purpose of the Act to prevent, through application of a strict regulatory process, the infiltration of criminals and other unfit persons into either the casino itself or the hotel facility which houses and supports it. This policy is explicit in the introductory section of the Act which sets forth the Legislature's findings that:

---

23. Section 86(f) defines a "career offender" as "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this State." A "career offender carter" is defined as "any group of persons who operate together as career offenders."

24. Petitioners do not argue that the licensing standards are unduly vague or confusing. In any event, it is clear that these standards are sufficiently definite and understandable to withstand attack on those grounds. See, e.g., In re Suspension of Heller, 73 N.J. 292,299-304 (1977); Berardi v. Ritter, 42 N.J. Super 39, 45-47 (App. Div. 1956), aff'd sub nom., In re Berardi, 23 N.J. 485 (1957). In addition, the Commission has interpreted and clarified these criteria. E.g., In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, CCC Docket No. 79-CL-1 (1979).

An integral and essential element of the regulation and control of...casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of the act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided. [Section 1(b)(6).]

Legalized casino gaming in New Jersey can obtain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations, and the exclusion or removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto. [Section 1(b)(7)].

Since casino operations are especially sensitive and in need of public control and supervision, and since it is vital to the interests of the State to prevent entry, directly or indirectly, into such operations or the ancillary industries regulated by this act of persons who have pursued economic gains in an occupational manner or context which are in violation of the criminal or civil public policies of this State, the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act. [Section 1(b)(9)].

These findings and the specific qualification criteria established in light of them dispel any doubt that the Act might authorize exclusion of an individual from the casino or an ancillary industry because of affiliation with a legitimate organization or exercise of any other First Amendment right. Admittedly, the Act does expressly establish an exclusionary standard based upon association with a career offender or a career offender cartel where the association would be inimical to the policies of the Act and to legalized gaming. However, no one could seriously argue that the First Amendment protects and nurtures organizations which pursue economic gain through use of methods that criminally violate the public policy of this State. Compare New York ex rel. Bryant v. Zimmerman, supra. Moreover, there can no longer be any question that an individual may be barred from a sensitive industry based upon association with criminals or unfit persons, if the association is such that it enhances the risk of harm to the industry or the regulatory process. E.g., Niglio v. N.J. Racing Commission, 158 N.J.Super. 182, 188 (App. Div. 1978); Costanza v. N.J. Racing Commission, 126 N.J.Super. 187, 193-94 (App. Div. 1974).

The Act does not require a loyalty oath; it does not prohibit membership in any legitimate group; it does not penalize protected associations or exercise of other First Amendment rights; and it does not provide for denial of licensure or approval based on membership in any designated

organization. See Application of Marvin, supra at 150. Under these circumstances, incidental disclosure to the Commission or Division of protected associational activities would hardly create a real possibility of official infringement on constitutional rights. As in Marvin and Konigsberg v. State Bar of California, supra, the ultimate criteria for approval are not within the protected zone and any disclosure of protected activity during the investigatory process would either be ignored or used only as a step toward the final determination. This basic distinction effectively negates any chilling effect which might otherwise arise from governmental discernment of legitimate associational activities. Compare Law Students Civil Rights Research Council, Inc. v. Wadmond, supra, Baird v. State Bar of Arizona, supra, and Application of Stolar, supra; see also Reporters Com. v. American Telephone and Telegraph, supra.

While the statutory standards themselves pose no threat of direct infringement on First Amendment rights, it is recognized that such rights are delicate and may be undermined indirectly and subtly. Bates v. City of Little Rock, supra. As discussed above, affiliation with groups advocating beliefs, especially unpopular ones, may be broadly stifled by the consequences of public disclosure and the fear of these consequences. Buckley v. Valeo, supra; Bates v. City of Little Rock, supra; N.A.A.C.P. v. Alabama, supra. Such public responses and the fear of them can be

largely eliminated by a guarantee of confidentiality surrounding the information. See Konigsberg v. State Bar of California, supra at 51. The Casino Control Act provides such a guarantee.

> All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the commission from any source shall be considered confidential and may be withheld in whole or in part, except that any information shall be released upon the lawful order of a court of competent jurisdiction or, with the approval of the Attorney General, to a duly authorized law enforcement agency. [Section 74(e)].

Although the quoted section uses the phrase "may be withheld," the tenor of the entire section and the very limited nature of the exceptions indicate that strict confidentiality is the rule and disclosure would be permitted only where necessary to effectuate the purposes of the Act, e.g., at a hearing requested by the applicant, on order of a court, and on proper authorization by the Attorney General.[25] In fact, the Commission policy of maintaining strict confidentiality is embodied in the ethics rules which forbid any employee from disclosing personal information without the formal authorization of the Chairman. Section 74 refers only to the Commission. This does not mean that the Division can or would liberally reveal personal information concerning applicants. Rather,

---

25. At the hearing, Assistant Attorney General Luciani who was personally familiar with the drafting of the Act testified that the confidentiality of Section 74(e) was intended to be mandatory with only the exceptions noted. (7T194-5 to 195-10).

section 74 addresses the Commission because that agency is obliged to maintain official records and to make certain non-privileged information available to the public. The Division, as a law enforcement agency, has no occasion to deal directly with the public at large and its records are presumably all confidential except as necessary to perform the functions incumbent upon the Division, i.e., to investigate each applicant and to provide all necessary information to the Commission. See Section 76.

Notwithstanding the legitimacy of the statutory criteria and the confidentiality of personal information, an agency might secretly or silently discriminate against an applicant because of protected associations and beliefs. See Shelton v. Tucker, supra. The most effective safeguard against insidious and arbitrary official conduct is to require the agency to justify its determinations and to subject the asserted justification to full judicial review. Konigsberg v. State Bar of California, supra at 52-56; Application of Marvin, supra at 153. Both the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the regulations of the Commission provide for a hearing upon request of any applicant prior to denial of an application for licensure. N.J.A.C. 19:42-3.2. At such hearing, the applicant may call witnesses, cross-examine opposing witnesses and introduce exhibits. N.J.A.C. 19:42-2.6. Upon review of the transcript and of the report and recommendation of the hearing examiner, the Commission will render a written decision

stating findings of fact and resolution of issues. N.J.A.C. 19:42-2.8 & 2.9. Of course, a denied applicant has the right to judicial review of the Commission action in accordance with the rules of court. See R. 2:2-3. Since the Commission must base the denial of an application on credible evidence apparent in the hearing record, the potential for arbitrary or discriminatory action based on the applicant's legitimate associations or beliefs reduces to insignificance.[26]

---

26. Section 80(a) of the Act states that it is the "affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications." See also Section 86(a). A cooperative and candid applicant would not be rejected on the sole ground that he failed to provide enough evidence to convince the Commission of his qualifications. Rather, the applicant's duty is to cooperate fully and to provide the information requested by the Act or by the Commission or Division pursuant to the Act. Assuming such cooperation, an applicant would be rejected only where some evidence appeared that the applicant was unqualified for a particular reason. At that point the applicant would be obliged to rebut the evidence or to face the possibility of rejection. Thus, the present procedure is far different from that condemned in Speiser v. Randall, 357 U.S. 513 (1958) where California placed the continuing burden of proof on an applicant for a tax exemption to show that he had not taken part in unlawful advocacy, a direct and intentional control over pure speech which the Court found to be too broad and suppressive of protected conduct. Of course, the Act does not seek to regulate any protected activity and the criteria for qualification are unrelated to First Amendment activity.

For these reasons, incidental disclosure to the Commission or Division of protected associational ties would pose no real threat to the exercise of the right of association. Fear of public embarrassment or governmental retaliation would be groundless, and complainants have not alleged any factual basis to believe otherwise. See Buckley v. Valeo, supra; Laird v. Tatum, supra; Anderson v. Sills, 56 N.J. 210 (1970). While some people would prefer never to divulge any information to a government agency, mere personal distaste for official information gathering activity hardly qualifies that activity as a serious constitutional infringement. California Bankers Association v. Shultz, supra at 55-57. Even if any compelled disclosure of protected and otherwise private associations itself violates the right of association (see Baird v. State Bar of Arizona, supra), the degree of infringement is, at most, slight under the statutory standards and procedures applicable here. See Konigsberg v. State Bar of California, supra.

The basic question is whether the State interest in obtaining the release authorization is sufficiently strong to justify the alleged constitutional infringement. This is essentially a balancing process. Application of Marvin, supra, 53 N.J. at 153. It is readily apparent that the State's need to conduct a thorough and unobstructed investigation of individuals seeking positions in a casino hotel facility fully warrants, if not requires, the

informational access provided by the release authorization, notwithstanding any minimal intrusion on associational rights which may result. The discussion will turn, first, to the governmental interest in protecting legalized casino gaming by strict and comprehensive regulation and, second, to the need for full disclosure in promoting that interest.

Gambling has long been a subject of special public concern in New Jersey. By a sweeping statute enacted in 1797, gambling in all forms was declared to be an indictable offense and all debts, contracts or obligations arising from gambling were declared null and void. Paterson, Laws, 224. In the 1844 Constitution, Art. IV, Section VII, par. 2 forbade lotteries or sale of lottery tickets in the State. In 1897, the section was expanded to prohibit the Legislature from authorizing "gambling of any kind." Since that time, however, limited exceptions to the otherwise complete prohibition appeared. In 1939, an amendment was approved to allow the Legislature to authorize on-track pari-mutuel betting on horse races. The Legislature subsequently established the Racing Commission and the manner in which such wagering could be conducted. See N.J.S.A. 5:15-22 et seq.

The 1947 Constitution maintained the pari-mutuel wagering exception and added an additional exception for charitable bingo games and lotteries when operated in accordance with legislative restrictions and controls. See N.J.S.A. 5:8-24 et seq. and N.J.S.A. 5:8-50 et seq. Moreover,

Art. IV, Section VII, par. 2 of the 1947 Constitution also permitted the Legislature to authorize any kind of gambling approved by a popular referendum. Through that process, subsection C was adopted in 1969 to permit State lotteries. See N.J.S.A. 5:9-1 et seq. Using the same procedure, subsection D was approved in November 1976. That subsection provides in pertinent part:

> It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. (emphasis added).

In view of this history, it can no longer be said that New Jersey condemns gambling per se as a matter of public policy. Caribe Hilton Hotel v. Toland, 63 N.J. 301 (1973). But that hardly equates to a public policy in favor of unrestricted gaming. "Rather our policy has become one of carefully regulating certain permitted forms of gambling while prohibiting all others entirely." Id. at 307. This policy is a recognition that gambling is still attended by dangers which can be reduced to an acceptable level only by strict governmental regulation and control. Aside from the few controlled exceptions, gaming ventures in New Jersey remain unlawful and criminal. Id.; see N.J.S.A. 2C:37-1 et seq.

By its very terms, the constitutional amendment permitting casino gaming specifically requires State regulation

and control and expressly confers the power to license gaming operations. Prior to that amendment, casino gaming had been totally banned under pain of criminal sanction. Petitioners do not assert that such ban was unlawful nor that it may not be reinstated. In such instances, the State may exercise its police powers to the fullest to assure that the public is protected and that the inherent dangers of the regulated activity are effectively suppressed.[27] For example, in the context of legalized bingo games, our Appellate Division stated:

> These demands, that safeguards be thrown around an operation that had prior to the constitutional amendment been a crime, bring to mind like demands made with respect to the sale of alcoholic beverages when, following the Twenty-First Amendment to the United States Constitution, it, to a certain extent, ceased to be a crime. In each of these cases social dangers, inherent in the operation, X-L Liquors, Inc., v. Taylor, 17 N.J. 444, 449 (1955), evoke the concern of the law. [Daughters of Miriam Home, etc. v. Legalized Games, etc., 42 N.J.Super. 405, 410 (App. Div. 1956)].

Thus, it appears that state regulation of legalized gaming should be exercisable with at least the same comprehensive sweep traditionally permitted the alcoholic beverage control boards. See, e.g., California v. LaRue, 409 U.S. 109 (1972);

---

27. Of course, it is understood that the State may not impose unreasonable or arbitrary conditions on the exercise of a privilege even if that privilege may be totally withheld. E.g., Perry v. Sindermann, 408 U.S. 593, 597 (1972). The point here is the nature of the regulated activity and the imperative for strong control to justify an incidental intrusion on protected rights.

Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970); State v. Zurawski, 89 N.J.Super. 488 (App. Div. 1965), aff'd o.b. 47 N.J. 160 (1966).

Moreover, our courts have recognized that legalized gaming is not only potentially harmful to the public but extremely sensitive and vulnerable to improper influence. In a case involving revocation of a woman's horse racing license on the ground of association with a disqualified person (her husband), the Appellate Division said:

> For many years we have recognized the desirability in the public interest of strict regulation of horse racing. State v. Garden State Racing Ass'n, 136 N.J.L. 178 (E.&A. 1947).
>
> > ***The business of racing and the legalized gambling attendant thereupon are strongly affected by a public interest, and close legislative regulatory supervision is highly appropriate.*** [Jersey Downs, Inc. v. Div. of N.J. Racing Comm., 102 N.J.Super., 451, 457 (App. Div. 1968)].
>
> The undesirability of an association between those previously convicted of a crime or those in affinity with such a person and this sensitive "business of racing and the legalized gambling attendant thereupon," is too apparent to justify extended discussion. [Niglio v. N.J. Racing Commission, supra at 188].

Surely, there is no less need to protect and control the extremely sensitive business of casino gaming by way of strict regulation. The Casino Control Act itself compels this conclusion. See Hamilton v. N.J. Real Estate Commission, 117 N.J.Super. 345, 348 (App. Div. 1971). As already noted, the Legislature specifically found that legalized casino gaming is "especially sensitive;" that

the public interest can only be protected by a system of control and regulation which assures exclusion of individuals with criminal records, habits or associations and individuals lacking business probity, ability or experience; and that this exception to the general policy against gaming for private gain could be allowed only on condition that persons participating therein discharge their "affirmative responsibility...to provide to the regulatory and investigatory authorities established by this act any assistance and information necessary to assure that the policies declared by this act are achieved." Section 1(b)(8). These legislative determinations followed lengthy investigation and study; they should not be underestimated or ignored. (See 7 T163-5 to 164-21).

For example, the Governor ordered that a Staff Policy Group on Casino Gambling be organized to examine the area and report its recommendations to the Legislature prior to adoption of the Act. In its second interim report, dated February 17, 1977, (A-3), the group noted that casino gaming was unique, that it had a "checkered history in other jurisdictions," and that it possessed "potential societal consequences." For these reasons, the group found a compelling need for regulation "in virtually every aspect of casinos and related operations." Moreover, the licensing process was perceived as "the most important single facet" in the regulatory scheme. Second Interim Report of the State Policy Group on Casino Gaming, February 17, 1977, at p.10. Stress was placed on the need to carefully investigate casino

employees who are found to be subject to "tremendous crime incentives and pressures." Id. at 45. As evidenced by its findings in section 1 of the Act, the Legislature concurred in these conclusions.

Further, the Commission may take notice of the dangers inherent in casino gaming. Criminal elements such as loansharks and extortionists will certainly be attracted. Attempts will likely be made to infiltrate the ancillary industries on which the casino hotel depends. Most obviously, cheating and stealing, both direct and subtle, will alwasys be a threat in the casino itself. Unlike other businesses, even pari-mutuel horse race wagering, casino gaming requires thousands of cash for cash transactions where ordinary accounting procedures are impossible. The daily presence of millions of unaccounted for dollars is strong incentive for the dishonest and a powerful temptation to all but the morally strong. In short, the success of casino gaming and the protection of public health and welfare demand exhaustive investigation of the character, ability, integrity, habits and associations of those wishing to be employed in the casino hotel facility.

With the compelling state interest in full and thorough investigation established, the question becomes whether there exists a substantial correlation between the challenged application requirements and achievement of the State goal. In other words, the issue is whether the incidental infringement, if any, of First Amendment rights

occasioned by the release authorization can be avoided by employing other means which will effectively serve the compelling governmental need without such infringement. The Division's investigative expert asserted that the authorization is an "absolutely necessary tool." (5T86-18 to 87-13). Petitioners suggest, however, that the release authorization be limited to information needed to verify responses contained in the personal history disclosure form. That suggestion is plainly unacceptable. The disclosure forms do not contain the sum total of all information relevant and necessary to a complete investigation. Rather, they supply certain basic data and leads to further investigation. Indeed, PHDF-4 contains little more than an individual's name, address, recent employments and "criminal history." Accepting petitioners' suggestion would require that the disclosure forms be themselves totally comprehensive. Since each investigation may lead to different areas of particular interest, a single comprehensive form is unthinkable. Moreover, the form would be enormous and would inconvenience many persons by requiring them to answer questions which are relevant only to a few. Indeed, these same petitioners would be quick to bemoan the length of such forms and the information requested.[28]

---

28. An additional and serious problem with petitioners' modification is that the Division investigator would in effect be required to show the completed form to the institution in possession of the records in order to demonstrate that there is information to be verified.

Aside from limiting the release to verifying information contained in the forms, petitioners generally object that both the forms themselves and the release authorization are overbroad. They contend that the State may inquire only into areas which directly relate to casino gaming. Petitioners fundamentally misconceive the nature and purpose of the investigation. Character, probity, financial responsibility, integrity, and undesirable associations[29] are not limited to purely job-related activities. When an applicant seeks to participate in this extremely sensitive and historically problematic industry, the regulatory and investigatory agencies may legitimately inquire into any portions of his private life which affect the public interest and the participation of the applicant in the regulated area. See Higgins v. N.J. Bureau of Securities, 100 N.J.Super. 266 (App. Div. 1968). The release authorization must be broad in order to allow the Division and Commission to perform this critical, statutorily mandated task; but the breadth of the release does not authorize any inquiry beyond that which is otherwise necessary and proper. See Anderson v. Sills, 56 N.J. 210, 255 (1970); see also Gabor v. Hyland,

---

FOOTNOTE 28 CONTINUED

Petitioners' own witness, who advises a law school on release of records, asserted that he would demand such disclosure before allowing release of records under such a modified authorization. (7T44-9 to 25). Such disclosure contradicts the confidentiality requirement of section 74(e) and the investigative procedure followed by Division personnel. (5T86-18 to 89-7).

29. Of course, associations of interest here are those previously described and not those protected by the First Amendment right of asscciation.

166 N.J.Super. 275 (App. Div. 1979).

Any further limitation on the scope of the release would destroy its effectiveness. Although the present petitioners may be persons of high integrity with no disqualifying characteristics, they must concede that there are individuals who would have reasons,unrelated to lofty constitutional precepts, for concealing their full character or associations. It would be these very persons who would likely escape detection if the release authorization were restricted. The sweep of the release is necessitated by its purpose. See Lehrhaupt v. Flynn, 140 N.J.Super. 250 (App. Div. 1976), aff'd o.b. 75 N.J. 459 (1978); Gabor v. Hyland, supra. So understood, the release is not invalid merely because it is comprehensive, and, as discussed earlier, any protected information incidentally obtained through use of the release would have no real adverse consequences on the individual.

In addition, petitioners have offered no workable suggestion for limiting the scope of the release. If, for example, the release were limited by its terms to "relevant" information, the Commission or Division would encounter resistance from any public agency or institution unless the relevance of the requested information were shown. Fearing liability, the record keeping agency or institution would likely refuse to divulge any type of information it possessed until it were assured that such material were covered by the release. Even then, the institution would

be constrained to make its own evaluation of the relevance of the information and the need of the Commission or Division to examine it. Such a balky procedure would be diametrically opposite to the fully cooperative effort required by the Legislature. See sections 80, 86, 89 and 90 of the Act.

To summarize, the State has a paramount or compelling interest to safeguard both the gaming industry and the public health, safety and welfare from the participation of unfit individuals in this most sensitive business. The ability of the State to achieve this objective depends heavily, if not primarily, on the licensing or qualification process which has at its heart the full and thorough investigation of each applicant's integrity and character, including criminal records, habits and associations. To this end, the Legislature required that each applicant cooperate in the investigation and provide needed assistance or information. The release authorization is a direct outgrowth of the legislative recognition that the unfit persons are hardly likely to simply declare their disqualifications. For the reasons stated above, the release authorization must be broad to be effective and no satisfactory "less drastic" alternative has been proposed. To the extent that legitimate use of the release results in incidental disclosure of information concerning protected associations, that potential disclosure must be permitted for the sake of meaningful investigation. See Reporters Com. v. American Telephone & Telegraph, supra. Moreover, the ultimate disqualification

standards, the confidentiality of the information, the right to a fair hearing and full judicial review all combine to render insignificant the effect of such disclosure on the exercise of the right of association. See Application of Marvin, supra. For these reasons, the balance falls heavily in favor of the State and the release authorization may be retained in its present form.[30]

V. RIGHT OF PRIVACY

In the incomplete PHDF-2 forms submitted initially by Ms. Martin and Ms. Stretton, several questions were omitted with the explanation that they allegedly violated each applicant's right of privacy (nos. 8,22,41,42,43,51 and 52) and right of "sexual privacy" (nos. 17 and 21). In the

---

30. So too, the minimal effect, if any, on protected assocations resulting from the challenged questions on the PHDF-2 is greatly outweighed by the need of the Commission or Division for the requested information to provide important investigative leads. Cf. Burton v. Sills, 53 N.J. 86 (1968), app. dism. 394 U.S. 812 (1969). The testimony of the Division's expert witnesses fully supports the legitimate investigative use for the requested information. (See 10T100-14-16; 10T125-12 to 133-25). The position of one of petitioners' witnesses, Mr. Clark, that screening of casino or casino hotel employees was totally improper must be rejected. The Legislature has plainly determined otherwise. Petitioners' other witnesses, Professor Rogovin and Inspector Clayton, questioned the need for some of the information but generally recognized that the forms are helpful to proper investigation.

complaint filed in the Appellate Division and refiled in this matter, these petitioners excluded several of the foregoing questions from their privacy attack but added others (nos. 45, 46 and 49). See Par. 13B of Complaint. The confused status of petioners' pleadings necessitates consideration of all the listed questions. In addition, petitioners' expert witnesses at the hearing asserted for the first time that other challenged questions on the PHDF-2 violated the right of privacy. Those questions are numbers 32,35,36,37,53 and 55. Further, the release authorization was also challenged on "right to privacy" grounds. At the outset, a brief examination of this concept is in order.

In their brief, petitioners devote much energy to proving that a constitutional right of privacy exists. There is, however, no real question as to the existence of such right. E.g., Roe v. Wade, 410 U.S. 113 (1973); State v. Saunders, 75 N.J. 200 (1977). Rather, it is the nature and scope of the right which must be examined to determine whether it has any application here. Until recently, the United States Supreme Court recognized the right in only limited areas:

> Our prior decisions recognizing a right to privacy, guaranteed by the Fourteenth Amendment, included "only personal rights that can be deemed 'fundamental' or implicit in the concept of ordered liberty, Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937)." Roe v. Wade, 410 U.S. 113, 152, 93 S.Ct. 705, 726, 35 L.Ed. 2d 147 (1973). This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing. Paris Adult Theatre I v. Slaton, 413 U.S. 49,65 (1973).

See Carey v. Population Services International, 431 U.S. 678 (1977); Paul v. Davis, 424 U.S. 693 (1976); Roe v. Wade, supra; Eisenstadt v. Baird, 405 U.S. 438 (1972); Stanley v. Georgia, 394 U.S. 557 (1969); Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965); Prince v. Massachusetts, 321 U.S. 158 (1944); Skinner v. Oklahoma, 316 U.S. 535 (1942); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

Prior to 1977, the Supreme Court found a violation of the right of privacy only where the government had directly intruded into the private zone and had actually interfered with the fundamental liberty of the individual. Cf. Paul v. Davis, supra. In 1974, Professor Henkin, a commentator quoted approvingly in petitioners' brief, described the evolving "right of privacy" as follows:

> I think that denomination is misleading, if not mistaken. To date, at least, the right has brought little new protection for what most of us think of as "privacy" - freedom from official intrusion. What the Supreme Court has given us, rather, is something essentially different and farther reaching, an additional zone of autonomy, of presumptive immunity to governmental regulation. [L. Henkin, "Privacy and Autonomy," 74 Columbia L. Rev. 1410-11 (1974)].

Professor Henkin convincingly argued that the "right of privacy," as recognized to that point, was really a right of individual autonomy in certain basic, human areas and not a general freedom to refuse governmental requests for "private" information. Id. at 1424-26; Doe v. Norton, 365 F.Supp. 65 (D. Conn. 1973)(3judge Ct.); see Mills v.

Atlantic City Dept. of Vital Statustics, 48 N.J.Super. 302, 310 (Ch. Div. 1977).

To be distinguished from any general constitutional right to withhold personal information (hereafter "the right to confidentiality") is the more limited right of disclosural privacy derived from the traditional right of autonomy. As with the disclosural privacy afforded First Amendment protected associations (see Part IV above), information regarding fundamental decisions within the zone of autonomy may be entitled to protection where compelled disclosure of the information would significantly hamper such decisions. See, e.g., N.A.A.C.P. v. Alabama, supra. The Supreme Court has indicated that such a derivative right of disclosural privacy may exist but that its scope is co-extensive with the danger posed to the underlying right of autonomy which it safeguards.

In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), a group of physicians attacked many aspects of a state abortion law, including a requirement that records be kept of all abortions and forwarded to the Department of Health.[31] The statute provided that these records be confidential but permitted them to be inspected by local, state or national health officers. The records

---

31. A woman's right to decide whether or not to have an abortion during the first trimester of pregnancy has been found to be within the "right of privacy" in Roe v. Wade, supra.

were to be maintained for seven years. The declared purpose of the record keeping requirement was to preserve maternal health through compilation of knowledge and to monitor abortions for medical propriety. In deciding whether this requirement infringed the woman's right to privacy, the Supreme Court first observed that such requirements would not be allowed if they had the effect of burdening the woman's decision to have an abortion. Id. at 80. The Court then declared that, if reasonably directed to proper goals and if properly maintained in a confidential manner, such record keeping requirements would be permitted. Id. After finding that the state had demonstrated legitimate reasons to maintain and collect the information, the Court continued:

> The added requirements for confidentiality, with the sole exception for public health officers, and for retention for seven years, a period not unreasonable in length, assist and persuade us in our determination of the constitutional limits. Id. at 81.

Based on these factors, the Court found no legally significant impact on the abortion decision as a result of the record requirement.

The Court focused more closely on the relationship between compelled disclosure and the "right to privacy" in Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869 (1977). In order to establish better control over distribution of lawful but potentially harmful or abused prescription drugs, New York enacted a law which required all doctors' prescriptions for such drugs to be forwarded to a central government office

where the information was placed on a computer tape for five years. The recorded information included the name, address and age of the patient as well as the dosage and type of drug. The statute required the information to be kept confidential and there was evidence that security precautions were taken. In a footnote, the Court observed that the statute did permit disclosure: (1) to other authorized employees of the Department of Health; (2) pursuant to judicial subpoena or court order in a criminal investigation or proceeding; or (3) to an agency or board authorized to regulate, license or supervise a person allowed to deal in controlled dangerous substances or in the course of any investigation or proceeding before such agency or board. Id. at n. 12.

The Whalen Court was asked to decide whether the New York information gathering scheme violated the right of privacy of a patient to seek health care and effective medication from a physician. The challengers argued that the collection and maintenance of the required information would burden the patient's decision in this regard because the patient would be intimidated by the possibility of public disclosure and consequent damage to reputation. The Court first noted that the statutory system was not an unreasonable one but a considered attempt to deal with a real problem of vital local concern. In such matters, the state may normally use its police power as it reasonably sees fit to alleviate the problem. With regard to the alleged invasion

of the right of privacy, the Court declared:

> The cases sometimes characterized as protecting "privacy" have in fact involved at least two different kinds of interest. [footnote omitted]. One is the individual interest in avoiding disclosure of personal matters, [footnote omitted, citing Stanley v. Georgia, supra and California Bankers Association v. Shultz, supra] and another is the interest in independence in making certain kinds of important decisions. Id., 429 U.S. at 599.

Having apparently recognized not only a right of basic autonomy but an interest in disclosural privacy, the Court proceeded to find that neither aspect of the "right of privacy" was seriously threatened by the New York statute. As to the disclosural aspect, the Court found no support for the contention that the statutory security and confidentiality provisions would not be followed by state officials. Further, the Court refused to assume that use of the information as evidence in judicial or agency proceedings would be improperly expanded or uncontrolled. The Court conceded that the mere existence of the records might actually discourage some few patients but stated: "Requiring such disclosures to representatives of the State having responsibility for the health of the community does not automatically amount to an impermissible invasion of privacy." Id., 97 S.Ct. at 878.

As to alleged interference with the actual choice to seek proper medication from a physician, the Court pointed out that the statute imposes no direct restriction or penalty on the individual's choice. Once again, the Court emphasized that the statute exhibited a proper respect for the individual's

interest in privacy through the confidentiality provisions. Under these circumstances, the Court perceived no threat to the freedom of choice. Moreover, the Court rejected the argument that the individual patient was entitled to anonymity in consulting a physician similar to the protection afforded persons in the freedom of association context. The Court distinguished the First Amendment decisions:

> But those cases protect "freedom of association for the purpose of advancing ideas and airing grievances," Bates v. City of Little Rock, 361 U.S., at 523, 80 S.Ct., at 416 not anonymity in the course of medical treatment. Also, in those cases there was an uncontroverted showing of past harm through disclosure, N.A.A.C.P. v. Alabama, 357 U.S., at 462, 78 S.Ct., at 1122, an element which is absent here. Id., 97 S.Ct., at 87 n. 32.

In a concurring opinion, Justice Brennan indicated that if there were a showing of broad dissemination of the recorded information, it would affect privacy rights protected by the Constitution. However, on the record made, he joined the majority in finding no invasion of privacy and no need for the state to prove that the challenged statute was absolutely necessary as a means to control drug abuse.

Planned Parenthood and Whalen indicate that the right of privacy includes an aspect regarding the compelled disclosure of certain personal information. However, in both cases, the information at issue directly concerned the exercise of a choice which itself fell within the basic right of individual autonomy, i.e., the right to obtain effective medication from a physician and the right to an abortion. Thus, neither case required a finding that the

disclosural aspect extends to information not related to an otherwise protected choice or activity. Moreover, the disclosural privilege, even where it exists, is not nearly as broad as the right of associational privacy derived from the First Amendment.

As noted, Whalen specifically rejected the argument that the right of privacy was analogous in its disclosural aspect to the First Amendment privacy recognized in N.A.A.C.P. v. Alabama, supra. The Whalen Court declared that there was no right to anonymity per se in the exercise of medical treatment options. Further, both Whalen and Planned Parenthood turned on the confidentiality of the recorded information. In each case, that fact persuaded the Court that no invasion of constitutionally protected privacy would occur. Indeed, the Whalen Court declared that the statutory reporting scheme would not have to pass a strict test of necessity or less drastic means because the information was not to be disseminated generally. Absent a showing of improper consequences from the disclosure, the Court would not assume that mere governmental disclosure would lead to infringement of the right of privacy, nor that the government would abuse the statutory exceptions to the cloak of confidentiality.

At least one federal court did so analyze the right of privacy shortly after Whalen. In Crain v. Krehbiel, 443 F.Supp. 202 (N.D. Cal. 1977), the plaintiff sued the federal government and certain federal narcotics agents because the agents threatened to disclose the plaintiff's identity after the plaintiff provided information in a drug

case. Among other things, the plaintiff claimed a deprivation of the right of privacy. The court observed that "privacy" has at least three meanings: (1) the Fourth Amendment protection against unreasonable searches and seizures; (2) "the individual interest in avoiding disclosure of personal matters," Whalen, supra at n. 24; and (3) "the interest in independence in making certain kinds of important decisions" or "constitutional protection of individual autonomy," citing Carey v. Population Services International, supra.

Observing that the third type has generally been limited to certain intimate, personal areas, the Crain Court proceeded to distinguish this right of autonomy from some generalized concept of privacy. In blunt language, the court stated: "To the extent that plaintiff asserts a general constitutional right of privacy (as distinguished from a right of autonomy) his claim fails because no such right exists." Id. at 208. (emphasis added). Although there is no constitutional guarantee of "privacy" in the broad sense, the Crain court recognized that there may be a right against public disclosure of private facts; but the court emphasized that this right exists only to safeguard the underlying right of autonomy.

> The right to privacy, as defined here [disclosural privacy], is a derivative right recognized in order to protect fundamental rights directly secured by the Constitution. Id. at 209.

So understood, the "right to disclosural privacy" is operative only where the right of autonomy itself would be

infringed by the proposed disclosure. Id. at 210.

In Nixon v. Administrator of General Services, 433 U.S. 425 (1977), the Supreme Court again considered whether the right to privacy protects against compelled disclosure of information. The case involved several challenges by the former president to the Presidential Recording and Material Preservation Act. Specifically, Nixon asserted that the law violated his right to privacy because, as implemented by regulations, it required him to produce all of the papers and recordings generated during his tenure. Once received by the Administrator, this huge mass of information was to be examined by archivists who were to separate any purely personal records and return them to the ex-president. Nixon claimed and the Court acknowledged that the material included "extremely private communications between [him] and, among others, his wife, his daughters, his physician, lawyer and clergymen, and his close friends as well as personal diary dictabelts and his wife's personal files." Id., 433 U.S. at 459.

The Nixon Court began its analysis by quoting the single statement from Whalen v. Roe that "privacy" encompasses "the individual interest in avoiding disclosure of personal matters." Nixon, supra, 433 U.S. at 459, quoting from Whalen v. Roe, supra, 429 U.S. at 599. Having so stated, the Court grasped for some definition of this "interest." Apparently since the concept had not been recognized in former decisions on the right of autonomy, the Court turned to doctrine developed in the context of the

Fourth Amendment guarantee against unreasonable searches and seizures. Citing the seminal case of Katz v. United States, 389 U.S. 347 (1967), the Court observed that, through the Fourth Amendment, protection is constitutionally afforded to those areas and possessions in which an individual has a reasonable expectation of privacy, i.e., an expectation which is not only subjective but also objectively justified. Thus, the Court selected precisely the same measurement for the "interest in avoiding disclosure of personal matters" as that which determines the scope of Fourth Amendment protection. See Smith v. Maryland, supra.

The Nixon Court found that the ex-president did have a reasonable expectation of privacy in those "extremely personal" materials which he possessed. Moreover, it was clear that the government claimed no lawful interest in such materials. Nevertheless, the Court upheld the process whereby Nixon was required to produce all his documents and to allow the archivists to decide which materials were purely personal. The Court emphasized that the intrusion was minimized because the screening process was to be conducted confidentially and because there was no reason to doubt that any personal materials would be kept secret and returned to the ex-president. Against this limited intrusion, the Court found a strong need for the government to decide which information was in the public domain rather than leave that choice to Nixon. Thus, on balance the process was "reasonable." Further, the Court saw no other effective

way to achieve the legitimate governmental interest in preserving presidential documents. Id., 433 U.S. at 955-65.

A review of the Nixon decision reveals that the Court was not creating a new type of constitutional protection. Rather, the Court was simply applying established principles of Fourth Amendment law to a situation which was essentially a search. Stated differently, the government may not intrude physically into an area where an individual has a legitimate expectation of privacy unless the intrusion complies with the basic requirement of the Fourth Amendment, i.e., reasonableness. See Terry v. Ohio, 392 U.S. 1 (1968).[32] Thus, the government may not simply avoid the Fourth Amendment by compelling the individual to yield private material where the government can not show the reasonableness of its request. Since the Fourth Amendment protection and the so-called privacy interest are, by definition, identical, the same standard of review for governmental incursions into that protected area must apply, whether the incursion is by a classic search or by a compelled protection of private

---

32. The Fourth Amendment also requires a judicial warrant to issue before a search and seizure except in certain cases. See State v. Ercolano, 79 N.J. 25 (1979). Since there is no prior physical intrusion by the state into protected areas but rather a statutory and regulatory demand for information, a warrant is not required. Indeed, no warrant was issued in Nixon. Rather, the applicant may choose to provide the information or to resist and challenge the request as in the present case.

materials. Certainly, no higher standard should be demanded where the government obtains the information under a promise of confidentiality. Compare Whalen v. Roe, supra, with Plante v. Gonzalez, supra.[33]

---

33. The fact that the Nixon Court "balanced" the interests of the government and the ex-president does not alter this conclusion. The Nixon Court confronted a situation where the government's broad demand for documents included materials as to which Nixon had a legitimate privacy expectation and which were clearly irrelevant to the government's lawful goals. Thus, the Court knew in advance that the government would acquire personal material in which it had no reasonable interest. In such a case, the Court necessarily had to decide whether this improper invasion of the protected area was justified. On balance, the Court found that the government's need to assure the production of all public materials required the government to identify the materials which were personal. The analogy is not to a simple seizure of described materials or information but to a seizure which of necessity will include protected and irrelevant matters as well. The best analogy is wiretapping with its inherent overbreadth and interception of innocent, private communications. Traditionally, electronic surveillance has been more circumscribed and has required a stronger showing of governmental need. See N.J.S.A. 2A:156A-1 et seq. In attempting to ascertain the proper standard of review where the so-called right of confidentiality is concerned, the Fifth Circuit has stated that "scrutiny" is required and mere "rationality" was not sufficient. Plante v. Gonzalez, supra, 575 F.2d at 1134. However, the Plante Court was addressing public disclosure of private material, a fact that the Court itself recognized as being qualitatively different from confidential disclosure to a government agency. Id. at 1133; see Lehrhaupt v. Flynn, 140 N.J.Super. 250 (App. Div. 1976), aff'd o.b. 75 N.J. 459 (1978), and Kenny v. Byrne, supra; see also McKenna v. Fargo, 451 F.Supp. 1355 (D. N.J. 1978).

Under the foregoing analysis, petitioners' attacks must fail. The confidentiality of the information disclosed to the Division or Commission has already been discussed. Given the very limited exceptions to this confidentiality, it can hardly be said that public dissemination is a likelihood. See Nixon v. Administrator of General Services, supra; Whalen v. Roe, supra. Absent reasons to believe that the information will be misused or that any improper governmental reprisal will occur, there would appear to be no likelihood of infringing the right to make intimate decisions. Since the fundamental right of autonomy is not infringed, the disclosural requirements do not have to meet the test of necessity or "least drastic means," so long as they are reasonably related to a legitimate state interest. Id. The urgent need to protect casino gaming and the public welfare through stringent regulation has been demonstrated. A survey of the challenged questions will reveal an obvious and substantial relationship between the requested information and the completion of a thorough investigation of the applicant. Thus, even if any requested information falls within the area covered by the right of confidentiality, the inquiries are nevertheless reasonable and valid.

Petitioners assert that questions 17 and 21 violate their rights to "sexual privacy." As to 17, it requires an applicant to provide the name, date of birth, occupation and dates of co-residence for any non-related person with whom

the applicant resided during the previous 10 years.[34] Petitioners' contention seems to be that such information might reveal the identity of a lover and would thus infringe the right to sexual activity recognized in State v. Saunders, 75 N.J. 200 (1977). However, petitioners ignore the actual question. There is no request for a description of the relationship between the co-residents. The question does not require a list of persons with whom the applicant has been sexually intimate. Simply, the question asks for non-related co-residents.

Presumably, the names of the applicant's relatives will be provided elsewhere in the application form. Thus, the focus of question 17 is to disclose those other persons, if any, who are closely associated with the applicant and who would be in a position to best know the applicant's character, activities and associates. Moreover, the likelihood of an intrusion into a truly private area is greatly lessened where, as here, the information sought is generally available to friends, neighbors, landlords, correspondents, etc. When two people reside together, for whatever reason, the fact of the joint residence is plain and open to public review. There can be no legitimate expectation of privacy

---

34. Petitioners also challenge question 53 which requires motor vehicle information for the applicant, the applicant's spouse and any person living with the applicant. Apparently the same arguments would be made as are advanced against question 17. (See 4T12-7 to 13-12).

as to the mere fact of the cohabitation. Of course, even if question 17 did reveal a protected sexual relationship, the information's confidentiality and the other safeguards provided by the Act undercut any possible infringement of the right to privacy or sexual autonomy. See Whalen v. Roe, supra. Since the requested information is relevant to a full investigation of the applicant, the question is valid.

Question 21 requires the applicant to advise whether he or she was ever the parent of a child "by marriage, adoption or natural relationship." If so, the applicant must provide the child's name, date of birth, place of birth and current address. Petitioners decry the fact that the question would include illegitimate children. Here again, the argument appears to be that disclosure of such information infringes the right to engage in sexual activity. See State v. Saunders, supra. Since the only petitioners with standing to challenge this question are women, the fact that they may have had children out of wedlock would hardly be secret. See Doe v. Norton, 365 F.Supp. 65 (D. Conn. 1973) (3 Judge Court). The question does not ask for names of all men with whom the applicants had sexual relations. It does not even ask for the name of the child's natural father. Moreover, the question would not be improper even as applied to a male applicant. The information would not be publicly disseminated and no official consequences would befall an applicant merely because of an illegitimate offspring. However, it is helpful to have the requested information

in order to complete the applicant's family picture, not only for the possibility of improper association but for the chance that the applicant may hold hidden interests and assets through the otherwise undisclosed child. Additionally, the information is directly relevant to the applicant's financial responsibility and stability. Under the circumstances, the question must be sustained.

The other questions on the on the PHDF-2 which are challenged under the broad rubric of "privacy" concern the following: distinguishing scars or marks (#8); birthdates of references (#22); ownership interests held by the applicant in any partnership, closed corporation or sole proprietorship and the identity of other partners or shareholders (#32); compensated employment of immediate family members for the previous twelve month period (#35); applications made by the applicant or applicant's spouse for firearms permits (#36); possession or ownership by the applicant or applicant's spouse of a firearm (#37); juvenile arrests or charges against the applicant (#45); arrests, indictments and convictions for crimes or disorderly persons offenses of the applicant or members of applicant's immediate family (#46); use, distribution or possession of a controlled dangerous substance other than pursuant to a valid prescription during the past ten years (#49); nature of any civil suits to which the applicant was a party (#51); other inquiries about the applicant conducted by a governmental investigative agency (#50); any charges made against applicant for violation of statute, regulation or code other than criminal, disorderly

persons or motor vehicles violation (#52); and any bond sought or obtained by the applicant (#55). In addition, petitioners object on "privacy" grounds to the release authorization described at length in Part IV above. While the substantial correlation between all these items and the compelling interest of the State in safeguarding casino gaming is plain, the privacy interests of the petitioners are obscure. Not only will the disclosed information be afforded confidentiality by the State, but these requests reveal nothing of the applicant's intimate or fundamentally personal activity. Compare Planned Parenthood of Missouri v. Danforth, supra. There is no reason to believe that use of the release authorization will reveal information regarding such activities as to these petitioners where that information retains constitutional protection. Even so, the confidentiality provision and other safeguards in the Act provide adequate assurance that the applicant's right of autonomy will not be disturbed. See Whalen v. Roe, supra. Furthermore, any right of confidentiality which these petitioners may assert in the disclosed information is easily overcome by the legitimate interest of the regulatory agency in the information and by the secrecy accorded the information by the Act. Id.; Nixon v. Administrator of General Services, supra.

Although no more need be said to dispose of the "privacy" claims, a review of the challenged items will further demonstrate that neither the right of autonomy nor

the right of confidentiality is violated. As to the questions regarding juvenile offenses (#45), criminal or disorderly persons charges (#46) and other types of violations (#52), there could be no impact on the right of autonomy. No protected intimate decisions are involved. Nor does the fact that question 46 requires criminal history information regarding the applicant's immediate family raise such a concern. Surely, the unity of the family would not be seriously impaired because an applicant provides information about a family member's arrests and convictions to a government agency. Cf. Califano v. Jobst, 437 U.S. 47, 54 (1977). As to the right of confidentiality, the information sought by these questions is by its nature already in the records of government and an applicant could not assert an expectation of privacy in those records. See United States v. Miller, supra. Even assuming that some such expectations could be supported by the existence of state statutes requiring confidentiality of juvenile records, the obvious relevance of juvenile offenses to an applicant's suitability for licensure renders the compelled disclosure fully reasonable and constitutionally valid, especially where, as here, the information will retain its confidentiality under the Act.

Certain questions pertain to financial or economic information. (Question nos. 32 and 35). At least two federal courts have found that the right of autonomy does not apply to financial disclosures. Plante v. Gonzalez, supra;

O'Brien v. DiGrazia, 544 F.2d 543 (1 Cir. 1976). Despite the imaginative speculation of petitioners' expert witness (see 7T95-17 to 96-22), these questions simply do not inquire about basic personal choices within the right of autonomy. Moreover, it is difficult to believe that immediate family members will have a strong adverse reaction to the disclosure of their employment. These are matters commonly known in the community. For similar reasons, the right of confidentiality is untouched by revelation of the applicant's commercial ventures or his family's employment. Even so, any minimal intrusion on expected privacy is warranted by the direct relevance of an applicant's financial activities, his business associates and his immediate family's economic sources to the licensing criteria. (See 5T70-14 to 71-23; 7T239-2 to 241-14). See Lehrhaupt v. Flynn, supra.

Petitioners find an invasion of privacy in the two questions dealing with firearms. Question 36 asks about applications for firearms permits and Question 37 inquires about possession or ownership of firearms. Both questions pertain to the applicant's spouse as well as the applicant. The purpose of these questions in the context of licensure for employment in a casino hotel is apparent. Aside from actual ownership and possession of guns, an applicantion for a weapons permit may well have been the subject of an investigation by the appropriate regulatory body. If the permit was denied, the reasons may be important. Further,

even if the permit was granted, information garnered in the permit investigation would clearly assist the Division in its own investigative effort. (See 5T70-14 to 73-7). The petitioners find fault with these questions because they include the applicant's spouse. (See 3T154-11 to 157-8).

Apparently, petitioners contend that revelation of any information about a spouse could violate marital rights. This contention is based on the supposition that the applicant's knowledge of the spouse's attempt to obtain a firearms permit or the spouse's ownership of a gun was obtained solely through a confidential, privileged communication between husband and wife. See Evid. R. 28; N.J.S.A. 2A:84A-22. However, the record fails to reveal that any applicant has ever been in that position. Certainly, these petitioners have not. In a broad assault on the validity of a question, the mere fact that it requests information regarding one's spouse does not indicate any invasion of privacy. See Kenny v. Byrne, supra, 144 N.J.Super. at 256. If an applicant feels that under particular circumstances an answer to these questions violates the marital communication privilege, the applicant should assert the privilege in response. Until that occurs, the problem is purely conjectural. To the extent that the petitioners assert any right of confidentiality in these matters, the relevance of the question in the context of the license application investigation is fully responsive.

Moreover, the New Jersey policy of strict regulation and registration of firearms undercuts any legitimate expectation of privacy for New Jersey applicants. See N.J.S.A. 2C:58-1 et seq.

Two questions related to financial integrity, responsibility and stability are attacked on privacy grounds. Question 51 requests information regarding any civil law suits to which the applicant has been a party. Plainly, a history of litigation or the existence of unsatisfied judgments may offer investigative leads and insights regarding the applicant's financial integrity and responsibility as well as stability. No intimate decision-making appears to be revealed by such information. Moreover, even the petitioners' expert witness, Professor Rogovin, agreed that lawsuits are a matter of public record. (7T18-13 to 22-20). However, he asserted that the inquiry was unduly invasive of privacy because it was not restricted to final judgments against the applicant in lawsuits based on fraud or other improper or immoral conduct. (4T9-20 to 11-11).

This suggestion misconceives the purpose of the inquiry. As noted, the financial stability and responsibility of an applicant, not merely his character, are at issue. See sections 89(b)(1), 90(b) and 91(b) of the Act. The suggested limitation of question 51 would needlessly hamper the effectiveness of the investigation as to these standards. Since the question as written intrudes on no protected area of privacy, it should not be so limited.

(See 7T259-4 to 260-3). For similar reasons, there is no justification for restricting the coverage of question 55 which asks whether the applicant has ever sought to be bonded and, if so, the result of that request. Neither the right of autonomy nor the right of confidentiality is implicated. Professor Rogovin's suggestion to limit the question to "fidelity bonds" again fails to appreciate the financial criteria established by the Act. (See 4T13-20 to 14-23; 5T84-20 to 85-10; 7T27-9 to 19).

Question 50 inquires whether "to the best of the applicant's knowledge" the applicant has been the subject of any investigation by a "governmental investigatory agency." If so, the identity of the agency and the nature of the investigation are requested. The legitimate purpose and use of this question for a thorough licensing investigation are apparent. The Division should be allowed to benefit from the prior investigative efforts of other agencies which have focused on the applicant. The right of autonomy hardly seems to apply to such a question which by its terms is limited to "investigatory" agencies and would not include the applicant's participating in such matters as health research programs, despite the inventive speculation of the present petitioners. (See 7T17-15 to 18-12). Even assuming that an investigatory agency had obtained information regarding fundamental decisions within the right of autonomy, the Division's access to such information with the attendant confidentiality assured by the Act causes no constitutional harm. Whalen v. Roe, supra. On the other hand, any

restriction which would allow an applicant to decide whether to reveal a particular probe conducted by an investigatory agency would essentially negate the utility of the question. See Kenny v. Byrne, supra. As to the right of confidentiality, an applicant would be hard pressed to demonstrate a reasonable expectation of privacy for information already in the possession of a government investigative body. In any event, these petitioners have made no such demonstration and the reasonableness of the inquiry in its present form is clear. See Whalen v. Roe, supra; Nixon v. Administrator of General Services, supra. (See 5T81-16 to 82-2; 7T257-11 to 259-3).

Question 49 inquires whether the applicant has distributed, possessed or used any controlled dangerous substance listed in the New Jersey Controlled Dangerous Substance Act (N.J.S.A. 24:21-1 et seq.) during the preceding 10 year period "other than pursuant to a valid prescription." Petitioners claim that this question invades the right of autonomy because "what I take into my own body is my business." (4T7-16 to 8-10). Petitioners are simply wrong. While the right to seek medical treatment and to obtain prescription drugs as part of that treatment may be within the right of autonomy (Whalen v. Roe, supra), the challenged question specifically excludes information regarding prescribed medication. Moreover, there is no right to ingest dangerous substances which have been prohibited by the state. See Id., 97 S.Ct. at 878.

With regard to the right of confidentiality, it may be true that, notwithstanding the illegality of certain drug use, an individual would have a legitimate expectation of privacy in such activity, at least if it was done in a private area. Even so, question 49 is valid if it is a reasonable inquiry in the context of licensure for employment in a casino hotel. The record fully supports the reasonableness of this inquiry.

Assistant Attorney General Luciani testified that the Staff Policy Group, appointed to determine potential regulatory problems posed by legalized casino gaming, visited Nevada and other casino jurisdictions and met with representatives of government and industry. In those meetings, the group members learned that, in addition to excessive gambling, drug use and dependence by employees was a significant problem. (7T255-15 to 25). The Second Interim Report of the Staff Policy Group (A-3) reflects these findings:

> [T]hose who work in casinos are subject to tremendous crime incentives and pressures, and instances of employee drug dependence, compulsive gambling, and consequent cheating, loan sharking, drug dealing and other criminal involvement are not uncommon. [Id. at 45] (emphasis added).

These concerns have also been recognized by the Legislature which amended the Act to specifically include certain drug offenses as disqualifying applicants for licensure. Section 86(c) of the Act, as amended by P.L. 1979, c.282. Given this background, information regarding prior distribution,

possession and use of controlled substances is fully warranted. Whether the information disclosed would always lead to denial of a license application is beside the point. The information is relevant and appropriate to the investigation.

Question 8 on the PHDF-2 asks whether the applicant has any "scars, tatoos or other distinguishing mark or physical characteristics." If so, the applicant is asked to describe them. Petitioners claim that this question violates both the right of autonomy and the right of confidentiality. Specifically, they contend that the question is overbroad in that it would require disclosure of such features which are not "visible when wearing normal attire of any given season of the year." (3T114-6 to 17). Without the suggested restriction, they assert that an applicant would be required to reveal marks in a private area of the body (confidentiality) and possibly scars on such areas which resulted from a decision to have surgery (autonomy).

Petitioners' arguments lack substance. The purpose of the question is simply to assist in definitively identifying an applicant or licensee. While "visible" features may be more useful for simple visual identification, the existence of otherwise unseen marks also enables the investigators to assure that they are dealing with the same person or with information regarding that person. Moreover, the limitation proposed by the petitioners hardly provides a workable standard to distinguish between those

features which must be revealed and those which need not. Is a bathing suit "normal attire" in the Summer? If a female applicant wears only pant suits should she be required to reveal a scar on her calf? Does the answer depend on the clothes normally worn in the season when the applicant submits the form or on the most revealing clothes which the applicant ever wears?

Beyond the practical difficulties inherent in the suggested limitation, there is no constitutional reason to so limit the inquiry. Disclosure of physical characteristics to licensing agencies is not unusual. For example, N.J.S.A. 2C:58-3(e) requires an applicant for a permit to purchase a firearm to provide a "physical description, including distinguishing physical characteristics." That requirement was upheld against similar challenges in Burton v. Sills, 53 N.J. 86, 102 (1968), where the Court found the requirement reasonable on its face and within the broad police power of the State. Moreover, if the question were to reveal the existence of a mark which resulted from an exercise of the right of autonomy, the question does not inquire how the scar was caused. Even if that information were incidentally revealed, the confidentiality of the information avoids any constitutionally cognizable harm to the individual's right of autonomy. Whalen v. Roe, supra. Lastly, since the question is clearly relevant and reasonable, any slight intrusion into the applicant's legitimate expectation of privacy is justified.

Question 22 requests the applicant to list three close friends or associates and to provide their address, occupation, phone number and date of birth. Petitioners Martin and Stretton responded to most of this question but would not provide the birth dates of the named persons. The purpose of the question is simply to obtain three references who would be in a position to supply helpful information as to the applicant's qualifications. (See 5T64-12 to 65-10; 7T224-19 to 225-21). Although question 22 allows the applicant to choose which individuals to list as references, petitioners claim that providing information to better identify the listed persons, i.e., the dates of their births, violates the right of privacy. This contention is mystifying. Indeed one of petitioners' own expert witnesses, Professor Rogovin, could perceive no problem with this inquiry. (3T124-20 to 125-8).

It would seem from Ms. Stretton's testimony that the objection to question 22 is based on a reluctance to help the Division ascertain the background of the references. This follows from the fact that birth dates are a standard identification method for requesting criminal record searches from federal and state law enforcement agencies. (1T71-25 to 72-15). However, it is clear that the applicant's own right of privacy is not involved. Even if the applicant were allowed to claim the rights of others, there would be no infringement. If someone has divulged his date of birth to another person, he may not reasonably expect privacy for

that information. United States v. Miller, supra. In fact, the date and place of a person's birth are routinely recorded as public matters. Of course, the date of a person's birth reveals nothing about any fundamental decisions made by that person and within the right of privacy. The Casino Control Act expressly declares a concern for associations which may threaten the integrity of the industry. See sections 1(b)(7), 86(f) and 89(b)(2) of the Act. Such concern is certainly justified. See Niglio v. New Jersey Racing Commission, supra. Where an applicant selects three individuals who possess knowledge of the applicant's character and suitability, the applicant may not rationally complain if the Division takes the sensible action of reviewing the criminal history of the references themselves.

Finally, petitioners assail the release authorization on privacy grounds. The scope and purpose of the authorization are discussed extensively in Part IV. As stated there, the scope of the authorization is not evidence of overbreadth. See Lehrhaupt v. Flynn, supra; Kenny v. Byrne, supra. Rather, the release must be as broad as necessary to allow a fair and thorough investigation. For the reasons given in Part IV, petitioners' suggested restriction on the release, to permit only verification of information in the disclosure form, is impractical and unacceptable. While the release may allow access to information which is not necessary to a particular investigation, the good faith of the investigators must be assumed. See Reporters Com. v. American Telephone & Telegraph, supra. Furthermore, the confidentiality

provisions of the Act remove any real danger of significant harm to an applicant's privacy, even if the information pertains to an exercise of the right of autonomy. Whalen v. Roe, supra. In short, the conduct of an effective investigation demands that the Division decide which information in the possession of public agencies and institutions is pertinent. See Nixon v. Administrator of General Services, supra.

In Gabor v. Hyland, 166 N.J.Super. 275 (App. Div. 1979), Medicaid beneficiaries alleged that a release authorization contained in the Medicaid benefit form was violative of both equal protection and the right to privacy. The beneficiaries requested that the release be stricken or, at least, restricted. The authorization, which was required by the State as a condition of Medicaid payments, stated in pertinent part:

> I authorize any holder of medical or other information about me to release to the Division of Medical Assistance and Health Services or its authorized agents any information needed for this or a related claim. [Id. at 278] (emphasis added).

The beneficiaries contended that they were, in effect, forced to prospectively waive their physician-patient privilege. They argued that, at most, the authorization could extend to the dates, times and places of treatment.

The Appellate Division disagreed. Observing that the responsible federal and state agencies were obliged to assure both the quality of services and the detection of fraud, the Court found the release authorization, as written,

to be reasonably related to such obligation and, thus, constitutional on its face. The Court emphasized that the information so gathered was to be kept confidential, except as necessary to administer the program. Under those circumstances, the Court declared that "access by appropriate public officials to otherwise confidential records" was an "essential component" of the agency's effort to monitor the program and was not an undue intrusion into the privacy of the beneficiaries. Moreover, the Court was not troubled by the claim of physician-patient privilege since such privilege does not apply where either the physician or the patient is required by law to report the information. Id. at 279; see N.J.S.A. 2A:84A-22.2.

The reasoning and conclusion of Gabor apply equally well to the present matter. With good reason, the State is deeply concerned with the integrity of casino gaming. As part of its commitment to that concern, the State has properly imposed strict and comprehensive controls on the industry. Whether petitioners agree or not, the State has reasonably determined that an essential component of effective regulation is the qualification and licensing of all persons employed in the casino and its hotel. The ability to conduct an effective investigation into the background of employee license applicants is necessary to achieve the legislative goals. Since the release authorization has been shown to be indispensable to such investigation, since petitioners have suggested no limitation on the release which

would not seriously undercut its utility, and since the information gathered by the Division is afforded confidentiality, the release is constitutional on its face and must be retained. Gabor v. Hyland, supra. For similar reasons, the other challenged questions are also valid.

It should be noted that Gabor upheld a release authorization required of any persons who need government assistance to pay for medical treatment. Here, the challenged questions and the release apply only to persons requesting employment in casino gaming and its related activities. Petitioners' fear, that the disclosures required of such applicants may be put to general use throughout the State, fails to comprehend the special context of these regulatory requirements. When an individual seeks to participate in a regulated enterprise which traditionally presents a high risk of danger to the public, the individual must subject much of his otherwise private life to government scrutiny. See Hamilton v. N.J. Real Estate Comm., supra; Higgins v. N.J. Bureau of Securities, supra; see also Kochman v. Keansburg Bd. of Ed., 124 N.J.Super. 203 (App. Div. 1973).

VI. SEARCH AND SEIZURE

Petitioners Martin and Stretton each submitted a PHDF-2 in applying for a license to work in a casino as a dealer. Initially, both Ms. Martin and Ms. Stretton refused to sign the Consent to Inspections, Searches and Seizures appended to the form. Subsequently, Ms. Stretton submitted

a revised PHDF-2 in which the consent form was "signed under protest."

Petitioner Pallone's wife applied for a casino employee license and submitted a PHDF-2 including a fully executed consent to search form. Although he did not appear at the hearing, petitioner Pallone apparently asserts that his privacy may be affected by a search of the marital home under the consent form and he challenges the validity of that consent as given by his wife. Further, he alleges that section 79(c), (d) and (e) of the Act threaten him because they allow administrative search warrants to issue for purposes of checking "compliance by any applicant [or] licensee...with the provisions of this act or regulations promulgated thereunder, and to investigate any violations thereof." Section 79(e) of the Act. According to Mr. Pallone, this would allow the Division to obtain administrative warrants to search the marital home for mere purposes of routine checking for compliance.

At the hearing, Ms. Martin and Ms. Stretton indicated that they understood the consent to inspections, searches and seizures to possibly encompass warrantless searches of the applicant's home. (See 1T91-14 to 92-6; 2T71-3 to 19). Deborah Hartwell related that she feared warrantless invasions of her home because her co-tenant had applied for a casino employee license and had executed the consent form. (See 11T110-23 to 112-14). The legal experts debated the effect of the consent and the meaning of the pertinent

sections of the Act. Professor Rogovin stated that the consent form did not provide any substantive authority to the State beyond that which was already contained in sections 79 and 80 of the Act. However, he read those sections to permit the Division to conduct warrantless searches of an applicant or an applicant's home. Further, he interpreted the Act to authorize the issuance of administrative search warrants to search the applicant's home for evidence of criminality. In addition, he found the definition of "probable cause" stated in section 79(d) as being inadequate and violative of the Fourth Amendment. He also considered any "consent" given by an applicant under these circumstances to be coerced and ineffective. (See 4T25-8 to 51-12).

The Division presented Assistant Attorney General Luciani as its expert on this issue. He agreed with Professor Rogovin that the consent form did not authorize the Division to conduct any inspection or search other than those authorized by the Act or the Constitution. (See 7T277-6 to 281-6). However, Mr. Luciani did not agree with Professor Rogovin's interpretation of sections 79 and 80. As one who supervised the drafting of these sections, Mr. Luciani stated that section 79 was never meant to allow either warrantless searches or administrative warrants during investigations of applicants. Moreover, he interpreted the Act as authorizing warrantless inspections only in the limited circumstances set forth in section 79(a), unless such

warrantless procedures were otherwise constitutionally permissible. (See 7T181-2 to 190-14; 7T284-12 to 288-6). Mr. Luciani acknowledged an element of "coercion" in requiring an applicant to agree to the procedures in section 79 but asserted that it was not an unlawful coercion. (7T190-15 to 191-2).

Before considering challenges to both the administrative search warrant procedures and warrantless inspections provided in section 79 of the Act, it is well to recall that the Commission, as an administrative agency, is not empowered to invalidate any portion of the Act itself. As noted earlier, only an appropriate court may declare a statutory section unconstitutional, and the agency is obliged to effectuate the section in question until ordered otherwise. Thus, the Commission may not adjudge section 79 invalid. However, the Commission is entitled to express its opinion of the section's constitutionality and to interpret the section, if necessary, to avoid an apparent constitutional defect.

With regard to the administrative warrants, section 79(c) allows the Division to seek such warrants to search the property possessed or controlled "by an applicant, licensee, registrant, intermediary company, or holding company." The procedure for issuance of such a warrant is contained in section 79(d) which authorizes a judge to issue a warrant "for the purpose of conducting administrative inspections authorized by this act or regulations thereunder and seizures

of property appropriate to such inspections." The section requires that the warrant be based "upon proper oath or affirmation showing probable cause." It then proceeds to define "probable cause" for these purposes as:

> a valid public interest in the effective enforcement of the act or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

If the judge is satisfied that such probable cause exists, he shall issue a warrant identifying the purpose of the inspection and the place to be inspected.

Petitioners attack the administrative warrant provision on the ground that it does not require a "proper showing of probable cause." See Complaint, p. 16, para. 6. They declare that the definition of "probable cause" in section 79(d) is "far less stringent" than that demanded by the Constitution. See petitioners' brief, p. 17. Further, they observe that section 79(e) authorizes the issuance of an administrative warrant "to check for compliance by any applicant [or] licensee...with the provisions of this act or regulations promulgated hereunder, and to investigate any violations thereof." Thus, they allege that section 79 would permit the Division to search the applicant's home based on a suspicion that the applicant might have falsified an answer in a disclosure form and that there may be relevant evidence in the home. Petitioners' brief, p. 18. On the strength of this hypothetical, petitioners conclude that the administrative warrant provision is invalid.

Section 79 makes no effort to specifically enumerate the circumstances under which an administrative inspection would be allowed. Rather, it establishes standards for the issuance of administrative warrants and requires those standards to be applied to particular situations not by the Commission or Division but by an appropriate court. Accordingly, if the standards are themselves constitutional, then there is no need to consider how a court would apply them to a particular fact pattern. It must be assumed that the court will conscientiously attempt to reach a fair and lawful determination in each case. Compare State v. Ransom, 169 N.J. Super. 511 (App. Div. 1979) with State v. Williams, 168 N.J. Super. 359 (App. Div. 1979).

The essence of petitioners' argument is that section 79(d) permits issuance of an administrative warrant on less than "full" probable cause. Presumably, petitioners mean that a warrant may issue only upon a showing of such facts or reliable information as would lead a reasonably prudent person to believe that a crime has been committed and that evidence of the crime will be found in a particular place. See, e.g., Henry v. United States, 361 U.S. 98, 102 (1959). Of course, that formulation would not apply outside the context of a criminal investigation. However, even in criminal cases, the courts have recognized the subtlety of the probable

cause concept.

> Probable cause is a flexible, nontechnical concept. It includes a conscious balancing of the governmental need for enforcement of the criminal law against the citizens' constitutionally protected right of privacy. It must be regarded as representing an effort to accomodate those often competing interests so as to serve them both in a practical fashion without unduly hampering the one or unreasonably impairing the significant content of the other. State v. Kasabucki, 52 N.J. 110, 116 (1968).

See also State v. Waltz, 61 N.J. 83, 87 (1972). This balancing of interests is recognition of the basic principle that the United States and New Jersey Constitutions bar only those searches that are "unreasonable." E.g., Terry v. Ohio, 392 U.S. 1 (1968); State v. Kasabucki, supra at 115; State v. McKnight, 52 N.J. 35, 58 (1968); State v. Davis, supra at 22; State v. Mark, 46 N.J. 262, 275 (1966).

Although the above cases dealt with criminal investigations, the Fourth Amendment does not vary from one area to another.[35] The touchstone for any search is its reasonableness whether the search is intended to disclose criminality or to check for compliance with a comprehensive regulatory scheme. Petitioners would apparently contend that no reasonable search or inspection can be conducted for mere regulatory purposes since there would normally be no reason to believe in advance of the search that a specific violation exists,

---

35. The New Jersey Constitution contains a provision which is virtually identical to the Fourth Amendment.

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized. N.J. Const., Art. 1, Par. 7 (Emphasis added).

much less a criminal infraction. This rigid and unsupported construction runs directly counter to the intended flexibility of the reasonableness standard. However, there is no need to debate the point since the United States Supreme Court has expressly approved and encouraged the use of administrative warrants to implement and monitor compliance with regulatory statutes.

In Michigan v. Tyler, 436 U.S. 499 (1978); Marshall v. Barlow's, Inc. 436 U.S. 307 (1978); Camara v. Municipal Court, 387 U.S. 523 (1967); and See v. Seattle, 387 U.S. 541 (1967), the Court recognized that an individual's privacy may be significantly invaded when an administrative inspector seeks to enter the person's home or business in order to check for compliance with government regulations. Since the Fourth Amendment generally requires a warrant from a judicial officer prior to such governmental intrusions, the Court held that a warrant must ordinarily be procured to authorize the inspection. However, the Court did not then conclude, as petitioners would, that no administrative warrant could be obtained without probable cause to believe evidence of wrongdoing would be found. Rather, in the context of administering the Occupational Safety and Health Act (OSHA), the Court stated:

> Probable cause in the criminal law sense is not required. For purposes of an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that "reasonable legislative or administrative standards for conducting an...inspection are satisfied with respect to a particular

> [establishment.]" Camara v. Municipal Court, supra, at 538. A warrant showing that a specific business has been chosen for an OSHA search on the basis of a general administrative plan for the enforcement of the Act derived from neutral sources...would protect an employer's Fourth Amendment rights. Marshall v. Barlow's Inc., supra, 436 U.S. at 320-21.

The definition of "probable cause" contained in section 79(d)(1) of the Casino Control Act essentially restates the concept as formulated by the Supreme Court. As noted earlier, section 79(d)(1) requires the issuing court to find "a valid interest in the effective enforcement of the act or regulations sufficient to justify administrative inspection." Section 79(e) merely authorizes the Division to conduct administrative inspections "to check for compliance by an applicant, licensee, registrant, intermediary company or holding company with the provisions of this act or regulations promulgated thereunder, and to investigate any violations thereof." In essence, section 79(e) simply makes explicit the right of the Division to seek a warrant for these reasons and to conduct the search authorized by the warrant. It does not enlarge the grounds on which the warrant may issue nor does it permit the Division to forego the warrant procedure.

The court to which the warrant application is made will apply relevant constitutional concepts and decisional law in determining whether the inspection is justified in a given case based on the information provided to it under oath or affirmation. State v. Kasabucki, supra at 117.

Conjecture as to whether a court would authorize issuance of an administrative warrant on a hypothetical set of facts, such as petitioners have contrived, wastes time and diverts attention from the real issue.[36] "Each case depends upon a sensitive appraisal of the circumstances shown to the issuing judge." Id. at 117-18. The critical fact is that section 79 establishes constitutionally proper procedures and standards. The petitioners will be adequately protected from unlawful, harassing or oppressive administrative inspections by the prior review of the neutral judicial officer. Marshall v. Barlow's, Inc., supra.

Petitioners primary Fourth Amendment attack is directed at the consent to search form contained in the PHDF-2. That form provides, in pertinent part, that the applicant will "consent to all inspections, searches and seizures...as authorized by the Casino Control Act and the regulations of the Commission." This consent is specifically

---

36. In their haste to find constitutional fault with the Act, petitioners take notice of only certain portions of the statutory language. Section 79(d)(2) in prescribing the conditions for an administrative warrant states: "The warrant shall direct that it be served during normal business hours of the licensee." It appears, as Mr. Luciani asserted, that the Legislature did not intend the administrative warrant procedure to apply to inspections in non-business areas, such as petitioners' home. However, there is no need to address the question here, since the standards for issuance of any administrative warrant under the Act are constitutional and valid. A court will decide the issues on particular facts if such an application is ever presented to it.

mandated by section 80(c) of the Act which states:

> All applicants, licensees, registrants, intermediary companies, and holding companies shall consent to inspections, searches and seizures... as authorized by this act and the regulations promulgated hereunder.

Thus, the Commission is not at liberty to dispense with the consent requirement.[37]

While the Commission lacks the authority to determine the constitutionality of Section 80(c), it may and should construe the section and the consent form with an eye toward potential constitutional pitfalls. See N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); State v. Profaci, 56 N.J. 346, 350 (1970); Woodhouse v. Woodhouse, 17 N.J. 409 (1955). Petitioners simply assume that the consent form would permit representatives of the Commission or Division to search any applicant or his property at any time or place without a warrant or probable cause. Naturally, that reading of the statute renders it most susceptible to constitutional attack. However, the actual language of section 80(c) and the consent form demonstrate that the scope of the consent is far more restricted.

The consent includes only inspections, searches and seizures "authorized by this act and the regulations promulgated hereunder." If the Commission intended to generally

---

37. Of course, the Commission is not required to have an applicant sign a particular form to this effect and has not done so for hotel employee license applicants. However, as will be shown, the form itself does not expand the scope of the statutorily imposed consent.

authorize warrantless searches without probable cause, it would have clearly said so. Such a drastic result is not to be implied. Cf. State v. Profaci, supra. Moreover, the quoted language expressly declares the Commission's intent to limit the pertinent searches to those otherwise authorized in the Act or regulations. It is unnecessary to now determine what types of searches could be authorized by regulation, since there are no such regulations which may affect these petitioners. See California Bankers Association v. Shultz, supra, 716 U.S. at 78-79 (Powell, J. and Blackmun, J. concurring). In the event the Commission considers adoption of such a regulation, a proper challenge can be timely raised and considered in more concrete terms. Id. at 55-57.

With regard to searches and inspections authorized by the Act itself, only section 79 would appear to have a possible application to these petitioners.[38] As just discussed,

---

38. There are other sections of the Act which authorize inspections but those do not pertain to the present petitioners. For example, section 82(d)(4) requires a corporate casino license applicant to maintain a legder of stockholders which "shall be available for inspection...at all reasonable times without notice." Section 96(e) requires, as a condition of operation, that a casino licensee "maintain all books, records, and documents pertaining to the licensee's operations on the licensed premises immediately available for inspection during all hours of operation." Section 103(e), conferring jurisdiction over alcoholic beverages in the licensed premises upon the Commission, authorizes the Commission to promulgate any necessary regulations including "inspections, investigations, searches and seizures." There is no indication that such a search or inspection would affect the present petitioners.

part of that section provides standards and procedures for obtaining administrative warrants. Obviously, if the Division conducts an administrative inspection pursuant to a duly issued warrant, there is no need to rely on the consent form. The warrant, by definition, empowers the Division to search based upon a satisfactory showing of "probable cause."

Section 79(a), however, authorizes the Division and its agents "upon approval of the director" to conduct certain searches "without notice and without warrant." Specifically, the Division is so empowered:

> (1) To inspect and examine all premises wherein casino gaming is conducted; or gaming devices or equipment are manufactured, sold, distributed, or serviced; or wherein any records of such activities are prepared or maintained;
>
> (2) To inspect all equipment and supplies in, about, upon or around such premises;
>
> (3) To seize summarily and remove from such premises and impound any such equipment or supplies for the purposes of examination and inspection;
>
> (4) To inspect, examine and audit all books, records, and documents pertaining to a casino licensee's operation;
>
> (5) To seize, impound or assume physical control of any book, record, ledger, game, device, cash box and its contents, counting room or its equipment, or casino operations; and
>
> (6) To inspect the person, and personal effects present in a casino facility licensed under the act, of any holder of a license issued pursuant to this act while that person is present in a licensed casino facility.

Since warrantless searches are permissible only under unusual circumstances, United States v. Ventresca, 380 U.S. 102, 105-06

(1965), the foregoing list must not be given an expansive reading and must be considered exclusive. This approach is bolstered by section 79(b) which states that the provisions of Section 79(a) "shall in no way be deemed to limit warrantless inspections except in accordance with constitutional requirements." (Emphasis added). In other words, if the Division wishes to conduct warrantless searches other than those enumerated in section 79(a), it may do so only if the search otherwise conforms to a constitutionally recognized exception to the warrant requirement. Of course, such other searches would be unobjectionable.

In light of section 79(a), it is appropriate to briefly reconsider the standing of the petitioners to challenge the consent to search form. It will be recalled that Mr. Pallone bases his interest on the fact that his wife has applied for licensure as a casino employee and has executed a consent to search form as part of that application.[39] Mr. Pallone feared that this consent would permit the Division to invade the Pallone home without cause or warrant. A review of section 79(a) indicates no authorization for such a warrantless intrusion. Moreover, since Mr. Pallone will not himself be a license holder, he would not be subject to inspection or search under section 79(a)(6) even if he were present in the casino facility. As Mr. Pallone has alleged no nexus to

---

39. Deborah Hartwell testified that she was in a similar position by virtue of the license application filed by her co-tenant. It is unnecessary to determine whether Ms. Hartwell has standing in her own right since the disposition as to Mr. Pallone controls her situation as well.

casino operations or to the manufacture or distribution of gaming equipment, he is outside the potential scope of section 79(a). Thus, he lacks standing.

As previously discussed, only one of the named petitioners sought to challenge the requirements placed upon casino hotel employee applicants and licensees. Aldona Middlesworth, however, never filed even a partially completed PHDF-4 and her testimony at the hearing revealed that she no longer seeks employment in the industry. (2T22-8 to 23-21). For these reasons, it has been determined that she does not have the requisite interest to challenge the Act or the regulations. Thus, the applicability of the inspection, search and seizure provisions to casino hotel employees is not at issue.

The standing of Ms. Martin and Ms. Stretton rests on firmer ground. Both these petitioners seek to be licensed as casino employees, specifically blackjack dealers. Both were required to sign the consent form and both object. Ms. Martin has refused to sign while Ms. Stretton "signed under protest." As license holders working in the casino, these petitioners would be potentially subject, under section 79(a)(6), to warrantless inspections of their persons and personal effects while present in the casino. The question is then presented whether warrantless inspections or searches of this limited nature conducted by Division representatives "upon approval of the director" are constitutional in the context of casino gaming regulation.

Petitioners devote much of their argument to the issue of consent. It is well settled that where an individual consents to a search, the government may proceed without a warrant and without probable cause. See Schneckloth v. Bustamonte, 402 U.S. 246 (1973). As petitioners correctly observe, a consent to search will be constitutionally effective only if it is voluntarily given. Id. In New Jersey, a search based on consent will be valid under Art. 1, par. 7 of the State Constitution only if the government can show that the individual both knew of his right to refuse consent and voluntarily chose to consent without duress or coercion. State v. Johnson, 68 N.J. 349 (1975).

The present petitioners may not "voluntarily" have consented to any search in the constitutional sense. One did not sign the consent form and the other did so "under protest" to expedite processing of her application. Moreover, even if both signed the form, the validity of their consent would be questionable under Johnson since a license application would not be accepted without the consent form being signed. Also questionable is the argument that an applicant can choose not to apply, thus rendering the consent effective. The day is past when discretionary governmental action could be conditioned on relinquishment of a constitutional right. See Perry v. Sindermann, supra. It is, however, unnecessary to pursue these matters.

The validity of section 80(c) and section 79(a)

does not depend on obtaining a voluntary consent in the Johnson sense. Rather, those sections must be tested against the ultimate standard of "reasonableness." See State v. McKnight, supra. The question is whether it is constitutionally reasonable to subject licensed individuals or their property to warrantless administrative searches in the casino, regardless of their consent. The extraordinary sensitivity of legalized casino gaming has already been discussed at length. So too, the need for the most careful and continuing control over casino operation is beyond serious dispute. The integrity of the industry and the public trust in casino gaming would be directly and extensively damaged by cheating, swindling or skimming and the like by licensed employees. Unfortunately, a casino is inherently attractive and vulnerable to such activities and continuous visual supervision of every employee at all times is impossible, despite the efforts of on-site investigators and the use of sophisticated surveillance equipment. Deterrence of unlawful conduct is at least as important as apprehension of offenders after the infraction. In this respect, the ability to conduct unannounced, warrantless inspections of licensees in the casino is a necessity. The issue remains whether the Federal and State Constitutions will permit the Division to employ this device. The essential reasonableness of this procedure under the circumstances militates in favor of its constitutionality. Relevant case law strongly supports this conclusion.

Admittedly, the warrant requirement generally applies

to administrative searches and inspections. Camara v. Municipal Court, supra; See v. Seattle, supra. However, a clear exception has been recognized for certain highly regulated and potentially troublesome activities. In Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), a catering company which held a federal retail dealer liquor tax stamp brought an action to recover liquor seized by federal revenue agents. During a banquet on the company's premises, the agents noticed an apparent tax violation. Later, the agents returned to the premises and, without obtaining the manager's consent, inspected the cellar. During the inspection, they requested the owner to open a locked liquor storeroom. The owner refused and the agents broke into the storage area where they seized apparently untaxed liquor. Federal law purported to authorize the agents to enter and inspect licensed premises, and provided a fine of $500 for refusal to allow the agents to do so. See 26 U.S.C. §§ 5146(6) and 7606. The Supreme Court found that the Fourth Amendment was not affronted by such warrantless inspections during business hours. Because of the long history of strong control over the liquor industry, the Court acknowledged an exception to the warrant rule of Camara and See.

The result in Colonnade was presaged by the New Jersey courts in State v. Zurawski, 89 N.J.Super. 488 (App. Div. 1965), aff'd o.b. 47 N.J. 160 (1966), where the defendant was charged with bookmaking based on evidence seized

by local police without a warrant. Three officers entered a tavern owned by defendant and indicated that they were making an inspection on behalf of the municipal alcoholic beverage control board. The ensuing warrantless search disclosed lottery slips in the pantry and the kitchen which were part of the licensed premises. Under N.J.S.A. 33:1-35, the director of the Division of Alcoholic Beverage Control, his agents or any other peace officer may conduct "investigations, inspections and searches of licensed premises...without search warrant." Against defendant's contention that the search unlawfully invaded his constitutional right of privacy, the Court cited the above statute and the consent to search form which defendant signed as a condition of obtaining his license. The Court emphasized the special nature of the liquor industry and the "unique position of a liquor licensee." Although the statutory power to inspect and search was quite broad, the Court refused to impose a restrictive interpretation. "To do otherwise would thwart the legislative policy for strict control of a business said to be 'so prone to evils' Boller Beverages, Inc. v. Davis, 38 N.J. 138, 50 (1962)." Id. at 492. The right to make warrantless inspections and seizures was upheld. See also State v. Ransom, supra; State v. Williams, supra.

Both Zurawski and Colonnade dealt with warrantless intrusions into licensed premises where the liquor business was operated. Undoubtedly, the liquor industry has been traditionally and broadly regulated even to the point of

being prohibited entirely by the Eighteenth Amendment, later repealed by the Twenty-First Amendment. However, the history of gambling in New Jersey reveals an equally strong background of public concern and rigid control. Indeed, as outlined earlier, gambling continues to be constitutionally barred with only certain exceptions, all subject to the strictest supervision if not outright operation by the State. The dangers traditionally associated with casino gaming and the need for the most effective regulatory enforcement have been demonstrated above. Surely, those who are obliged to protect the public interest and maintain the integrity of casino gaming must have no less authority than the liquor control boards. Daughters of Miriam Home v. Legalized Games, etc., supra, 42 N.J.Super. at 410.

Within the casino itself, the evils posed by a corrupt employee are virtually limitless. Both the patron and the casino are vulnerable to any number of frauds, from simple cheating at the games to intricate schemes designed to circumvent internal controls. See N.J.A.C. 19:45-1 et seq. Chips, currency, valuable accounting documents, cheating devices, even weapons, are readily concealed on the person or in the effects of the licensed employee. The ability to conduct an inspection for regulatory purposes is essential to deter many offenses or violations which might otherwise be virtually undetectable. It is not unreasonable to subject the license holder to the possibility of such intrusions while present in the casino facility. Direct

participation in this sensitive industry rightly requires some loss of privacy where necessary to promote the public interest. See Higgins v. N.J. Bureau of Securities, supra, 100 N.J.Super. at 273.

Use of warrantless inspections outside the liquor industry was expressly approved in United States v. Biswell, 406 U.S. 311 (1972). The Gun Control Act of 1968, 18 U.S.C. §921, authorized official entry during business hours into the premises of any firearms or munitions dealer for the purpose of inspecting or examining any records or documents and any firearms or ammunition. Pursuant to this authority, a federal agent visited a dealer's business, examined the books and requested to inspect a locked gun room. When the dealer asked for a warrant, the agent produced a copy of the statute. The dealer than said: "Well, that's what it says so I guess its okay." Upon searching the room, the agent discovered unauthorized firearms. The dealer was indicted and convicted.

On appeal, the Supreme Court held that the statutory search was valid as an exception to the Fourth Amendment warrant requirement. The Court acknowledged that the dealer submitted to the authority of the agent, but that this was lawful authority similar to that exerted by a warrant. However, the validity of the search did not depend on voluntary consent. Rather, in a system of regulatory inspections of business premises that are carefully limited in time, place and scope, the legality of the search depends "not on consent but on the authority of a valid statute."

Id. at 315. As it did with Colonnade, the Court in Biswell recognized the importance of administrative inspections to effective control over the firearms trade. "it is also apparent that if the law is to be properly enforced and inspection made effective, inspections without warrants must be deemed reasonable official conduct under the Fourth Amendment." Id.

The Biswell Court drew a clear distinction between that case and See v. Seattle, supra, where administrative warrants were required to inspect for housing code violations since such violations are not easily concealed or corrected as compared to improper gun transactions. As a practical matter, the Court found that inspections must be unannounced and even frequent to deter gun violations. The warrant requirement "could easily frustrate inspection; and if the necessary flexibility as to time, scope and frequency is to be preserved, the protections afforded by a warrant would be negligible." Id. Against these strong interests in warrantless inspections, the Court found only a limited threat to the legitimate privacy expectations of a gun dealer. "When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms and ammunition will be subject to effective inspection." Id. at 316.

The rationale of warrantless administrative inspections was further refined in Marshall v. Barlow's, Inc., supra. As

noted above, that case dealt with the question whether OSHA agents should obtain warrants to conduct regulatory inspections of businesses to check for compliance with employee health and safety measures. Section 8 of OSHA purported to authorize federal agents to enter any place of business within the jurisdiction of the law to inspect for such compliance. 29 U.S.C. §657(a). The OSHA jurisdiction, however, extends to all employers who conduct businesses "affecting interstate commerce." Observing that "few businesses can be conducted without having some effect on interstate commerce," the Court rejected the government's attempt to bring the OSHA inspections within the warrant exception of Colonnade and Biswell.

The Court pointed out that certain industries have "such a history of government oversight that no reasonable expectation of privacy, see Katz v. United States, 389 U.S. 347, 351-352 (1967), could exist for a proprietor over the stock of such an enterprise. Liquor (Colonnade) and firearms (Biswell) are industries of this type; when an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." Id., 436 U.S. at 325. Restating this concept, the Court declared: "the element that distinguishes those enterprises from ordinary businesses is a long tradition of close government supervision, of which any person who chooses to enter such a business must already be aware." Id. Significantly, the Court did not vitiate the Colonnade-Biswell type

exception but ruled that it could not be applied to all businesses under OSHA, lest the exception become the rule. In fact, the Court expressed its belief that other federal statutory inspection provisions might well be justified on that basis. "Some of the statutes cited apply only to a single industry, where regulations might already be so pervasive that a Colonnade-Biswell exception to the warrant requirement could apply." Id. at 327. Having found that all employers covered by OSHA did not effectively surrender reasonable expectations of privacy merely by engaging in ordinary businesses affecting interstate commerce, the Court proceeded to hold that warrantless inspections were not truly necessary to effective enforcement of the law and, therefore, could not be justified as "reasonable" within the meaning of the Fourth Amendment. See also Delaware v. Prouse - U.S. - (1979) (random investigatory stops of motor vehicles invalidated).

The Colonnade-Biswell exception, as interpreted in Barlow's Inc., is fully applicable to the warrantless inspections authorized by Section 79(a) of the Act. Such inspections are limited to entities and individuals directly involved in casino gaming, a highly sensitive industry which may be permitted only under the most comprehensive regulation and which previously had been constitutionally forbidden in this State. The inspections are further restricted to those physical locations where the dangers are greatest and the need most urgent, principally the casino facility itself.

Admittedly, many of the cited cases concerned statutory provisions for inspecting the business premises and records, whereas section 79(a)(6) includes the person and personal effects of license holders present in the casino facility. However, the unique nature of casino gaming mandates this inclusion. Unlike other regulated businesses such as liquor or firearms, casino gaming cannot be effectively policed by reference to documents or inventory alone. The "inventory" of the casino is constantly in flux, with thousands of dollars changing hands at any given moment. Neither the casino operator nor the public would ordinarily be aware of any fraud until the harm was done, and perhaps not then. Oftentimes only a suspicion of misconduct exists, incapable of confirmation without direct investigation, including a search. Moreover, as already noted, the possibility of an inspection will itself serve to deter the susceptible licensee from yielding to the temptation around him.

Emphasis must be placed on the fact that only a "license holder" in the casino facility is subject to section 79(a)(6). Unlike an employee in an ordinary business, an individual employed in the casino hotel must be licensed. As noted earlier, the licensing requirements are essential to preservation of the integrity of the industry. Thus, an individual who seeks employment in the casino is made well aware of the pervasively regulated area into which he chooses to enter. Like the entrepreneur, such an individual

cannot reasonably expect normal privacy considerations to apply in the charged atmosphere of the casino. This is undeniably true in the case of the present petitioners, Ms. Martin and Ms. Stretton, who wish to work as dealers.

For all the foregoing reasons, it is plain that effective enforcement of the Act and the regulations thereunder requires the ability to conduct warrantless inspections in the casino facility. Those inspections are statutorily limited in time, place and scope. With regard to the present petitioners, they are subject to inspections for compliance only while they are in the casino facility and only so long as they hold casino employee licenses. The remote possibility of abusive or harassing inspections is further reduced by the requirement that all such inspections be conducted "upon approval of the director." Having elected to work at the very center of this pervasively regulated industry, these potential licensees are in no position to legitimately assert their expectations of privacy in opposition to a procedure which is both necessary to proper regulation and carefully restricted to minimize intrusions. Since section 79(a) is constitutional in relation to these petitioners, then section 80(c) and the consent form must also pass muster. By requiring an applicant to sign the consent form, the Commission provides explicit notice that certain inspections or searches are authorized by the Act. In this way, the applicant is not only made aware of this fact but offered the opportunity to reconsider his decision

to enter this extraordinary field of endeavor. In short, the consent form derived from section 80(c) of the Act, when read in conjunction with section 79(a), is a valid requirement for licensure as a casino employee.

VII. WAIVER OF LIABILITY

Petitioners challenge the right of the Commission to require a waiver of liability as a condition of licensure. Waiver forms are appended to all applications, including the PHDF-2 and PHDF-4. The waiver form provides that the applicant shall:

> Waive liability as to the State of New Jersey and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during the license consideration process or during any inquiries, investigations or hearings.

Petitioners assert that "the right to sue for negligence[sic] disclosure is a common law right, a right accruing to all people whose privacy has been infringed by libel, slander, and other acts of publication inconsistent with, as here, the expectation of confidentiality concomitant with disclosure of personal and inherently private information." Petitioners' brief, p.18. Proceeding from this premise, they argue that the waiver requirement imposes an improper condition, i.e., loss of a common law right of action, on their eligibility for a license. Petitioners further contend that the waiver will have the effect of denying them "their right to expect confidentiality in their communications and disclosures to

the State." Complaint, par. 14, pp. 12-13. Neither petitioners' premise nor their conclusions are sound.

As petitioners recognize, the waiver of liability is mandated by section 80(b) of the Act. When the present proceeding was commenced and at the time of the hearing, section 80(b) stated, in relevant part:

> All applicants and licensees shall waive liability as to the State of New Jersey, and its instrumentalities and agents, for any damages resulting from lawful or unintentional disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings. (emphasis added).

Obviously concerned that the work of the Commission and Division would be unduly hampered by threat of legal action for unintentional, that is, negligent, disclosure of confidential information, the Legislature expressly demanded that any such legal right be waived. Since section 80(b) is clearly related to a legitimate state interest and since no fundamental rights are involved, section 80(b) validly extinguished any "common law" right which an applicant might otherwise have in this regard.

A close reading of section 80(b) as it stood at the time of the hearing reveals some variation from the waiver form. Former section 80(b) required waiver of liability for "lawful or unintentional" disclosures whereas the waiver form has always applied to any disclosure "other than a willfully unlawful disclosure or publication." Although the former section 80(b) and the waiver form both clearly applied to disclosures which were not

intended, the former section might not have covered a situation where a Commission or Division employee intentionally released confidential information in the mistaken, good faith belief that such disclosure was authorized under section 74 of the Act. The waiver form includes such a case because the disclosure would not be "willfully unlawful," i.e., it would not be malicious or in bad faith.

By the statutory amendments adopted on January 9, 1980, the Legislature recognized the need to expressly provide protection in the type of situation described above. Thus, the pertinent portion of section 80(b) now states:

> All applicants and licensees shall waive liability as to the State of New Jersey, and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations or hearings. [N.J.S.A. 5:12-80(b), as amended by P.L. 1979, c.282] (emphasis added).

Thus, the waiver form as written is now specifically required by the Act. While this disposes of the present contention for purposes of review by the Commission, it seems appropriate to demonstrate that the waiver form and the amended section 80(b) do not actually deprive an applicant of any cause of action which he would otherwise have against the State.

Historically, there was no right to maintain a tort action against the State of New Jersey or its departments and agencies. Complete sovereign immunity prevailed.

Fitzgerald v. Palmer, 47 N.J. 106 (1966). Recognizing the severity of this doctrine, the Supreme Court moved to permit certain types of actions against the State. Willis v. Dept. of Conserv. and Econ. Dev., 55 N.J. 534 (1970). In response to Willis, the Legislature passed the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.) which became effective on July 1, 1972. The statute re-established governmental immunity as the rule subject to the specific exceptions set forth therein. In addition, the statute provides that any governmental liability "is subject to any immunity of the public entity." N.J.S.A. 59:2-1(b). The foregoing refutes petitioners' basic assumption that there is a common law right to maintain an action against the State or its agents for negligent disclosure or publication. Such right, if it exists at all, must be found in the Tort Claims Act or other statutory provisions.

As a general rule, public entities and employees are not liable for discretionary conduct, but are liable for ministerial acts negligently performed. See N.J.S.A. 59:2-2, 3(a); N.J.S.A. 59:3-1, 2(a). At the time of the passage of the Casino Control Act on June 2, 1977, it was believed that liability for negligent ministerial acts extended to agencies and employees engaged in the licensing process. (See 7T178-2 to 9). This belief was obviously engendered by the holding of the Appellate Division in Malloy v. State, 148 N.J. Super. 15 (App. Div. March 4, 1977), in which the Court so interpreted the Tort Claims Act. Specifically, the

Appellate Division ruled that N.J.S.A. 59:2-5 provided immunity to a licensing agency only for discretionary or judgmental actions in issuing or denying a license.[40] Id. at 20. Apparently in response to that ruling, the Legislature included section 80(b) in the Act to provide protection against suits by applicants or licensees for "lawful or unintentional" disclosure. However, subsequent judicial action has assured far more comprehensive immunity to licensing agencies and their employees. In Malloy v. State, 76 N.J. 515 (App. Div. June 8, 1978), the Supreme Court unanimously reversed the Appellate Division holding.

The facts of the case were simple, the plaintiff took an examination for a real estate salesman's license. The examination was administered by the Division of the New Jersey Real Estate Commission, Department of Insurance, which is the licensing body. Plaintiff passed the examination, but, due to clerical error, he was sent a letter informing him that he failed. More than a year later the error was

---

40. N.J.S.A. 59:2-5 provides:

> A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where the public entity or public employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked.

discovered and plaintiff was advised that he had actually passed. Plaintiff's suit was based not on fraud, bad faith or malice but merely negligence or mistake.[41]

After reciting the history of sovereign immunity in New Jersey and observing that the Tort Claims Act had again established immunity as the norm and liability as the exception, the Supreme Court turned to the pertinent section, N.J.S.A. 59:2-5. In light of the need to protect licensing activity from broad liability exposure, the Court declared: "We are satisfied that the immunity granted is pervasive and applies to all phases of the licensing function, whether the governmental acts be classified as discretionary or ministerial." Id. at 520 (emphasis added). Elaborating on its holding, the Court stated:

---

41. Under N.J.S.A. 59:2-10, a "public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice or willful misconduct." Conversely, under N.J.S.A. 59:3-14, a public employee may claim no immunity if his conduct "was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct." It is apparent that the phrase "willfully unlawful" as used in the waiver form should be interpreted to conform to these statutory provisions. In that way, the waiver form will provide no more and no less protection than the Legislature provided in the Tort Claims Act. This will allow the agency and its employees to function without undue intimidation and will avoid disputes over the validity and scope of the waiver.

> The construction we place upon N.J.S.A. 59:2-5 carries out the legislative purpose. Licensing activity is a vital exercise of governmental authority. In this State there are literally millions of licenses, certificates, permits and the like applied for, issued, renewed or denied. It is inevitable that with such a staggering volume of activity, mistakes, both judgmental and ministerial, will be made. The purpose of the immunity is to protect the licensing function and permit it to operate free from possible harassment and the threat of tort liability. On this basis, it would make little sense to immunize judgmental mistakes from liability but not others. Id. at 521.

Restating its position yet again, the Court said:

> We find in the New Jersey Tort Claims Act a clear expression of legislative intent that the licensing function, as defined, be immune from tort liability for negligence or mistake, whether the act involved be discretionary or ministerial. Id.

The clear impact of Malloy is that the present petitioners would not be able to maintain a tort action against the Commission, the Division or their employees for negligent or mistaken disclosure of information. While the Division is not actually the licensing agency, it is an indispensable and integral component of the licensing function. Simply, the Commission could not perform its obligations without the Division, an agency created by the Casino Control Act for the purpose of assisting the Commission and enforcing the regulatory scheme. See section 76 of the Act. Potential tort liability of the Division and its agents would cripple the licensing process as surely as liability of the Commission itself. Plainly, the strong policy in favor of immunity for the licensing function would

mandate inclusion of the Division under the protective mantle.

From all the preceding, it is evident that the waiver of liability does not deprive the petitioners of any right of action which they otherwise might have. By limiting potential suits to "willfully unlawful" disclosures, the waiver merely reflects the immunity provided by the Tort Claims Act as interpreted in Malloy. Moreover, the waiver is expressly mandated and authorized by section 80(b) of the Act.

Finally, some mention must be made of petitioners' assertion that the waiver denies them their right to expect confidentiality in their disclosures to the State. The confidentiality of personal information is explicitly set forth in section 74 of the Act. The waiver has no effect whatsoever on this guarantee. If the confidentiality provision is knowingly breached, the responsible employee will be subject to appropriate sanctions, including reprimand, dismissal or, where appropriate, criminal prosecution for misconduct in office. Indeed, he would also be exposed to liability in a tort action since neither the waiver nor the Tort Claims Act would exonerate him in such case. See N.J.S.A. 59:3-14. Further, Det. Hooven testified at length at the hearing as to the processing of license applications and the Division's efforts to assure the confidentiality of all investigative material. It is clear that these efforts are substantial

and effective, as witnessed by the fact that not one instance of wrongful disclosure or loss of an application has been cited. (See 9T61-15 to 63-17; 10T114-14 to 18). There is no reason to believe that the Commission or Division will relax their vigilance against improper dissemination through negligence or mistake. Thus, petitioners may not equate the waiver requirement with loss or diminution of the confidentiality of their disclosures.

VIII. SELF-INCRIMINATION

Petitioners Martin and Stretton assert that question numbers 37 and 49 violate their constitutional right to avoid self-incrimination. This assertion appears in the list of objections which accompanied the PHDF-2 initially submitted by each of those petitioners. At the hearing, Professor Rogovin further envisioned Fifth Amendment difficulties with regard to questions 19, 27, 52 and 54, although he obviously does not have standing on those grounds. Nevertheless, the asserted Fifth Amendment issue is simply not presented on this record.

The present petitioners may not assert any deprivation of their Fifth Amendment right to avoid self-incrimination. Neither Ms. Stretton nor Ms. Martin have actually claimed that the privilege applies to them. Ordinarily, one who wishes to avoid responding to a question on grounds of possible self-incrimination must affirmatively assert the

privilege and establish a basis for it. See Gilhaus Beverage Company, Inc. v. Lerner, 78 N.J. 499, 510 (1979); State v. DeCola, 33 N.J. 335, 350 (1960); In re Pillo, 11 N.J. 8, 19 (1952). It is generally held that, in a civil case, there is "not too high a price exacted for the exercise of that privilege" to put a litigant to "the difficult choice of whether or not to assert the privilege." Shaw v. Riverdell Hospital, 150 N.J. Super. 585, 589 (Law Div. 1977); see United States v. Kordel, 397 U.S. 1 (1970). Here, the applicant may calmly consider whether to submit the application at all and whether to answer the challenged questions. The applicant is not in custody but may deliberate in the familiar surroundings of his home or in the offices of his attorney. Only if he chooses to submit the application does he face the issue whether to assert his privilege in response to any question. Under such circumstances, devoid of governmental coercion, actual assertion of the privilege is necessary to raise the issue and to preserve the right. Garner v. United States, 424 U.S. 648 (1976).

Both Martin and Stretton initially refused to answer question 49 and stated that it "violates my right under the U.S. Constitution to be free from self-incrimination." See list of objections accompanying forms. Since question 49 requests information as to use, possession or distribution of controlled dangerous substances other than pursuant to

a valid prescription, it might otherwise be a sufficient assertion merely to claim the privilege in response to such a question which may be said to "carry its own threat." State v. DeCola, supra. However, Ms. Stretton subsequently filed a revised PHDF-2 in which she responded simply "No" to that inquiry. This response ends any contention which Ms. Stretton may have had. See Garner v. United States, supra. It also casts great doubt on Ms. Martin's claim since it appears that both petitioners are seeking to attack the question itself in the abstract rather than to actually "take the Fifth" to protect their own personal rights. See State v. Jennings, 126 N.J. Super. 70, 75 (App. Div. 1972), certif. den. 60 N.J. 512 (1972).

As to question 37, the hypothetical nature of the petitioners' objection is manifest. The question inquires into ownership or possession of firearms. Both petitioners initially refused to answer and made the following statement: "[I]f the person is not licensed but carries a weapon, this question would be self-incriminatory." See list of objections. The conditional phraseology of this contention bespeaks the absence of any real and appreciable danger that either of these petitioners would be personally exposed to criminal prosecution by their answer. But assertion of such personal hazard is essential to a claim of the privilege. In re Ippolito, 75 N.J. 435, 440-41 (1978). As before, Ms. Stretton has now responded to question 37 in her revised form. Providing a perfect

illustration why the privilege must be based on reasonable and present grounds rather than imaginary situations, Ms. Stretton's answer to question 37 is, simply, "No," that is, she neither owns nor possesses any firearm. Once again, Ms. Stretton may not maintain any claim in light of her answer. Garner v. United States, supra. As to Ms. Martin, she may not be heard to challenge question 37 on Fifth Amendment grounds unless she is ready to provide reason to believe that her answer does involve a substantial peril of self-incrimination. See In re Addonizio, 53 N.J. 107, 116-17 (1968); Burton v. Sills, 53 N.J. 86, 104 (1968), appeal dismissed 394 U.S. 812 (1969).[42]

Although the issue is not projected in this matter, the constitutional implications of potentially incriminatory inquiries by a regulatory agency in the license application process warrant some discussion. At the outset, the right of the Commission to inquire into the background and qualifications of a prospective licensee cannot be doubted. The Act enjoins the Commission to assure that only those individuals who meet the legislatively determined standards be permitted to participate in this highly sensitive industry. See section 64 of the Act. Naturally, an applicant's involvement in unsavory, improper or illegal activities is

---

42. The questions selected by Professor Rogovin are even less likely to produce potentially incriminatory information. Question 19 inquires whether the applicant has ever been married and, if so, the time and place of the marriage, the spouse's name and any annullment or divorce are requested. Question 27 asks whether the applicant ever served in a foreign military organization and, if so, the country, service and dates are requested. Question 52 requests information regarding any charge or conviction for

highly relevant to the applicant's qualifications. Any serious defect in the moral character of the applicant must be exposed and examined.

To this end, the Commission must inquire into the applicant's background and this inquiry may well involve questions pertaining to possible criminal behavior. So long as the question is relevant to the determination of fitness, however, it is not made invalid solely because of its incriminatory potential. See Gilhaus Beverage Company, Inc. v. Lerner, supra at 511; Burton v. Sills, supra at 103-04. As noted elsewhere, question 49 properly delves into the applicant's use of controlled dangerous substances since such use might well indicate a dependency which renders the applicant vulnerable to improper influence or incompetence, or both. Further, illegal use, possession or distribution of controlled substances might be strongly

---

FOOTNOTE 42 CONTINUED

violation of statute or code other than criminal, disorderly persons or motor vehicle matters. Question 54 pertains to licenses to operate a motor vehicle. While Professor Rogovin managed to contrive situations where these questions could possibly call for incriminatory responses, such conjecture is wholly inappropriate to a facial challenge on Fifth Amendment grounds. Indeed, a set of circumstances could probably be devised to bring every question on the forms into the Fifth Amendment area. Of course, that is not the test.

indicative that the applicant associates with criminal elements or lacks a law abiding character.

Questions 36 and 37 concern firearms. Specifically, question 36 inquires whether the applicant has ever applied for a firearms permit. If so, the applicant must indicate where and when the application was made, the reason and the result. Such information is plainly helpful to the investigative process. If a firearm permit was sought, the appropriate agency would likely have pertinent material as to the applicant's fitness. If the permit application was denied, the reason for the denial may be important. Question 37, which inquires into present possession or ownership of firearms, is equally relevant. If an applicant for a casino license has a firearm it is important for obvious security purposes to know that fact. The applicant's reason for having a weapon may also be quite enlightening. Of course, illegal possession or ownership of a gun is a matter of vital concern to the Commission in considering the applicant's qualifications. While neither 36 nor 37 may provide dispositive information in any given case, the questions are reasonably designed to further the investigation along legitimate avenues of inquiry.

Although the challenged questions appear to be appropriate to the application process, the issue remains whether merely including these questions in the application form may deprive an applicant of the privilege against self-incrimination. As noted, there is no governmental compulsion

to file an application. The applicant is not in a custodial setting and may seek advice in filling out the application form, if he chooses to submit it. Moreover, the mere filing or non-filing of the form does not stigmatize the applicant since the form is not directed at a suspect class. For these reasons, the mere inclusion on the form of potentially incriminating questions does not per se coerce the applicant into a waiver of the privilege. Rather, the applicant is free to either respond truthfully to each question, claim the privilege where it is applicable, or not pursue the application at all. Garner v. United States, supra; Burton v. Sills, supra. In short, the mere inclusion of a question to which an applicant may have a valid claim of privilege does not undermine the right of the applicant to exercise the privilege. Garner v. United States, supra. The issue becomes more difficult, however, if it is assumed that, once the privilege is properly invoked, the Commission will take some action in response to that fact.[43]

---

43. It is this assumption of responsive action by the Commission on which petitioners base their premature, speculative challenge. Plainly, if the Commission did not react in any fashion to the invocation of the privilege on the application form, the privilege would be totally unburdened and intact. The instructions on the PHDF-2 are not inconsistent with this fact. The instructions advise the applicant to complete every item and to provide the appropriate information or indicate that the question does not apply. Although the instructions also caution the applicant that failure to provide requested information may be grounds for denial, the applicant may always assert the privilege and contest any adverse response. No application is denied without providing a right to a hearing. See N.J.A.C. 19:42-1 et seq.

The general rule is now settled that "the right to remain silent cannot be infringed through any penalty for asserting such right, whether that penalty consists of a fine or imprisonment or consists of the threat of job forfeiture." Ott v. Bd. of Ed. of Hamilton Tp., 160 N.J.Super. 333, 338 (App. Div. 1978); Lefkowitz v. Cunningham, 97 S.Ct. 2132 (1977); Lefkowitz v. Turley, 414 U.S. 70(1973); Gardner v. Broderick, 392 U.S. 273 (1968); Spevack v. Klein, 385 U.S. 511 (1967); Garrity v. New Jersey, 385 U.S. 493 (1967). In each of the federal cases, the Supreme Court condemned a procedure whereby a waiver of the privilege was sought to be compelled by an automatic penalty of dismisal, disqualification from public office or loss of public contracts solely for refusal to waive. Thus, the Commission may not impose any penalty on an applicant solely for the purpose of coercing a waiver of the privilege; but this does not mean that other consequences may not flow, for proper reasons, when the privilege is asserted in agency proceedings.

Although the privilege may be asserted in a civil proceeding, the "test is whether the testimony might later subject the witness to criminal prosecution." Lefkowitz v. Cunningham,supra, 97 S.Ct. at 2136. The privilege is not intended to protect against compelled testimony in the civil action itself. See Manning Engineering, Inc. v. Hudson Cty Park Comm'n, 74 N.J. 113 (1977). Proceedings before the Commission, whether for license application or

revocation, are indisputably civil in nature. As the Court in Manning Engineering stated with regard to use of compelled testimony in attorney disciplinary matters where the attorney faces disbarment:

> The primary purpose of such proceedings is not to punish, but to protect the public. Hence, the courts have been willing to allow immunized testimony of an attorney, as well as other licensed persons in similar proceedings, to be introduced in subsequent disciplinary proceedings over objections that such use violated the privilege. Id. at 132.

An applicant before the Commission has no constitutional right to withhold information from consideration by the agency, but does have the right to remain silent in anticipation of use of his testimony in potential criminal proceedings. If the applicant is provided with "use and fruits" immunity to negate the latter possibility, then there is no bar to compelling his testimony before the agency or penalizing his refusal to cooperate. Id.; see Kastigar v. United States, 406 U.S. 441 (1972). Such immunity may result from a formal grant by the Commission and the Attorney General, under section 67 of the Act. Additionally, if the Commission exerts undue coercion on an applicant and if the applicant responds to inquiries under such coercion, use immunity will attach to the compelled information as a matter of law. "Such immunity, if it exists, is self-executing and protects him from subsequent use of the statement in a criminal proceeding." Ott v. Bd. of Ed. of Hamilton Tp., supra at 341. Use

immunity, however, is not a panacea. If any future prosecution of the applicant on matters related to the immunized statement is anticipated, the grant of use immunity might unduly hamper law enforcement because of the difficult burden on the prosecutor to prove that the prosecution is in no way based on the immunized material. See Kastigar v. United States, supra. In many cases, this burden amounts "in practical effect to a total immunity from prosecution." State v. Falco, 60 N.J. 570,580 (1972).

Given the foregoing, the issue is refined to whether the Commission may respond in any fashion to a claim of privilege during the application process without "coercing" the applicant. Despite the apparently absolute prohibition in the early cases of Garrity and Spevack, the United States Supreme Court has since recognized the need to strike a balance between the right to silence and the public interest. State v. Falco, supra at 580. The balancing process is somewhat restricted since the public interest, even if a compelling one, may not be achieved at the expense of "impairing the historic designs of the privilege." Mahne v. Mahne, 66 N.J. 53, 57 (1974); see Kugler v. Tiller, 127 N.J.Super. 468, 473-74 (App. Div. 1974). However, the courts have been willing to allow certain consequences to flow from invocation of the privilege in a civil context, where the privilege was never meant to apply, so long as the consequences were reasonable and did not have the effect of

unduly penalizing exercise of the right. Ott v. Bd. of Ed. of Hamilton Tp., supra at 339. A few examples will, perhaps, clarify this troublesome distinction.

In Baxter v. Palmigiano, 425 U.S. 308, 316-20 (1976), the Court addressed the procedural safeguards which due process requires to be afforded a prison inmate in a serious disciplinary matter. After holding that such inmates were not entitled to counsel at the administrative hearing, the Court examined the practice whereby the board advised the inmate that he had a right to silence but that if he chose to exercise that right his silence could be used against him at the hearing. The Court held that this procedure did not unduly burden the inmate's constitutional privilege. Subsequently, in Lefkowitz v. Cunningham, supra, the Court explained the Baxter holding and distinguished it from those cases where an impermissible infringement was found:

> Baxter did no more than permit an inference to be drawn in a civil case from a party's refusal to testify. Respondent's silence in Baxter was only one of a number of factors to be considered by the finder of fact in assessing a penalty, and was given no more probative value than the facts of the case warranted; here [Cunningham], refusal to waive the Fifth Amendment privilege leads automatically and without more to imposition of sanctions. Id, 97 S. Ct. at 2138 n.5.

The Baxter holding reveals that no federal constitutional right is impinged where, in a "civil" proceeding, some evidential inferences are drawn from a prison inmate's refusal to speak in the face of serious disciplinary charges. See Ott v. Bd. of Ed. of Hamilton Tp., supra at 339. However, the New Jersey Supreme in Avant v. Clifford, 67 N.J. 496 (1975), held as a matter of state law that it was unfair to subject an inmate to such adverse

inferences where the inmate is subject to criminal prosecution for the same conduct. This holding was grounded in the peculiar circumstances of the prison disciplinary process. Since the inmate is not accorded the right to formal counsel, since the inmate is an incarcerated suspect subject to the same oppressive factors which would otherwise trigger the Miranda[44] protections, since the inmate's rights to produce witnesses or to cross-examine adverse witnesses may be limited by the disciplinary board and since the burden of proof is far less than that in a criminal trial, the Court concluded that silence by the inmate would be "tantamount to a sacrifice of his defense." Id. at 539.

This intolerable choice was aggravated by the fact that, in the Court's view, the prison authorities could not humanly refrain from drawing adverse, probably conclusive, inferences against a silent inmate. With the knowledge that he faced virtually certain and serious sanctions if he exercised his privilege, an inmate would be under extreme pressure to relinquish his right to silence in order to present his side of the story. To extricate the inmate from this unconscionable dilemma, the Court required that automatic use immunity be provided for any statements made by the inmate at the hearing. In this way, the inmate could preserve his right to defend his liberty at the hearing without jeopardizing his right to silence in any criminal prosecution.

---

44. Miranda v. Arizona, 384 U.S. 436 (1966) would entitle a criminal suspect in a custodial setting to be advised of his right to silence and to the assistance of formal counsel before undergoing custodial interrogation. The Avant Court rejected the right of formal counsel, on policy grounds, in the disciplinary process.

A careful reading of Avant fairly compels the conclusion that its extraordinary holding must be limited to the extraordinary circumstances of a prison disciplinary proceeding. This conclusion is supported by the failure of the Avant Court to question, or even cite, the cases of Mahne v. Mahne, 66 N.J. 53 (1974) and Costanza v. Costanza, 66 N.J. 63 (1974), decided only one year before Avant. These cases, which are discussed in some detail below, have subsequently been cited with apparent approval in cases after Avant. See, e.g., Manning Engineering, Inc. v. Hudson Cty Park Comm'n., supra at 132 n.9. Essentially, Mahne and Costanza teach that, in a truly civil matter with full procedural safeguards, the invocation of the right to silence by a civil litigant may constitutionally subject that party to reasonable, albeit substantial, responsive action.

Mahne was a divorce action brought by the husband who charged the wife and a named co-defendant with adultery. During discovery, the husband served both defendants with interrogatories in which he inquired whether the defendants had engaged in sexual intercourse with each other. The defendants invoked their privilege against self- incrimination and refused to answer the question. The husband then moved to strike the defense pleadings and the trial court granted the motion. On appeal, our Supreme Court held that, under the circumstances, the trial court had imposed too heavy a sanction since striking the pleadings was the equivalent of a default judgement against the defendants. However, the Court expressly affirmed the power of a trial court in a civil action to impose substantial consequences even where the privilege is properly invoked,

"While we agree that noncriminal sanctions were permissible we reject his [the judge's] choice of sanction." Id. at 56. In response to the defense argument that any sanction would unduly burden the exercise of their right to silence, the Court declared:

> Garrity and Spevack did suggest expansively that no sanctions which make exercise of the privilege costly may be imposed, but neither case arose in the present context of private litigation between private parties in which noncriminal sanctions are imposed in aid of orderly pretrial discovery. Id. at 57.

Drawing a clear distinction between criminal and civil proceedings where much broader mutual discovery is available, the Court expressed its approval of civil cases in which "the courts have, in the interests of truth and justice, displayed understandable readiness to impose noncriminal sanctions for refusal to submit to pretrial discovery on the basis of the privilege." Id. at 58. Significantly, the Court further distinguished between civil cases wherein the plaintiff invoked the privilege and those where the defendant did so. Based on the premise that one may not voluntarily invoke the judicial process seeking affirmative relief and at the same time use the privilege to prevent development of relevant proof, a civil plaintiff who stands on the privilege to the detriment of the defendant may be subject to dismissal of his action. On the other hand, a defendant who is involuntarily brought before the court should ordinarily not suffer a default judgement for refusal to answer plaintiff's questions, but adverse inferences may be drawn against him. Id. at 59-60.

The Mahne Court summarized these holdings, thus:

> The cited cases serve to illustrate the recognized availability of broad choices of sanctions when dealing with good faith exercises of the privilege in civil litigation. Proper balances are the goal and the trial court must

> seek those sanctions which are best designed to protect the pertinent public and private interests without impairing the historic designs of the privilege. Id. at 61.

Accordingly, in Costanza, decided the same day, the Court upheld a trial court's refusal to allow a civil defendant to testify at the trial where the defendant, who was accused of murdering her husband, claimed her privilege in response to questions posed at a deposition. The Court agreed with the trial court that the severe sanction of a default judgement against the defendant was not appropriate where "the defendant was in court involuntarily and the plaintiffs had the burden of establishing their claim." Id. at 68.

The holding in Gilhaus Beverage Company, Inc. v. Lerner, supra, is not to the contrary. There, the Division of Alcoholic Beverage Control [ABC], responding to allegations of kickbacks and bribery in the liquor industry, sent a questionnaire and cover letter to all licensees and solicitors engaged in the wholesale liquor trade in New Jersey. The licensed solicitors challenged the right of the ABC to promulgate such a questionnaire and asserted that the questionnaire, combined with the cover letter, violated their Fifth Amendment rights. Specifically, they claimed that, in the cover letter, the ABC effectively threatened them with license revocations, suspensions or other sanctions if they relied on their privilege against self-incrimination.

The cover letter, which became the focal point of the challenge, cautioned the licensees that a failure to

return the completed questionnaire or to provide "complete and accurate answers to all questions" might subject "your license or permit to suspension or revocation." It continued that if the licensee answered all the questions, and in so doing, revealed unlawful activity, "your admission and cooperation will be a mitigating factor which will be taken into consideration in the imposition of penalty." The letter also stated that "with respect to violations committed by licensees which the Division learns about from other sources...particularly where you have withheld information...they will be dealt with accordingly." Id. at 504-505. A second cover letter extending the deadline for answering the questionnaire indicated that "a claim of privilege to a specific question will be considered an appropriate response." Id. at 506.

The Court found that in view of the broad regulatory power exercised by the State over the liquor industry, the Director had the statutory authority to use the questionnaire as an investigative tool. However, the Court held that portions of the letter, as quoted above, had a chilling effect on licensees' Fifth Amendment rights. The Court noted that if the answer to certain questions required a licensee to admit unlawful activity on his part, he had the right to assert the privilege without subjecting himself to a threat of sanctions for so doing. In the Court's opinion, the subsequent cover letter stating that a claim of privilege would be an appropriate response was inadequate to erase the harm contained in the initial cover letter.

Gilhaus is not applicable to the present matter for several reasons. A basic distinction is that Gilhaus involved a different class of affected persons, to wit, licensees who were already operating in the regulated industry and who were required to provide information regarding their operations. Licensees, unlike applicants, constitute a definite group which is already subject to the control of the regulatory agency. Thus, they were involuntarily subjected to the ABC's demand for potentially incriminatory information. Moreover, the ABC did not simply request that the information be provided but actually stated its intent to impose more severe sanctions on any licensee who invoked the privilege and who was later charged with violations relevant to the withheld information. Thus, the ABC was truly threatening additional punishment for claiming the Fifth Amendment guarantee. Such a direct burden on the exercise of the right has traditionally been condemned. In the present matter, however, the Commission is not seeking to impose or exact any penalty for invocation of the privilege. Rather, the Commission is simply requesting information on which it can base a judgment as to the suitability of an applicant who, by choosing to file the application form, represents that he possesses the requisite attributes for licensure. Thus, Gilhaus is fundamentally different from the present matter. It might be noted, as well, that Gilhaus made no reference to Mahne v. Mahne, supra or Costanza v. Costanza, supra.

In light of the above, it appears that the Commission may fairly impose reasonable consequences for the refusal of an applicant to provide answers to pertinent questions, even where the refusal is grounded in a good faith invocation of Fifth Amendment privilege. As noted, application proceedings are clearly civil in nature. No penalties or sanctions are threatened against the applicant other than rejection of the application. In the event of a proposed rejection, the applicant is provided a hearing attended by full procedural safeguards, including the right to formal counsel. Compare Avant v. Clifford, supra. Thus, the application process is legally analogous to a civil trial. Moreover, the applicant is in essentially the same position as a civil plaintiff. Under the Act, the applicant must satisfy the Commission that he meets the standards of licensure and must provide all information pertinent to the Commission's determination. See sections 80(a), 86(a), 89(b), 90(b) and 91(b) of the Act.

Since the applicant voluntarily comes before the Commission and requests affirmative Commission action, he may not be permitted to simultaneously frustrate the process by refusing to assist the Commission in developing the facts necessary for a reasonable determination. See Mahne v. Mahne, supra. To continue the trial analogy, the application form serves not only as the initial "pleading" in the application procedure but also as the basic

"interrogatory" concerning the applicant's fitness. If the applicant refuses on Fifth Amendment grounds to respond to relevant inquiries on the form, the Commission may choose appropriate sanctions not to penalize assertion of the privilege but to assure that licensing standards of the Act are met. Compare Gilhaus Beverage Company, Inc. v. Lerner, supra. It is the withholding of significant information that prompts the Commission response. Although that withholding is based on the privilege, the damage to the regulatory process is the same. Thus, if the information sought is truly pertinent to the licensing decision, the Commission could even reject the application "without impairing the historic designs of the privilege." Costanza v. Costanza, supra at 67-68. Moreover, adoption of this position by the Commission would apparently not automatically cloak any future incriminatory responses actually given with "use and fruits" immunity, since the possibility of rejection in a proper case is not an unfair or coercive sanction.[45]

---

45. While not presented here, the limits of the Commission response to invocation of the privilege in a license revocation proceeding may well be different. Using the civil trial analogy, the accused licensee is more akin to a civil defendant who is involuntarily before the court, who does not have the burden of proof and who may be subject to monetary or other loss. In such cases, the Commission may probably not revoke the license solely for refusal of the licensee to respond to questions. See Gilhaus Beverage Company, Inc., v. Lerner, supra; Baxter v. Palmigiano, supra; Mahne v. Mahne, supra.

IX. OTHER CLAIMS

In addition to the contentions already discussed herein, petitioners Martin and Stretton made several other claims as to the alleged invalidity of questions on the PHDF-2. These claims are to be found on the list of objections submitted by the petitioners with their incomplete forms.

A. ARRESTS, INDICTMENTS AND JUVENILE OFFENSES

In questions 45 through 52 on the PHDF-2, information is requested concerning involvement in civil, criminal, disorderly persons or juvenile offense proceedings. Specifically, these questions inquire: whether the applicant was ever arrested or charged with any juvenile offense (#45); whether the applicant or any member of his immediate family was ever arrested, indicted, charged with or convicted of a criminal or disorderly persons offense (#46); whether the applicant was ever named as an unindicted co-conspirator in a criminal proceeding (#47); whether the applicant ever received a pardon for a criminal or disorderly persons offense (#48); whether the applicant possessed, used or distributed any controlled dangerous substance without a prescription during the last ten years (#49); whether the applicant has ever been the subject of any government investigation (#50); and whether the applicant has ever been charged with a violation of any statute, regulation or code other than a criminal, disorderly persons or motor vehicle violation (#52). Some of these questions

are the subject of other challenges raised by petitioners and are considered above.

Petitioners object to any question regarding past charges, whether civil or criminal, where no conviction or final judgment was entered against the applicant. Petitions fail to specify what law forbids such inquiries in the licensing process, but they advert to the "presumption of innocence." Apparently, petitioners are under the impression that the Commission intends to adjudge an applicant "guilty" of any charged misconduct based on the existence of the charges alone. Presumably, they fear that this would result in automatic rejection of any applicant who has been accused of civil or criminal wrongdoing without regard to the disposition of the accusation. Of course, any such fear is utterly groundless.

The standards for licensure are plainly established in the Act itself. With regard to casino employee applicants such as Ms. Stretton and Ms. Martin, sections 89(b) and 90(b) of the Act require the applicant to establish (1) financial stability, integrity and responsibility and (2) good character, honesty and integrity. In addition, section 86 disqualifies applicants (1) who have been convicted of certain enumerated offenses or "other offenses which indicate that licensure would be inimical to the policy of this act and to casino operations" or (2) who have committed any act which would constitute such an offense, whether prosecuted for that act or not. Obviously, the mere fact

that an applicant was once charged with a civil or criminal wrong would not itself constitute a disqualifying criteria.[46] See Costanzo v. N.J. Racing Comm., supra, 126 N.J.Super. at 194. In this regard it is important to recall that any rejected applicant would be entitled to a full hearing and to judicial review. See N.J.S.A. 52:14B--1 et seq. and N.J.A.C. 19:42-2.2, 2.12 and 3.2. Since the applicant would have an opportunity to demonstrate his qualifications and to contest any allegedly disqualifying facts and since the record so created would be subject to judicial scrutiny, no real possibility of unfair rejection based solely on the fact of an unproven charge exists. See Application of Marvin, supra.

Although an applicant may not be rejected based on the mere fact that some prior accusations were made but not conclusively proven against him, the need for information regarding such charges cannot be seriously questioned. During the investigation phase of the licensing process, the Commission and Division must be accorded broad latitude in seeking data which itself may not be conclusive but which may open important areas of inquiry. An applicant's past arrest record, for example, is highly relevant to any investigation into the individual's character, honesty and

---

46. Section 86(d) does refer to current prosecution or pending charges for an offense which could, if proven, disqualify the applicant; but it is clear that the intent of this subsection is merely to defer the Commission action on the application until resolution of the pending charges.

integrity. Indeed, section 89(b) of the Act specifically refers to criminal and arrest records being supplied to the Commission. Once known, this material may furnish valuable leads. Further inquiry into the circumstances underlying the charges could produce evidence that does affect the applicant's qualifications. There is surely no bar to consideration of that evidence merely because it gave rise to an unproven criminal charge. See Hyland v. Kehayas, 157 N.J. Super. 258 (App. Div. 1978).

Given the clear need for the material requested in questions 45 through 52 and the express statutory authorization for such requests, the only question remaining is whether some other, superior legal precept prohibits the inquiry. As noted, petitioners blandly assert that "under present law" such questions are prohibited, but they make no effort to support this assertion. Previous discussion has shown that no constitutional "right to privacy" protects against disclosure of these facts, which in most cases are matters of public record.[47] Moreover, even in

---

47. By a previous legal opinion of the Commission, an applicant would not be required to provide information as to any arrest or charge which has been duly expunged or sealed. See N.J.S.A. 2A:164-28; 2A:169-11; 2A:85-21; 2A:4-67 and 24:21-28. Even an expunged conviction would not be automatic grounds for denial. See N.J.S.A. 5:12-86(c) as amended by P.L. 1979, c.282.

the case of juvenile offenses which are normally confidential, the policy of confidentiality will be preserved under section 74(e) of the Act.[48] Cf. Whalen v. Roe, supra. In short, no constitutional right to withhold this information from the Commission appears. See

---

48. "Social, medical, psychological, legal and other records" of the juvenile courts and law enforcement agencies relating to juvenile offenses are generally not available to public inspection. N.J.S.A. 2A:4-65. This confidentiality is not absolute. The same statutory section includes several exceptions including release of records to law enforcement agencies investigating acts of delinquency or crime and to the victim or a member of the victim's immediate family. In addition, a general waiver of confidentiality may occur where the juvenile is 14 years old or older and where the offense would have been of a certain serious nature if committed by an adult. N.J.S.A. 2A:4-65(a)(7),(b) and (c). Regardless whether any of these exceptions specifically applies here, they demonstrate that the need for confidentiality will be balanced against the need for disclosure. See State in Interest of D.H., 153 N.J. Super. 420 (App. Div. 1977). Surely, the Commission must be allowed to obtain such data to serve the public interest in protecting casino gaming. In any event, the confidentiality of juvenile records does not justify refusal to respond to a direct inquiry on the application forms. This is evident from N.J.S.A. 2A:4-67 which provides for sealing of juvenile records in certain cases. Subsection d of that section states that upon entry of a sealing order "the person may reply to any inquiry that there is no record with respect to such person." This provision would be unnecessary if no reply were required even in the absence of an order. See State v. W.J.A., 173 N.J. Super. 19 (Law Div. 1980). It should also be kept in mind that the Commission does not seek to impose any civil disability on an applicant by reason of the existence of a juvenile record, but merely wishes to obtain a picture of the "whole man" to assess his character and his suitability for participation in this sensitive field. See State v. Green, 62 N.J. 547, 566-571 (1973).

Hammons v. Scott, 423 F. Supp. 618 (D.Cal. 1976) [Finding no constitutional right to refuse to answer questions as to arrest]. New Jersey courts have also approved questions posed by a licensing agency as to a license applicant's prior record, including charges which did not culminate in convictions.

In Higgins v. N.J. Bureau of Securities, supra, 100 N.J. Super. 266, the bureau revoked Higgins' registration as a securities agent in New Jersey. The revocation was based, in part, on a finding that Higgins had knowingly refused to provide information in response to a question on the application form and had instead answered the question in the negative. The question inquired whether the applicant had: "been arrested or convicted of any crime, misdemeanor or disorderly persons offense?;" "been subject to any disciplinary action, past or pending, by any administrative, governmental or regulatory body?"; or "been charged with a violation of any statute, rule, regulation or ordinance of any municipal, administrative, regulatory or other governmental body?" Id. at 269 (Emphasis added).

On appeal, Higgins argued that the questions were illegal. The Appellate Division responded that the bureau was statutorily obliged to effectively regulate the sensitive business of securities sales and to assure that only qualified persons participated therein. Given the public interest in such matters, the bureau was

empowered to query applicants on a broad scale to assist in searching for indicia of character. The Court continued:

> Nor do we find merit in the suggestion that appellant's privacy is improperly invaded by the questions posed. An applicant seeking admission to a licensed profession must expect that the licensing authority may legitimately inquire into those portions of his private life which affect the public interest and the exercise of the licensed profession among the public. Id. at 273.

Since the record in the agency hearing indicated that Higgins had been convicted at courts martial and had been arrested for additional charges both in the military and in civilian life, the Court affirmed the agency conclusion that Higgins falsely answered the questions on the application.

The Higgins decision strongly supports inclusion of questions 45 through 52 in PHDF-2. These questions are remarkably similar to those which were unsuccessfully challenged in Higgins. Further, the sensitivity of casino gaming is at least equal to that of securities sales, and the investigation of casino employee applicants must be at least as thorough as that permitted for securities brokers. Although the Higgins Court did not dwell on the distinction between arrests or charges and convictions, the failure of the Court to in any way qualify its approval of the questions could hardly be due to inadvertance. In any event, no disapproval appears. Absent any reason to prohibit these

obviously relevant and helpful inquiries, they must be sustained.[49]

B. MILITARY SERVICE SERIAL NUMBER

Questions 26 through 30 on the PHDF-2 request information concerning military service. Petitioners object to that part of question 26 which asks for the applicant's service serial number. According to petitioners, this number has in recent years been identical to the individual's social security number. Therefore, they conclude that the Federal Privacy Act of 1974, P.L. 93-579, prohibits the Commission from requiring the applicant to furnish this number as a condition of eligibility for licensure. Petitioners also object to question 30,which orders the applicant to attach a copy of his military record (DD-214) to the application form,apparently on the same theory, i.e., that this record would incidentally reveal the service serial number.

On the present record, neither Ms. Martin nor Ms. Stretton have standing to assert this issue. In the incomplete forms initially submitted by these petitioners, they both responded negatively to the first part of question 26 which asks whether the applicant ever served in a military

---

49. Petitioners also challenge question 29 on military disciplinary proceedings to the extent it requires any information other than a conviction. For the reasons stated, this question is obviously proper. In any event, neither Martin nor Stretton claim to have had any military service and clearly lack standing in this regard.

organization of the United States. A negative response to that question naturally terminates the applicant's obligation to provide additional information, including service serial number, since no such information exists. Indeed, question 26 expressly recognizes this fact by making subsequent portions of the question conditional upon a positive response as to United States military service. Moreover, even if these petitioners had served in the United States armed forces, that fact alone would not accord standing. If the service was rendered prior to the federal government's use of social security numbers as serial numbers, then revelation of the latter would disclose nothing of the former. Since petitioners have failed to make any showing in this respect, they should not now be permitted to argue a purely hypothetical point.

Although the issue is not presented, a brief discussion will show that the Privacy Act does not prohibit the Commission from requesting a service serial number merely because that number may correspond to a social security account number. The Privacy Act imposes a broad variety of restrictions on the obtaining, dissemination and use of certain personal information about individuals and mandates adherence to various procedural safeguards to further these aims. However, except for one small section, the Privacy Act is applicable only to federal government agencies and is wholly inapplicable to state or local governments or to the private sector. The only portion of the Privacy Act

which is applicable to state and local governmental agencies is section 7, which provides in its entirety as follows:

> (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security number.
> (2) the provisions of paragraph (1) of this subsection shall not apply with respect to -
> (A) any disclosure which is required by Federal statute, or
> (B) the disclosure of a social security number to any Federal, State or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
> (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

By its plain language, subsection (a)(1) prohibits a State agency such as the Commission from denying a license application because of the applicant's "refusal to disclose his social security number." However, that is obviously not the case here. Nowhere in the PHDF-2 does the Commission request the applicant to provide his social security number. Specifically, question 26 requires applicants who have served in the United States armed forces to supply their service serial number. The fact that for some applicants the serial number may correspond to their social security number does not alter the tenor of the request.

The Commission and Division are legitimately concerned with the military records of casino employee license applicants. See Higgins v. N.J. Bureau of Securities, supra. Obtaining the service serial number is necessary to verify the record submitted by the applicant and to assure that no other relevant information is in the possession of military authorities. Given the legitimate purpose, it cannot be alleged that the Commission is seeking to obtain social security numbers by means of a pretext or subterfuge. Indeed, many, perhaps most, of the service serial numbers which may be provided will not correspond to the social security number and no effort is made to obtain that number from the applicants in such cases.

In a real sense, any alleged correspondence between the social security number and the service serial number is fortuitous, occasioned by the federal government's effort for administrative convenience. There could easily arise other situations where an identifying number might also relate to the social security number, for example, driver's licenses, vehicle registrations, welfare programs and tax returns.[50] If petitioners' position is accepted, state agencies would be prevented from obtaining any of these

---

50. In this connection it is noteworthy that since 1974 Congress has greatly expanded, not restricted, the authority of state and local governments to obtain social security numbers. Section 1211 of the Tax Reform Act of 1976 (P.L. 94-455) contains an amendment to the Social Security Act permitting state and local governments to require individuals to disclose social security account numbers for purposes of administering "any tax, general public assistance, driver's license or motor vehicle registration law...", even if the number was not so used prior to January 1, 1975. This law expressly repeals any prior provisions of federal law inconsistent with its terms. S.1211(b)(C)(ii).

materials even though they may be essential to the normal functioning of the government. This untoward result could hardly be within the contemplation of the Privacy Act. Rather, the apparent purpose of that statute was to curb abuses whereby state and local agencies were routinely demanding social security numbers without a real need for that data and the potential intrusion on the privacy of the individual. See 120 Cong. Rec. 36895 and 3905. In short, the Privacy Act does not apply to the Commission's good faith request for a service serial number merely because that number may in certain instances incidentally reveal a social security number.

C. DISCRIMINATORY EMPLOYMENT PRACTICES

Petitioners challenge no less than 11 questions on the PHDF-2 on the ground that they "contravene the Employment Practices Manual issued by the New Jersey Department of Law and Public Safety, Division on Civil Rights."[51] Apparently, petitioners are referring to a booklet entitled "A Guide for Employers to the New Jersey Law against Discrimination" [Guide] which is published by the Division on Civil Rights. As its title suggests, the Guide is "intended to assist employers in understanding and complying with the law [against discrimination]" See Guide, p.1. The Guide contains certain provisions of the discrimination law, N.J.S.A. 10:5-1 et seq., and provides specific examples of questions which are to be avoided on employment application forms because of their potentially discriminatory effect.

---

51. This objection is made in the list of objections appended to the incomplete forms initially submitted by Ms. Martin and Ms. Stretton. The challenged questions are nos. 16,18,19,20,21,27,28,45,46,47 and 52.

Preliminarily, it must be emphasized that the Commission is dedicated to the prevention of employment discrimination by the casino hotels and by the industries which service the hotels. Indeed, the Casino Control Act specifically requires the Commission to approve and monitor affirmative action plans by such applicants or licensees. See sections 134 and 135 of the Act. Acting under these provisions, the Commission has promulgated comprehensive regulations relating to equal employment opportunity and has aggressively used its authority to achieve a significant measure of success in placing minorities and women in employment positions and in gaming school classes. The Commission, thus, has been sincere and effective in exercising its jurisdiction over these matters, and that jurisdiction is in no way subordinate to that of the Division on Civil Rights. See Hinfey et al. v. Matawan Reg. Bd. of Ed. et al., 77 N.J. 514 (1978).

Questions of jurisdiction aside, it is clear beyond peradventure that the Guide has no bearing on the license application forms promulgated by the Commission. By its own statement, the Guide pertains to questions posed by employers in the employment process. This is, of course, a major concern of the Law Against Discrimination. See N.J.S.A. 10:5-4. In that realm, subtle and apparently innocent questions may be used by employers to tacitly practice discrimination. However, the Commission is not an employer with regard to license applicants. Moreover, the

possibility of Commission discrimination in the licensing process simply does not exist.

Beyond the proven concern of the Commission in this area, every applicant who is denied licensure is afforded an opportunity for a full hearing with judicial review. A denial could only be sustained where the record supported a finding that the applicant could not meet the statutory standards. Such procedural protection precludes the type of unspoken and often unprovable discrimination which may occur in the usual employment situation. See Application of Marvin, supra. Further, the Commission must probe deeply into the financial stability and good character of an applicant in order to perform its important regulatory duty. That obligation demands that the Commission be allowed to pose questions which would not ordinarily be appropriate to the usual employment process. See Burton v. Sills, supra. Since the petitioners cannot effectively dispute the relevance of the challenged questions to the licensing function, there is no reason to suspect that any of these inquiries run afoul of the policy established in the Law Against Discrimination. Thus, these contentions are without merit.

D. RELEVANCE

Petitioners object to four questions on the PHDF-2 on the ground that these questions are simply irrelevant or overbroad. These contentions require only a cursory review.

The power of an administrative agency to investigate is broad. Anderson v. Sills, supra. The nature of casino gaming and the strict regulation attendant thereto authorize, indeed require, searching inquiry into all potentially relevant aspects of the applicant's background and character. In this framework, the challenged questions must clearly be without any possible utility before they will be invalidated on the ground of irrelevance or overbreadth alone. Each of the pertinent questions easily passes this minimal requirement.

Question 16 requires the applicant to indicate each residence which he has had since age 18, the dates of residing therein, whether he owned or rented, and the name of any landlord or mortgagee. Obviously, this material is relevant to the investigation of the applicant since the Division must know where the applicant lived during his adult life in order to effectively check into the applicant's prior conduct and community reputation. Merely going back 10 years, as petitioners suggest, would needlessly restrict the investigation. Despite petitioners' assertion to the contrary, providing the residence information beyond 10 years is hardly so onerous as to demand relief.

Questions 53 and 54 request information regarding motor vehicles. Specifically, question 52 asks for a description of all vehicles registered to the applicant or members of his household, the license numbers, registered owners and expiration dates of registrations. The purpose

of this question is to further identify the applicant and to facilitate identifications in the future. If an individual is observed under suspicious circumstances, for example, his identity might be traced through the vehicle being used. Witnesses may also be able to identify a vehicle involved in some significant event. Question 53 requires the applicant to provide information as to any driver's, operator's or chauffeur's licenses which he held for the past 10 years. This material serves to crosscheck the identity of the applicant, and it provides a valuable aid in obtaining data as to criminal, motor vehicle or other violations.

Finally, question 55 inquires whether the applicant has ever been bonded for any purpose or refused or denied any type of bond. If yes, the applicant must provide details, including whether any such bond was ever called. This question has been discussed fully in the context of the right of privacy. As noted there, the statutory standards of financial responsibility and integrity make the applicant's previous history as to bonding an important consideration. If the applicant has been refused a bond or if he has caused the bond to be called, it would be worthy of further investigation into the underlying circumstances. Further, the bonding company may have obtained relevant information regarding the applicant. Hence, these questions are clearly relevant.

X. RECOMMENDATION

For the reasons stated above, I find that the challenged questions, the release authorization, the waiver of liability and the consent to inspections, searches and seizures are lawful and valid. The compelling state interest in honest, well-regulated casino gaming demands that casino employees and casino hotel employees be persons of character and integrity. A full and effective background review is essential to assure the realization of these goals. While some of the challenged questions and items may be more important than others, all are relevant and helpful. Given the confidential treatment afforded information gathered during the application process, a question need only be reasonably related to the important state purpose of strict control, even if some intrusion into protected areas results. See Whalen v. Roe, supra; Konigsberg v. State Bar of California, supra.

While I am convinced that no constitutional infirmity appears, I recommend a reexamination of the Commission's disclosure forms in light of the cumulative experience of both the Commission and the Division. The necessity of thorough license investigations cannot be denied. However, there may be revisions which could preserve the utility of the form but which might lessen the burdens placed on the applicants.

At the prehearing conference, the Division stated that three questions (17, 21 and 49) on the PHDF-2 were

not essential and that two questions (23 and 46) might be limited. (Prehearing Conference Order, Part B(4)(b)). However, at the hearing, the Division's witnesses advanced substantial reasons for each of these questions. Nevertheless, if the Division's experience reveals relatively little use for the questions mentioned, then it may be appropriate to eliminate or restrict them. In particular, question 17 pertains to nonrelated co-residents. To date, there have been few instances where the Division has objected to a casino employee or casino hotel employee license applicant on the ground of improper associations. While a co-resident may have relevant information regarding an applicant, that information can probably be ascertained by other persons close to the applicant. Further, the question is susceptible to being misunderstood since it is not clear whether dormitories or other multiple resident dwellings would be included. Unless the Division has altered its position since the prehearing conference, I would agree that question 17 may be eliminated. However, the Division may still choose to inquire of particular applicants whether they have shared a residence with a non-relative.

Question 21 inquires about the applicant's children. Its purpose is to provide information about associations and financial responsibility. The major objection to the question is its specific inclusion of children by "natural relationship." The existence of illegitimate children could be indicative of the applicant's financial responsi-

bility. Additionally, it is possible that the illegitimate child could be a member of the criminal element. However, it would appear that the applicant's financial responsibility would be otherwise ascertained during the normal investigative process. Moreover, the fact of the illegitimate child's criminal activity would be irrelevant unless the child and the applicant were associated other than biologically. Such association should also appear from the investigation. Thus, although the question is perfectly proper in its present form, it may be restricted by striking the phrase "natural relationship." Again, however, the Division may ask a particular applicant whether any other children exist. Further, if the Division finds that the investigation would be hindered without this information, both questions 17 and 21 should be retained or reinstated.

Question 49 asks about any distribution, possession or use of controlled dangerous substances, other than pursuant to a valid prescription, during the past 10 year period. At the prehearing conference, the Division indicated that it might be acceptable to replace this question with a two-part inquiry concerning addiction and whether such addiction would affect job performance. The suggested substitute for question 49 would require the applicant to decide whether he is addicted or dependent on illicit substances. Such discretion should not be placed in the applicant. Moreover, drug use by a casino employee

would pose a serious problem which would threaten not only the well-being of the employee but the integrity of the industry. It is thus appropriate to inquire whether the applicant has had any drug involvement for a reasonable period preceding application. In that way, the Commission, not the applicant, may determine whether the applicant is suitable for employment in the casino and for the life-style attendant on such employment. I cannot now recommend the Division's substitute for question 49.

The Division has indicated that question 23 may be limited. Currently, that question requires the applicant to provide certain basic information about his parents, aunts, uncles, siblings, spouses of siblings, children, and spouses of children. The scope of the question may inconvenience the applicant and may present a practical problem if the applicant is unable to obtain the information. While the Division may always request the applicant to cooperate and provide further material, I recommend that the question be limited to the applicant's parents, siblings and children.

The Division has stated that question 46 may be restricted. Presently, that question, which requires information as to criminal or disorderly persons charges or convictions, applies to the applicant and to his immediate family. The Division has indicated that the question could be limited to the applicant only. While the criminal

history of the applicant's family may be relevant, the information can generally be obtained through law enforcement records. It is true that such records are not always complete. However, the applicant himself may not be aware of all criminal charges brought against family members. Thus, there is no assurance that the applicant's response will be accurate. Moreover, requiring an applicant to gather such information from other family members and report it to the Division is not unconstitutional but it is unpleasant. Subject again to the Division's right to obtain relevant information from the applicant and to request the reinstatement of the question if the need appears, I would recommend so limiting question 46.

The scope of the release authorization has been extensively discussed herein. While I would not now suggest any substantive restriction on the release, I do recommend a limitation on its duration. The Act requires any applicant or licensee to cooperate fully with the Commission and the Division. Thus, the release authorization should be valid so long as there is an application pending or a license in effect. However, the release should not be viable beyond that time. I would recommend amendment of the release to so provide and to require an authorized representative of the Division or Commission to certify the pendency of an application or the existence of a current license whenever the release authorization is presented to a record keeping institution.

The consent to inspections, searches and seizures has generated much controversy and confusion. The "consent" form does not authorize the Division to conduct an inspection or search. Rather, it merely advises the applicant that there are sections of the Act which provide for administrative inspections and searches under certain circumstances. It is recommended that the "consent" form be revised to more clearly indicate that it is actually an acknowledgment of these statutory provisions. See section 79 and 80(c).

To summarize, I find that the PHDF-2 is both lawful and necessary to the achievement of the statutory licensing standards. I recommend, however, that certain changes be made in the form. I further recommend that the Commission's staff and the Division review the forms in light of the subsequent experience of the agencies. In such review, the purpose should be to retain the utility and efficacy of the forms but to respond wherever possible to the privacy and convenience of the applicant.

Respectfully submitted

R. Benjamin Cohen
Hearing Examiner

Dated: _____

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-68

IN THE MATTER OF THE APPLICATION :
OF RAYMOND I. MOLENAAR FOR :
LICENSURE AS A CASINO EMPLOYEE :
(SLOT ATTENDANT) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter before the Honorable James Ospenson, Administrative Law Judge, of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, no exceptions or objections thereto having been filed by the parties; and the Commission having resolved at its public meeting of May 21, 1980 to adopt the Initial Decision with certain modifications and to deny the application for licensure;

It is on this 29th day of May 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby adopted insofar as it concludes that the Applicant intentionally failed to disclose his past record of arrests and convictions and the arrest record of his brother; and

It is further ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby adopted insofar as it concludes that the Applicant failed to demonstrate his reputation for good character, honesty and integrity by clear and convincing

evidence as required by N.J.S.A. 5:12-89(b) and 90(b); and

It is further ORDERED that that portion of the Initial Decision holding that N.J.S.A. 5:12-108(a)(b) [now N.J.S.A. 5:12-107(a)(b)] does not apply in licensing proceedings before the Office of Administrative Law be and is hereby rejected; and

It is further ORDERED that the Chairman be and is hereby authorized to issue a Final Decision on behalf of the Commission explaining the reasons for the foregoing modification to the Initial Decision; and

It is further ORDERED that the application of Raymond I. Molenaar for licensure as a casino employee be and is hereby denied for the reasons stated in the Initial Decision, as modified by and for the further reasons stated in the Final Commission Decision in this matter to be issued by the Chairman, both of which are incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: May 29, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-68

IN THE MATTER OF THE APPLICATION	:	
OF RAYMOND I. MOLENAAR FOR	:	
LICENSURE AS A CASINO EMPLOYEE	:	FINAL COMMISSION
(SLOT ATTENDANT)	:	DECISION

On April 14, 1980 the Administrative Law Judge rendered an Initial Decision (a copy of which is appended hereto, A-1 to A-8) to deny Applicant Raymond I. Molenaar's application for licensure as a casino employee (slot attendant) on two grounds: (1) that the Applicant failed to prove his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b); and (2) that he was disqualified from licensure by reason of nondisclosure of his criminal record contrary to N.J.S.A. 5:12-86(b). Based upon a review of the entire record, the Commission finds sufficient credible evidence in the record to support these conclusions and we adopt them as our own. However, we are constrained to comment further to correct a misstatement of the law governing admissibility of evidence under the Casino Control Act, N.J.S.A. 5:12-1 et seq. [hereinafter: the Act].

The Administrative Law Judge excluded certain hearsay evidence offered by the Division of Gaming Enforcement [hereinafter: Division] for the purpose of proving that the Applicant had committed a criminal offense in 1977 which warranted his disqualification under N.J.S.A. 5:12-86(g).

The hearsay evidence in question was a written statement given to police officers by a juvenile who was accused of breaking and entering a supermarket and larceny of a safe. The statement inculpated the Applicant as an accomplice to the crime. Despite persistent efforts to do so, the Division attorney was unable to produce the juvenile declarant as a witness at the hearings. Accordingly, the judge ruled the statement inadmissible, exercising his discretion to exclude the statement essentially on the grounds that there was "*** a substantial danger of undue prejudice ***."

Our concern is not with the exclusion of the evidence, for we find no abuse of discretion under the circumstances presented. However, the judge misstated the law when he rejected the Division's argument that the statement was admissible under the Act's provisions governing conduct of hearings and rules of evidence. The judge stated: "N.J.S.A.5:12-108(6) of the Act governs Commission license revocation hearings, however, and not administrative hearings on license applications."

Prior to January 9, 1980, the provisions governing conduct of hearings and rules of evidence were contained in §108 of the Act. However, pursuant to amendments effective that date (L.1979, c.282), these provisions are now, and were at the time of the Initial Decision in this case, contained in §107 of the Act. Section 107 as amended applies to all hearings of the Commission in contested cases, including those referred to the Office of Administrative Law. See In the Matter of the

Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (1980).

Prior to January 9, §108 read in pertinent part:

> a. At all hearings of the Commission pursuant to this article: (1) at least one member of the Commission shall be present and shall exercise all powers relating to the conduct of the hearing;
>
> * * * *
>
> (6) the hearing need not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action; ***

In its present form, §107 reads in pertinent part:

> a. At all hearings of the Commission in contested cases, as defined in §2 of P.L. 1968, c.410 (C.52:14B-2): (1) unless the Commission hears the matter directly, the Chairman shall refer the matter to the Office of Administrative Law in accordance with P.L. 1978, c. 67, (C52:14F-1 et seq.); provided, however, that the Chairman may, in his discretion, designate a member of the Commission to serve as hearing examiner in a particular matter;
>
> * * * *
>
> (6) the hearing shall not be conducted according to the rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action; * * *

While the former law contemplated hearings before the Commission or individual members of the Commission, the law was amended to conform with what has been the actual practice since shortly after the creation of the Office of Administrative Law in 1978. See N.J.S.A. 52:14F-1 et seq. That practice has been to transfer virtually all contested cases on employee license applications to the Office of Administrative Law for the holding of hearings and rendering of Initial Decisions. We think it obvious from the plain language of §107(a)(6) that the intent of the Legislature was to promulgate a specific statutory rule concerning the admissibility of hearsay evidence, which rule applies to all contested cases under the Act whether held before members of the Commission or Administrative Law Judges. Therefore, we expressly reject that part of the Initial Decision which indicates that subsection (a)(6) of what is now §107 does not apply to administrative hearings on license applications. To the contrary, we hold that §107 as amended applies to all hearings under the Act.

For the reasons more fully set forth in the Initial Decision appended hereto, we find that the Applicant intentionally failed to disclose his past record for arrest and convictions and the arrest record of his brother, both in violation of N.J.S.A. 5:12-86(b). We further find that the Applicant failed to demonstrate his reputation for good character, honesty and

integrity by clear and convincing evidence as required by N.J.S.A. 5:12-89(b)(2) and N.J.S.A. 5:12-90(b). Accordingly, the application of Raymond I. Molenaar for licensure as a casino employee is denied.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: July 2, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF RAYMOND I. MOLENAAR FOR LICENSURE AS A CASINO EMPLOYEE (SLOT TRAINEE)	)))))	INITIAL DECISION OAL DKT. NO. CCC 2343-79 AGENCY DKT. NO. 70-EA-68

APPEARANCES:

Raymond I. Molenaar, Applicant, Pro Se.

John J. Degnan, Attorney General of New Jersey,
By: Patricia Arons, Deputy Attorney General,
For Division of Gaming Enforcement.

EXHIBITS MARKED IN EVIDENCE:

J-1	Personal History Disclosure Form - 2.
R-1	Arrest record, Raymond Molenaar, Passaic PD, February 10, 1977.
R-2	Arrest record, Roland F. Molenaar, Passaic PD, May 13, 1975.
R-3	Arrest record, Ronald F. Molenaar, Passaic PD, August 21, 1973.
R-4	Arrest record, Ronald Molenaar, Passaic PD, June 21, 1974.
R-5	Arrest record, Ronald Molenaar, Passaic PD, June 27, 1974.
R-6	Arrest record, Ronald Molenaar, Passaic PD, December 26, 1973
R-7	Arrest record, Ronald Molenaar, Passaic PD, Nobember 17, 1973.
R-8	Arrest report, Raymond I. Molenaar, San Marcos, Texas, PD, January 28, 1976, charge theft under $5.00, disposition plead guilty, paid fine $27.50, February 19, 1976.
R-9	Arrest report, Raymond D. Molenaar, San Marcos, Texas PD, September 3, 1976 on felony warrant, supplemental report.

R-11 & R-12	2 photos, safe, taken basement of 18 Martha Place, Passaic, February 10, 1977.
R-14	Diagram by L. Grocchala, re path of safe.
R-15	Affidavit, Modesta Gomez, December 12, 1979.
R-16	Affidavit, Jose Garcia, December 3, 1979.
R-17	Documents, U.S. Dept. of Labor, re applicant's job history at Gary Job Corps, Texas.

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

This is a Casino Control Commission licensure proceeding by Raymond I. Molenaar for licensing as a casino employee/slot attendant under N.J.S.A. 5:12-89(b), 90. Having filed his application on July 12, 1978, the applicant was informed by the Commission, on June 25, 1979, that based on information contained in the investigative report of the Division of Gaming Enforcement of June 8, 1979 there was a "substantial possibility that the Commission will deny your application." On July 15, 1979 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42-2.2. The matter was thereupon transmitted to the Office of Administrative Law for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-9, 10.

A prehearing conference was held on August 24, 1979, and an order entered. The matter proceeded to formal hearing on September 24, 1979, December 4, 1979, January 29, 1980 and March 5, 1980. Conclusion of hearing was ten days thereafter on March 15, 1980 to furnish opportunity for filing of memoranda of law.

At issue are the following:

A. When applicant answered no to question No. 46 of the Personal History Disclosure Form-2, whether he or any member of his immediate family had ever been arrested, indicted, charged with or convicted of a criminal offense in this or any other state, were there disqualifying material non-disclosures contrary to N.J.S.A. 5:12-86(b), by reason of applicant's arrests without conviction on February 10, 1977 in Passaic, New Jersey for breaking, entry and larceny in a

supermarket and on September 3, 1976 in San Marcos, Texas for burglary; by reason of applicant's arrest on January 28, 1976 in San Marcos and conviction on February 19, 1976 for larceny under $200; and by reason of applicant's brother Ronald's several arrests in Passaic from 1973-1975;

B. Whether applicant's arrest in Passaic on February 10, 1977 is disqualifying under N.J.S.A. 5:12-86 (g); and whether such conduct is disqualifying under N.J.S.A. 5:12-89(b)(2) by reason of character impairment; and

C. Whether applicant has proven by clear and convincing evidence under N.J.S.A. 5:12-89(b),90 his reputation for good character, honesty and integrity.

EVIDENCE:

Raymond T. Molenaar is a 22 year old native of Aruba, N.A., presently a resident of West New York, New Jersey. He is a student at Fashion Institute of Technology, New York City. He has had prior experience in casinos in Aruba as change boy and dealer trainee. He is a former resident, with his mother, of 14 Martha Place, Passaic. In 1976, he was a job corps member at Gary Job Corps, San Marcos, Texas.

Applicant answered no the question No. 46 of the Personal History Disclosure Form-2 (J-1 in evidence), which inquired whether he or any member of his family had ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction. Through a State Police investigator, the Division identified and offered into evidence a record of applicant's arrest in Passaic on February 10, 1977 for breaking, entry and larceny of a supermarket safe (R-1); and records for some 6 arrests of applicant's brother, Ronald Molenaar, in Passaic during the years 1973-1975 (R-1 to R-7). A further record (R-8) was offered of applicant's arrest on January 28, 1976 in San Marcos, Texas, on a charge of theft under $5.00, disposition "plead guilty, paid fine of $27.50 on February 19, 1976." Another record (R-9) disclosed applicant's arrest on September 3, 1976 in San Marcos, Texas, on a felony warrant (burglary of a business). See also R-17.

(It should be noted that exhibits R-1 through R-9, above, were originally marked in identification when the State Police investigator testified out of turn, that is, before the applicant. Ruling on their reception into evidence was reserved until after applicant's testimony. Since he did not deny the arrests disclosed in the several records, all of such records

(R-1 through R-9) should be received, and they are hereby, into evidence. In addition, the San Marcos arrest of September 3, 1976 was corroborated by records of the Gary Job Corps, U.S. Department of Labor (R-17), which deal with applicant's service as a corpsmember and the circumstances of his termination as such on October 7, 1976: that is, he was arrested in San Marcos on September 3, 1976 on a charge of burglary and remained in Hays County jail unable to make $20,000 bond until October 7, 1976, when the court dismissed charges against him on condition he return to his home of record in Passaic, New Jersey).

A Division investigator testified applicant told him on interview he had not fully understood that question No. 46 required him to list arrests. Applicant thought he was required only to disclose convictions. He told the investigator he was unaware of his brother's several arrests. He testified his brother had never "made time" even though he had been arrested several times. As a result, he did not think he was required to disclose such matters. Actually, he said, he was surprised his brother had been arrested that many times, when shown a list of arrests by the investigator.

Applicant said he remembered his arrest in San Marcos on January 28, 1976. He and some friends had gone into town. One friend took some bags of cookies and gave one to applicant. The police came and arrested them. Later, they were released at request of a Gary Job Corps officer. He said he did not recall if he made a quilty plea.

Applicant said he was arrested on September 3, 1976 in San Marcos when a San Marcos police detective found a leather coat in his locker that was said to have been stolen in a local burglary. He denied the theft. He said he had bought the coat. He was taken to the county jail where he stayed until his release 40 days later. He was sent home by bus to New Jersey.

Applicant said that on February 10, 1977, while he was asleep at home at 14 Martha Place, Passaic, detectives from the Passaic Police Department arrested him and took him to the police department where he was confronted with the circumstances of the break, entry and safe larceny of a local supermarket. He denied any knowledge of the crime. He was jailed for several hours until released to his mother's custody. The case against him was later dismissed in Passaic County Court for lack of evidence, he said. Again, he said he did not disclose that arrest on his Personal History Disclosure Form-2 because he was innocent of any charge and did not "make time." He was with his girl friend that night, he said.

The Division offered into evidence certain records of the Passaic Police Department that included a written statement of a witness not produced at hearing. The Division's specific proffer of proof was a written statement of the witness that inculpated applicant in the commission of the break, entry and safe larceny on February 10, 1977. The Division argued the statement should be admitted in a relaxation of the rule against hearsay. The offer was denied by the administrative law judge on the grounds (1) applicant had denied complicity in the crime and (2) there was a sustantial danger of undue prejudice to the interest of the applicant in the formal reception into evidence of any hearsay statement made by an extra-judical declarent inculpating him in the commission of a crime. Applicant has a fundamental due process right to confront and cross-examine his accusers, especially since his disqualification under N.J.S.A. 5:12-86(g) is at issue and literally is grounded in an accusation that he committed a crime. See N.J.S.A. 52:14B-10(a):

> "...The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will...create substantial danger of undue prejudice..."

and see N.J.A.C. 19:2.1, 2.6; Weston v. State, 60 N.J. 36, 52 (1972); Tibbs v. Board of Education, Township of Franklin, 114 N.J. Sup. 287, 300-302 (App. Div. 1971), aff'd. o.b. 59 N.J. 506 (1971); and transcript, September 24, 1979, pp. 147-166; transcript, March 5, 1980, pp. 33, 34, 27, 38.

The Division argued the inculpatory hearsay statement, being "relevant" evidence, should be admitted under N.J.S.A. 5:12-108(6) as being "the sort of evidence upon which responsible persons are accustorned to rely in the conduct of serious affairs." Transcript, September 24, 1979, p. 155. (The Division also sought to have a police detective, who assisted in taking the statement, testify to the content of the statement and to voice his opinion about the witness' credibility. Transcript, September 24, 1979, pp. 156, 159, 160, 163; transcript, March 5, 1980, pp. 23-38. These proffers were rejected). N.J.S.A. 5:12-108(6) of the Act governs Commission license revocation hearings, however, and not administrative hearings on license applications. See N.J.S.A. 52:14B-10; and N.J.A.C. 19:42-2.1, 2.6. Even if the hearsay relaxation standard were that stated in N.J.S.A. 5:12-108(6), it seems obvious the profferred inculpatory statement here can hardly qualify as the sort of evidence responsible persons would have anything to do with much less rely on in the conduct of serious affairs. (It developed subsequently the Division's efforts to secure attendance of the witness were thwarted when, having been

subpoenaed by Division investigators, the witness fled the drug rehabilitation center where he was residing and vanished. The act was said to be a violation of parole. Transcript, March 5, 1980, pp. 4-9, 28-38).

DISCUSSION:

Is applicant disqualified for commission on February 10, 1977, in Passaic of an offense enumerated in N.J.S.A. 5:12-86(g)? Plainly, there is no proof in the record, hearsay or otherwise, that applicant committed the act for which he was arrested; indeed, he denied it and he was not prosecuted for it; hence the Division's objection to licensure in that respect must fail. Does applicant's arrest without conviction, nevertheless, reflect negatively on his good character and become disqualifying under N.J.S.A. 5:15-89(b)(2)? I do not think so. It has long been held that arrests without conviction are not acceptable indices of character because mere accusations of crime are quite consistent with innocence. See Costanzo v. New Jersey Racing Commission, 126 N.J. Sup. 187, 194 (App. Div. 1974).

Applicant's failures to disclose his two arrests in San Marcos, Texas, and one conviction, as well as his arrest in Passaic on February 10, 1977 and his brother's several arrests in Passaic from 1973-1975, however, are more serious matters and, in this case, fatal to his application. N.J.S.A. 5:12-86(b) provides as follows:

> "Casino License - Disqualification Criteria. The Commission shall deny (emphasis added) a casino license to any applicant who is disqualified on the basis of...(b) failure of the applicant to provide information, documentation and assurance 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."

On the evidence here, I do not credit applicant's explanations for non-disclosure of arrests. I am content to conclude that applicant knew very well that arrest information was called for even though he had not "made time". His explanations are specious, therefore, and his motivation in non-disclosure was self-serving concealment.

On balance, moreover, I am constrained to conclude that applicant had failed to sustain his heavy burden under N.J.S.A. 5:12-89(b)(2) to establish by clear and convincing evidence his reputation for good character, honesty and integrity, especially in view of his arrest and conviction in San Marcos, Texas on January 28, 1976, his job record at Gary Job Corps and the circumstances under which corps membership was terminated.

Based on the evidence adduced, therefore, I FIND as follows:

1. The above discussion, to the extent of any mediate conclusions of fact, is incorporated herein.

2. Raymond T. Molenaar has applied for a casino employee license as slot attendant.

3. Applicant was arrested in San Marcos, Texas on January 28, 1976 for larceny under $200. He was convicted and fined on his plea of guilty on February 19, 1976.

4. Applicant was arrested in San Marcos, Texas, on September 3, 1976 for burglary. Jailed and unable to make bail, he was released and charges were dropped upon condition he leave Gary Job Corps, San Marcos, Texas, and return home to Passaic.

5. Applicant was arrested in Passaic on February 10, 1977 for breaking, entering and larceny in a supermarket. The charges were dismissed.

6. Applicant's brother was arrested several times in Passaic during the years 1973-1975, circumstances of which applicant was or should have been aware.

7. Applicant did not disclose the above arrests of himself or his brother or his arrest and conviction of larceny under $200 in San Marcos, Texas on the Personal History Disclosure Form-2 of his casino license application.

8. Applicant's non-disclosures were intentional and material; his explanation that because he had not "made time" he was not required to make such disclosures is specious.

9. There is no evidence in the record to support the proposition that applicant committed the crime of breaking, entering and larceny of a supermarket for which he was arrested though not prosecuted in Passaic on February 10, 1977.

10. Applicant has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE that applicant has failed to sustain the burden of proof required of him by N.J.S.A. 5:12-89(b)(2); and that applicant is disqualified from licensure by reason of material non-disclosures, contrary to N.J.S.A. 5:12-86(b).

I ORDER, therefore, that his license application be DENIED.

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

I HEREBY FILE with the designee of the Casino Control Commission, R. Benjamin Cohen, General Counsel, my Initial Decision in this matter and the record in these proceedings.

April 9, 1980
DATE

James A. Ospenson
JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

April 14, 1980
DATE

AGENCY HEAD
BY: R. BENJAMIN COHEN
GENERAL COUNSEL

Mailed to the Parties:

April 15, 1980
DATE

Ronald L. Parker /bf
FOR OFFICE OF ADMINISTRATIVE LAW

ad

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-1051-80
CCC DOCKET NO. 80-EA-6

IN THE MATTER OF THE APPLICATION :
OF RITA J. MONTAGNA FOR LICENSURE: FINAL ORDER
AS A CASINO EMPLOYEE, TELLER :

This matter having been opened to the Casino Control Commission at its public meeting of July 24, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to deny Rita J. Montagna's application for licensure,

It is on this 5th day of August 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Rita J. Montagna be and hereby is denied, based upon the reasons set forth in the report of the Division of Gaming Enforcement dated December 19, 1979, which is incorporated herein by reference and made a part hereof; and

It is further ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement

within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: August 5, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION	:	INITIAL DECISION
OF RITA J. MONTAGNA FOR	:	OAL DKT. NO. CCC 1051-80
LICENSURE AS A CASINO EMPLOYEE	:	CASINO CONTROL COMMISSION
(TELLER)	:	DKT. NO. 80-EA-6

APPEARANCES:

John J. Degnan, Attorney General of New Jersey, by Deputy Attorney General Robert J. Melillo, on behalf of the Division of Gaming Enforcement, Department of Law and Public Safety

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., A.L.J.:

This matter concerns the application of Rita J. Montagna, petitioner, for licensure by the Casino Control Commission as a Casino Employee (Teller). The applicant was advised by letter from the Commission, dated January 28, 1980, that based upon information received by letter from the Division of Gaming Enforcement, dated December 19, 1979, there was a "substantial possibility" the Commission would deny her application and that she had a right to a hearing. Ms. Montagna requested a hearing on her application and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was scheduled for the following 9:00 a.m., April 15, 1980, at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey.

All parties were properly notified of the scheduled prehearing conference by the Office of Administrative Law. On the scheduled hearing date, neither the respondent nor any representative appeared on her behalf. Deputy Attorney General Melillo appeared on behalf of the Division and remained until one hour had elapsed.

By letter dated April 18, 1980 (copy attached), the petitioner was asked to submit her reasons for her nonappearance. No response has been received.

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

1. No appearance was made by Rita J. Montagna at the prehearing conference on April 15, 1980.

2. The Office of Administrative Law has received no communication from the petitioner giving a satisfactory explanation of her failure to appear.

3. The petitioner has abandoned her request for a hearing.

Therefore, I ORDER that the application of Rita J. Montagna for licensure as a casino employee be DISMISSED.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMMISSION, which by law is empowered to make a final decision in this matter. However, if the COMMISSION does not so act in forty-five (45) days from receipt hereof and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

I HEREBY FILE with **JOSEPH P. LORDI, CHAIRMAN OF THE CASINO CONTROL COMMISSION,** my Initial Decision in this matter and the record in these proceedings.

June 9, 1980
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., A.L.J.

Receipt Acknowledged

June 13, 1980
DATE

Joseph P. Lordi
AGENCY HEAD

Mailed to Parties

June 18, 1980
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ms

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1939-80
CCC DOCKET NO. 80-EA-47

IN THE MATTER OF THE APPLICATION :
OF KAREN NIXON FOR LICENSURE AS :
A CASINO EMPLOYEE (DEALER) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter before the Honorable R. Jackson Dwyer, Administrative Law Judge; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge and exceptions thereto filed by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of November 5, 1980 to adopt the Initial Decision with certain modifications and to deny the application for licensure;

It is on this 10th day of December 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and is hereby adopted and is incorporated herein by reference and made a part hereof except to the extent modified as follows:

1. The applicant is disqualified on the basis of her intentional failure to disclose information requested by the Commission pursuant to N.J.S.A. 5:12-86(b); and

2. The Commission does not adopt the legal conclusion drawn by the Administrative Law Judge such that the applicant is disqualified for her failure to establish by clear and convincing evidence her good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b); and

IT IS FURTHER ORDERED that the application of Karen Nixon for licensure as a casino employee be and is hereby denied; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 10, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1939-80

AGENCY DKT. NO. 80-EA-47

IN THE MATTER OF:

MS. KAREN W. NIXON FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)

Record Closed: August 14, 1980 Decided: September 2, 1980

Agency Received: Mailed to Parties:

APPEARANCES:

MICHAEL CARROLL, Esq., for applicant
(THE CAPE-ATLANTIC LEGAL SERVICES)

HOWARD M. BARMAN, Esq., Deputy Attorney General for the Division of Gaming Enforcement
(John J. Degnan, Attorney General of New Jersey, Attorney)

BEFORE R. JACKSON DWYER, ALJ:

In March of 1979, Ms. Karen W. Nixon (applicant) filed an application, including a Personal History Disclosure Form (PHD) with the Casino Control Commission (Commission for licensure to work as a casino employee dealer). The Division of Gaming Enforcement (Division) wrote a letter to the Chairman of the Casino Control Commission dated February 12, 1980, objecting to the applicant's licensure based upon her criminal

record, which she disclosed in response to question number 46 of her PHD. The applicant was advised by letter, dated March 17, 1980, from the Commission's Senior Assistant Counsel that there was a "substantial possibility" that the Commission would deny her application, and that she had a right to a hearing.

The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 22, 1980, and a hearing was held on July 17, 1980. Proposed findings of fact and conclusions of law were received from Michael Carroll, Esq. on August 5, 1980, and from Deputy Attorney General Howard M. Barman on August 18, 1980. The record was closed on the latter date.

The essential facts can be briefly narrated as follows: the applicant, a resident of Beaufort, South Carolina decided to travel to California with Mr. Jim Nichols, whom she had known for a period of approximately ten days. After completing the trip, lasting three days and two nights, they rented a motel room for three weeks in Newport Beach, California. She learned that Nichols had made a substantial purchase of marijuana; however, since she was impecunious, she decided to return to Beaufort, South Carolina with him. The applicant asserted that she had no financial interest in, or actual or constructive control over the drugs.

On January 25, 1974, the applicant and Nichols were arrested in Estancia, New Mexico, and charged with possession of a controlled dangerous substance, approximately 72 3/4 pounds of marijuana. The charges were dismissed against them because the State failed to hold a preliminary hearing within ten days, as required by the laws of the State of New Mexico.

The applicant separated from her husband sometime in February of 1978. She is now seeking a divorce. In response to question number 46 on her PHD, she noted that her husband was convicted on the charges of possession of marijuana and the possession of a dangerous weapon in Beauford, South Carolina, and sentenced to eighteen months in jail. She testified that she was aware that her husband was in possession of marijuana, and that she used and possessed marijuana during her marital relationship. She did not disclose this information in response to question number 49 on her PHD because she believed that "it would hurt her chances for receiving a casino employee license".

After having considered the entire record, including the testimony of the applicant, her character witness, Edward J. Jackson, and the exhibits submitted into evidence, I make the following findings of fact:

1. The applicant filed a Personal History Disclosure Form (PHD) on March 28, 1979, and has applied for licensure as a casino employee (dealer).

2. The applicant graduated from Mainland Regional High School, Linwood, New Jersey. She has completed casino dealer's school, and has enrolled in a college level program for the fall semester of 1980.

3. The applicant was employed in the Clothing Department of Woolco, Inc. until she was laid off. She is presently employed at a Wawa store; however, her hours of employment have been reduced. She is entrusted with substantial sums of money. She has an excellent employment record.

4. The applicant had a clerical position at Ceasar's Boardwalk Regency in Atlantic City, New Jersey, until she was terminated in October of 1979 pending the outcome of this hearing.

5. The applicant presently receives $86.00 a week in wages and welfare benefits. She supports herself and two year old daughter. She seeks a casino license to become financially self-sufficient.

6. On January 25, 1974, the applicant was arrested in Estancia, New Mexico for the offense of possession of a controlled dangerous substance, marijuana, in the amount of 72 3/4 pounds. The applicant's testimony regarding the circumstances surrounding her relationship with Nichols in California leading up to her arrest in New Mexico is credible. The charges against the applicant were dismissed for the lack of a speedy probable cause hearing. She did not purchase, have any financial interest in, or any actual construction possession of the marijuana.

7. The applicant has possessed and used marijuana, while she was married and as recently as February of 1978.

8. The applicant failed to disclose her use and possession of marijuana during her marriage in response to question number 49 on the PHD, because she felt that it would "hurt her chances for licensure".

9. The applicant was convicted in Beaufort, South Carolina in September of 1974 on a petty larceny charge involving the theft of two bottles of wine valued at approximately $10.00. She pled guilty to the charge and was fined $100.00.

CONCLUSIONS OF LAW

The Division contends that, since the applicant was arrested and charged with the possession of approximately 72 pounds of marijuana in Estancia, New Mexico, the offense is equivalent to N.J.S.A. 24:21-20 and N.J.S.A. 24:2-21, which constitutes a per se disqualifier under N.J.S.A. 5:12.86(c), and compels denial of licensure under N.J.S.A. 5:12-86(g).

Since I have resolved the question of credibility regarding the factual circumstances of this matter in the applicant's favor, the Division's legal analysis on this issue becomes flawed. Nichols purchased the marijuana for his own purposes and attempted to transport the drugs back to Beaufort, South Carolina in his car. The applicant had no mens rea or intent to possess these drugs, actually or constructively. The applicant was destitute and needed a ride back to South Carolina in Nichols' car.

I am convinced that, even if the charge was not dismissed on a technicality and the applicant came to trial, the charge would be dismissed on a motion prior to or at the end of the State's case.

For the foregoing reasons, I CONCLUDE that the issue of the applicant's rehabilitation under N.J.S.A 5:12-90(h) is moot.

I CONCLUDE with reluctance that the applicant has not established by clear and convincing evidence her good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2). The applicant testified under cross-examination that she failed to reveal that she used marijuana during her marital relationship in response to question 49 on her PHD "because she was afraid that it would hurt her chances for licensure".

While I am not unsympathetic to the applicant's prior personal misfortunes, the policy considerations of the Act explicitly mandate that total candor is an indispensable requisite for licensure.

It is, therefore, my recommended decision that a casino license permitting the applicant to work as a casino employee (Dealer) BE DENIED.

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

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

September 8, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

September 10, 1980
DATE

David Araji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

rtw

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL Docket No. CCC 0022-80
CCC Docket No. 79-EA-195

IN THE MATTER OF THE APPLICATION :
OF DENISE PERRY FOR LICENSURE :
AS A CASINO EMPLOYEE (SECURITY :
OFFICER). :

FINAL ORDER

A hearing having been conducted on April 28, 1980, in the above-captioned matter before Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law; and the Commission having considered the record of the hearing, the Initial Decision of the Administrative Law Judge, and no exceptions having been filed thereto by either the Applicant or the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of June 11, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

It is on this 20th day of June, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and it is further

ORDERED that the application of Ms. Denise Perry for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision rendered herein, which is incorporated here by reference and made a part hereof; and it is further ORDERED that copies of this Final Order be served upon

the Applicant and the Division of Gaming Enforcement with five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: June 20, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF DENISE PERRY FOR LICENSURE AS A CASINO EMPLOYEE (Security Officer)	:	INITIAL DECISION OAL DKT. NO. CCC 0022-80 AGENCY DKT. NO. 79-EA-195

APPEARANCES:

Ms. Denise Perry, pro se

John J. Degnan, Attorney General of New Jersey
by Joseph A. Mussomeli, Deputy Attorney General
for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In April of 1979 Ms. Denise Perry, applicant, filed an application, including a Personal History Disclosure form (PHD) with the Casino Control Commission for licensure to work as a casino employee (security officer). The applicant was advised by letter from the Commission's general counsel dated December 13, 1979 that there was a "substantial possibility" that the Commission would deny her application and that she had a right to a hearing. The applicant requested a hearing on her application 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 preheaing conference was held on February 29, 1980 at the Office of Administrative Law, Trenton, New Jersey. A hearing was held in Toms River, New Jersey on April 28, 1980.

Ms. Denise Perry testified briefly. She stated that she declined to reveal her arrest and conviction for shoplifting because she was apprehensive that the Commission would deny her a casino license. She expressed deep regret for her omission. She presently has the promise of employment for a security position that would commence on or about September 15, 1980 pending her licensure.

She completed a security management course and received a grade of 91% on her examination. She neglected

to bring to the hearing any letters of reference; however, I agreed to place them into evidence when they are received. A prospective employer has submitted the required $50.00 fee for her licensure. She is a working mother who is providing for the care and maintenance of her child.

By stipulation the Personal History Disclosure form was marked into evidence as (JE-1).

On cross examination, the applicant testified that she gave a false answer to question number 46 on the Personal History Disclosure form when she denied that she had ever been arrested or convicted of an offense. She was, in fact, arrested and convicted for shoplifting at K-Mart in Manahawkin, New Jersey on or about October 27, 1976. She shoplifted some personal items and six record albums. Her arrest and conviction record (a three page document) was placed into evidence as (R-1 A,B, and C). That document sets forth the specific articles that were stolen and lists their total value as $40.12. The applicant pleaded guilty to the shoplifting offense and was fined $100.00 and assessed $25.00 court costs. The applicant and her husband were unemployed when the offense occurred. She was receiving $235.00 a month in welfare benefits. She asserted she also shoplifted those items because of an "emergency need". She would have preferred to have the store set those articles aside for her until she was able to pay for them. A letter (consisting of three pages) was placed into evidence as (R-2). The applicant wrote this letter to Mr. Hill, the store manager, and apologized for shoplifting the articles from the store. She has never been involved in any other shoplifting offenses.

She was interviewed by a Division investigator, L. Wettig, who asked if she had ever been arrested. In response to his question, there was a pause - - and then she said that "I wasn't".

At the prehearing conference the applicant disclosed to Deputy Attorney General Mussomeli additional unfavorable information. She was indicted for but not convicted of welfare fraud. She was put into a Pre-trial Intervention Program (PTI). She presently is repaying $1,500 to the welfare authorities. The welfare fraud occurred in September of 1978 and she was indicted in October of 1978. She testified that she was unaware that it was unlawful to receive both welfare and unemployment benefits simultaneously. She felt, at the time, that the unemployment benefits were "due to me" because "I have worked for it". She also knew others who were receiving both benefits at the same time.

The welfare fraud occurred subsequent to when she filled out her Personal History Disclosure form. She disclosed the matter to Deputy Attorney General Mussomeli at the prehearing conference because she believed that the

Division did not know about this matter, and she hoped to avoid any additional difficulties regarding her licensure.

FINDINGS OF FACTS

1. The applicant is applying for a casino license as a security guard.

2. Question 46 on the Personal History Disclosure form (PHD) reads "Have you are has any member of your immediate family, as defined on page IV of this application, ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction?". The applicant placed an 'x' after the word 'no' on her application.

3. The applicant was arrested and convicted for shoplifting at the K-Mart store in Manahawkin on or about October 27, 1976.

4. She shoplifted some personal items and six record albums valued at $40.12.

5. She pleaded guilty to shoplifting and was fined $100.00 and assessed $25.00 court costs.

6. She and her husband were unemployed and she was receiving $235.00 a month in welfare benefits when the offense occurred.

7. She told a Division investigator, L. Wettig, that she was never arrested when she was interviewed.

8. She was indicted but not convicted of welfare fraud subsequent to when she filled out her Personal History Disclosure form (PHD). She was put into a Pre-Trial Intervention Program (PTI). She is presently paying the welfare authorities back the sum of $1,500.00.

9. She volunteered information about her indictment for welfare fraud to Deputy Attorney General Mussomeli at the prehearing conference to avoid any additional difficulties in obtaining a casino license.

CONCLUSIONS OF LAW

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

> "The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> (a) . . .
>
> (b) . . . failure of the applicant to reveal any fact material to qualification, or misleading as to a material fact pertaining to the qualification criteria; . . .".

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of license casino enterprises and all related service industries as herein provided.

I am not unmindful that the applicant testified with candor and sincerity at the hearing, that she has completed a course in security management, and that the shoplifted items were of nominal value. However, I CONCLUDE that her nondisclosure of her shoplifting arrest and conviction on her Personal History Disclosure form, and at her interview with a Division investigator was both intentional and material; and contrary to the express public policy of the Act.

I FURTHER CONCLUDE that the applicant's failure to disclose her arrest and conviction for shoplifting demonstrates a lack of honesty, integrity and good character under N.J.S.A. 5:12-89(b)2 substantially for the aforementioned reason.

I recommend that the application of Ms. Denise Perry for licensure as a casino employee (security officer) be DENIED.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which, by law, is empowered to make a final agency 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-1, et seq.

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

May 8, 1980
Date

R. Jackson Dwyer, A. L.J.

May 12, 1980
Date

Receipt Acknowledged:

AGENCY HEAD

Mailed to Parties:

Date

OFFICE OF ADMINISTRATIVE LAW

jrp

OAL DKT. NO. CCC 0022-80

INVENTORY OF EXHIBITS

The following exhibits have been placed into evidence:

The Personal History Disclosure Form - (JE-1)

The applicant's arrest and conviction record (a 3 page document) -(R-1, a, b and c)

A letter written by the applicant to the store manager, Mr. Hill - (R-2)

On May 8, 1980, I received the following character references from the applicant, and I place them into evidence as follows:

Letter from Sgt. Carroll Perry, Boardwalk Penthouse Hotel - (P-1)

Letter from G. Taylor, Paymaster, Boardwalk Properties, Inc. - (P-2)

Letter from William J. Brophy, Atlantic City College, stating that the applicant has completed successfully the hotel-casino security course - (P-3)

Letter from Anthony T. Torcasio, Vice President, Director of Gaming, the Penthouse Boardwalk Hotel - P-4)

Letter from Harold Williams, Director of Security, Penthouse Boardwalk Hotel - (P-5)

Letter from Andrew Sutor, Security Director, Marina Associates - (P-6)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4048-79
CCC DOCKET NO. 79-EA-125

IN THE MATTER OF THE APPLICATION	:	
OF ANTHONY R. RAMPOLLA FOR	:	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE	:	
(TELLER).	:	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of September 5, 1980 to affirm and adopt in part and reject in part the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 5th day of September 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted in part and rejected in part as specified below; and

IT IS FURTHER ORDERED that the application of Anthony R. Rampolla for a casino employee license be and hereby is denied on the basis of the following:

A. The Applicant's failure to disclose on his Personal History Disclosure Form his termination from employment with the Riverfront Restaurant in violation of N.J.S.A. 5:12-86(b).

B. The Applicant's failure to establish by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2).

IT IS FURTHER ORDERED that the Administrative Law Judge's finding that the Applicant's admitted conduct, which constituted theft during the course of his employment at the Riverfront Restaurant, contrary to N.J.S.A. 2C:20-2, is not a basis for disqualification from licensure pursuant to N.J.S.A. 5:12-86(c) and (g) is hereby rejected but that the Commission does not base its determination to deny licensure on such ground; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: September 5, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF ANTHONY R. RAMPOLLA FOR LICENSURE AS A CASINO EMPLOYEE (Teller)	:	INITIAL DECISION DOCKET NO. CCC-4048-79 AGENCY DKT. NO. 79-EA-125

APPEARANCES:

David G. Schiarra, Esq., Cape-Atlantic Legal Services, Inc. for the applicant, Anthony R. Rampolla

John J. Degnan, Attorney General for the State of New Jersey by Joseph A. Mussomeli for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

On March 12, 1979, Anthony R. Rampolla (Applicant) filed an application for a license as a casino employee (teller). On July 30, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the applicant's licensure "based upon the facts surrounding his dismissal from a previous place of employment (The River Front Restaurant in Philadelphia, Pennsylvania)" where the applicant worked as a bartender from November of 1977 until January of 1979.

By letter dated August 30, 1979, the Commission informed the applicant that based upon information contained in a report from the Division of Gaming Enforcement, dated July 30, 1979, there was a "substantial possibility" that the Commission would deny his application.

The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. After notice, a prehearing conference was

held on November 4, 1979, and a prehearing order was issued on November 14, 1979 at which time the issues to be resolved at the hearing were identified. A hearing was held on February 7, 1980. Proposed findings of fact and conclusions of law were received from the applicant's counsel on February 22, 1980 and from Deputy Attorney General Mussomeli on April 17, 1980.

The applicant filled out his Personal History Disclosure Form (PHD) (JE-1) for the position of casino employee (teller). Question number 33 on that form asks: 'Were you ever discharged or asked to resign from employment?'. The applicant placed an 'x' after the block designated 'no'.

The Division asserted that the applicant was terminated from employment as a bartender at the River Front Restaurant, Philadelphia, Pennsylvania for not ringing up drinks on the cash register and pocketing the money on the night of January 23, 1979. The Division maintains that the applicant's failure to disclose this termination for cause constituted a knowing misrepresentation and the withholding of a material fact compelling denial of licensure. The Division further claims that the facts and circumstances surrounding this episode call into question the applicant's honesty, integrity and good character, and that the illegal taking of money, even though the conduct was not prosecuted, constitutes grounds for disqualification under N.J.S.A. 5:12-86g.

The Division presented documentary evidence (R-1 through R-5) consisting of the applicant's unemployment compensation claim in Philadelphia, Pennsylvania (R-1, R-2), and Unemployment Compensation Board of Review referee's decision (R-3), a special report from Security Services Administration (R-4) and a written statement from Peter Bruhn, general manager of the River Front Restaurant, dated February 6, 1979 (R-5). That special report and Bruhn's statement claim that the applicant was observed by a surveillance team giving away free drinks during the evening of January 23, 1979.

The Division points out that the applicant stated, at his initial interview for unemployment compensation benefits, that he was separated from the River Front Restaurant because he was 'accused of stealing' and that he was 'fired'. Conversely, the Personal History Disclosure Form (PHD) (JE-1), filled out several weeks after the application for unemployment compensation benefits, gave no indication that he was terminated for cause.

The applicant asserts that certain events occurring prior to and after his termination on January 23, 1979 require discussion to put this matter in focus. He initially asked the liquor manager, Shawn Hennigan, to intercede with the general manager, Peter Bruhn, to rearrange his schedule to attend dealer's school in Atlantic City on the weekends. When Bruhn refused to accede to his request, he stated that he would "give him until February, and if he didn't change his mind that he would have to leave". On January 12, 1979, the day and night bartenders were working out of the same cash register. A tally of the receipts at the end of the night revealed a $75.00 shortage. Bruhn told the bartenders that they were not getting their paychecks until the shortage was made up. The applicant signed his paycheck over to Bruhn, while the other bartenders paid their pro rata share in cash. The applicant asserted that he told Bruhn that he would "take him before the Labor Board".

A second incident occurred on January 23, 1979. A surveillance team allegedly observed the applicant failed to ring up drinks on the cash register, and pocket the money. The applicant asserted that the alleged $33.00 shortage consisted of a River Front vest, worth approximately $20.00, which he was never issued, and some $13.00 in complimentary drinks. The house policy was to give free drinks to regular customers. On the night of January 23, 1979, he did, in fact, give some free drinks away; however, he was uncertain about the number. The applicant produced two former employees of the restaurant, Robert Pasquarella, a beverage manager and Vito Caccavo, a waiter, who corroborated his testimony that the restaurant did have such a policy regarding complimentary drinks.

The applicant stated that after this episode occurred on January 23, 1979, that he quit. The following day, January 24, 1979, he came back to get his paychecks. Bruhn told him that he was fired.

The applicant applied for unemployment compensation in Pennsylvania. He stated on his initial application that he 'was accused of stealing' and was 'fired' because the claims person, after hearing the background circumstances of this matter instructed him to put down the word 'fired'. A hearing was held on the applicant's claim. Norman Briker, an investigator, employed by the Security Services Administration, testified that the applicant gave free drinks to customers on the night of January 23, 1979. The referee of unemployment compensation denied benefits because of 'willful misconduct'.

The applicant pursued his unemployment compensation claim both to obtain benefits and his paychecks which had been wrongfully withheld by the River Front Restaurant. Some three months later, he received the proceeds of the three checks minus the amount of the alleged free drinks.

The applicant also placed on the record his educational background, his employment record, and letters from teachers, friends and former employers attesting to his good character, honesty and integrity (P-1 through P-6).

FINDINGS OF FACT

I FIND:

1. Anthony R. Rampallo (applicant) filed an application for licensure as a casino employee (teller) on March 12, 1979.

2. Question 33 on that applications asks: 'Were you ever discharged or asked to resign from employment?' The applicant placed an 'x' after the word 'no.'

3. Question 34 on that application asked the question: "Were you ever charged with any infraction which was the subject of a disciplinary action in connection with employment during the last ten week period?' The applicant placed an 'x' after the word 'no'.

4. The applicant was employed as a bartender at the River Front Restaurant, Philadelphia, Pa. from November of 1977 to January 24, 1979.

5. The applicant was fired from the River Front Restaurant on January 24, 1979 for serving drinks, and failing to deposit the money in the cash register. He was observed on the evening of January 23, 1979 by a surveillance team from the Security Services Administration for acts constituting multiple infractions of the house rules.

6. The applicant asserted that he quit his employment on the evening of January 23, 1979 because he had undergone incessant harrassment from the general manager, Peter Bruhn, for a protracted period of time.

7. The applicant applied in February 1979 for unemployment compensation benefits in Philadelphia, Pa. A hearing on his claim was held on March 28, 1979. A referee of unemployment compensation disapproved his claim for 'willful misconduct'.

8. While the applicant was employed at the River Front Restaurant there was a house policy to give complimentary drinks to steady customers periodically.

9. The applicant worked in the Boardwalk Regency Hotel/Casino from May 1979 to August 21, 1979. He was required to leave his position after the Casino Control Commission proposed the denial of his license pending a hearing on this matter.

10. From December 1979 until the present, the applicant has been employed at Recreational Amusements, Atlantic City, New Jersey, as a change person. He handled approximately $100 a day. Prior thereto the applicant was employed from approximately 1973 to 1977, part time, at the Drake Hotel, Philadelphia, Pa., as a bingo caller. He handled approximately $4,000 a night.

11. The applicant produced letters from his high school teachers, friends and employers attesting to his good character, honesty and integrity.

12. Robert Pasquarella, former beverage manager, and Vito Caccavo, former waiter, at the River Front Restaurant, testified that the applicant was cooperative, punctual, that he got along well with others, and, to the best of their knowledge, no disciplinary action or complaints were lodged against him. They also corroborated the applicant's testimony that there was a house policy to give a limited number of free drinks to regular patrons.

CONCLUSIONS OF LAW

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

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

(a) . . .

(b) . . . failure of the applicant to reveal any fact material to qualification, or misleading as to a material fact pertaining to the qualification criteria; . . .".

I am persuaded that the doctrine of collateral estoppel does not apply to the administrative determination of the Unemployment Compensation referee's determination in Pennsylvania. However, I am equally convinced that some deference should be accorded to it. The applicant applied for unemployment compensation in Pennsylvania. He had a due process hearing on that claim with a right of cross examination. He gave his version of the events that occurred on January 23 and 24, 1979. A judge of a sister administrative agency found that the applicant was observed by a security agent "in the act of serving free drinks, failing to record all charges on the bar tab, and failing to deposit all receipts of money in the register". The referee also found that "the claimant was terminated by the employer for multiple infractions of house rules".

I have made a de novo examination of the exhibits (R-1 through R-6) and I have canvassed the record to evaluate credibility. The applicant was discharged for theft on January 24, 1979. He filed a claim for unemployment compensation in February 1979. He stated at the initial interview, in his own handwriting, that he was 'accused of stealing' and that he was 'fired'. I regard his written statement (R-3) as an admission against interest and it is also akin to an estoppel in pais, which means that a person may not repudiate a prior act or position assumed. The applicant filed a Personal History Disclosure form (PHD) (JE-1) for licensure as a casino employee (teller) on March 12, 1979 - some two weeks after applying for unemployment compensation benefits - and failed to mention any of the background circumstances of his termination at the River Front Restaurant. The applicant asserted that, after he was confronted by a surveillance team on the evening of January 23, 1979, he quit immediately. That self-serving assertion neither

justified his failure to supply the missing information on his Personal History Disclosure form (PHD) or satisfactorily explains the disparate information contained in the exhibits (R-3 and JE-1).

I am bound to accept the logic of the inferences that the applicant intentionally had or ought to have known that the information supplied on his Personal History Disclosure form (PHD) was false and/or misleading under N.J.S.A. 5:12-86(b).

I CONCLUDE that the applicant's failure to disclose his termination from employment also reflects adversely upon his good character, honesty and integrity under N.J.S.A. 5:12-90(b) and 5:12-89(b)2 substantially for the aforementioned reasons.

The proofs necessarily compel the conclusion that under N.J.S.A. 5:12-86(g) the applicant has not committed acts which would constitute an offense under N.J.S.A. 5:12-86(c).

When the prehearing order was drafted on November 9, 1979, the applicant's conduct would have been a per se disqualifier under N.J.S.A. 5:12-86(c). Since that time, the Act has been amended and N.J.S.A. 5:12-86(c) lists as a disqualifying offense the provisions of N.J.S. 2C:20-1 et seq., which are theft offenses under the provisions of the new criminal code. However, N.J.S.A. 5:12-86(c) specifies only those "theft and related offenses which constitute crimes of the second and third degrees". N.J.S. 2C:20-2(b)(c) classifies thefts of less than $200.00 as a disorderly persons offense. It is clear that the applicant's theft of some six to ten drinks did constitute a disorderly persons offense if prosecuted, and, as such, it is not a per se disqualifier under N.J.S.A. 5:12-86(c).

Finally, I CONCLUDE that the provisions of N.J.S.A. 5:12-90(h), the rehabilitation factors in the Act; and the applicant's testimonials of good character from a former teacher, a principal, former employer and friends are apposite only to criminal conduct, and not to the failure to disclose a material fact on the Personal History Disclosure form (PHD).

It is, therefore, my recommended decision that a casino license permitting the applicant to work as a teller be DENIED.

This recommended decision may be affirmed, modified or rejected by the Chairperson of the Casino Control Commission, Joseph P. Lordi, who, by law, is empowered to make a final decision in this matter. However, if the Chairperson of 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-1.

I HEREBY FILE with the Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

April 29, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

May 1, 1980
DATE

Receipt Acknowledged.
Joseph P. Lordi
AGENCY HEAD

MAILED TO PARTIES:

DATE

OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5105-79
CCC DOCKET NO. 79-EA-79

IN THE MATTER OF THE APPLICATION :
OF HARRIS EDWARD RAMSEY FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Norman D. Smith of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the Applicant, the Division of Gaming Enforcement having taken no exception to the Initial Decision, and the Commission having resolved at its public meeting of June 11, 1980, to affirm and adopt in part and reject in part the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 23rd day of June, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby affirmed and adopted in part and rejected in part as specified below; and

IT IS FURTHER ORDERED that the application of Harris Edward Ramsey for a casino employee license be and hereby is denied on the basis of the following:

A. The Applicant's intentional failure to disclose on his Personal History Disclosure Form his employment at Bayshore Exxon in violation of N.J.S.A. 5:12-86(b).

B. The Applicant's failure to establish by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2).

IT IS FURTHER ORDERED that the Administrative Law Judge's finding that the Applicant's fraudulent collection of unemployment benefits in March 1978 would render his licensure inimical to the Act and casino operations be and hereby is rejected; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: June 23, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

HARRIS EDWARD RAMSEY,	:	INITIAL DECISION
PETITIONER,	:	OAL DKT. NO. CCC 5105-79
	:	AGENCY DKT NO. 79-EA-161
DIVISION OF GAMING ENFORCEMENT,	:	
RESPONDENT.	:	

APPEARANCES:

Harris Edward Ramsey, Petitioner, Pro Se

Patricia J. Arons, Esq., Deputy Attorney General, on behalf of the Respondent

WITNESSES:

Harris Ramsey
Lorraine Ramsey
Dorothy Martin
Priscilla Carrano
Victor Buch

EXHIBITS:

P-1 Receipt of payments from Department of Labor

P-2 Card issued by Division of Employment Services

P-3 Determination and demand for refund of Unemployment Benefits

P-4 One-page original letter dated August 6, from Department of Labor

P-5 Notice of Hearing dated April 3, 1979

P-6 Complainant in Juvenile Delinquency May 5, 1965

P-7 Complaint in Juvenile Delinquency dated February 5, 1967

P-8 Police report dated April 11, 1970

P-9 Complaint dated March 19, 1972 in Lower Township Municipal Court

P-10a-e Character reference letters

J-1 Photocopy of personal history disclosure form

J-2 Photocopy of record of hearing

R-1 Report from Department of Labor showing weeks received of Unemployment Benefits

R-2 One page photocopy of report dated January 29, 1979

R-3 Duplicate yellow payroll cheets

R-4 Photocopy of benefit payment and employment record December 20, 1977

R-5 Updated credit report

R-1a-d Report from Department of Labor & Industry

R-6 1965 police report

R-7 1967 police report

R-8 1970 arrest report

R-9 1972 arrest report

R-10 Uniform arrest report

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

On October 4, 1978 the petitioner filed an application with the Casino Control Commission for licensure as a Blackjack Dealer (J-1). Pursuant to objections filed by the Division of Gaming Enforcement, the Casino Control Commission notified Mr. Ramsey on October 26, 1979 that there existed a substantial possibility that his application would be denied and of his right to a hearing. Mr. Ramsey requested a hearing

and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on March 6, 1980 and the record closed on March 21, 1980 with the receipt of the final Memorandum of the Division of Gaming Enforcement.

The Division objects to licensure on three (3) grounds:

1. That Mr. Ramsey fraudulently received unemployment benefits while working and earning an income. The Division contends that this alleged conduct was inimical to the policy of the Casino Control Act and to casino operations in violation of N.J.S.A. 5:12-86g; and it negatively reflects on the petitioner's ability to establish his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2).

2. That Mr. Ramsey failed to disclose his employment on his Personal History Disclosure Form which required disqualification pursuant to N.J.S.A. 5:12-86b and further negatively reflects upon the petitioner's character, honesty and integrity.

3. That Mr. Ramsey's arrest and conviction record negstively reflects upon his good character, honesty and integrity.

Regarding the first two objections I find the following facts:

Mr. Ramsey began work for Parkway Exxon in Berleigh, New Jersy on Monday, March 6, 1978. R-3 in evidence, Payroll Records of Parkway Exxon, show that he worked 44 hours during the week ending Friday, March 10, 1978. His work was on a full-time basis (T 24-19 to 25). Previously, on May 2, 1977, Mr. Ramsey opened a claim for Unemployment Compensation with the Department of Labor & Industry of the State of New Jersey (T 134-10 to 18; R-1). It is clear from the testimony of Dorothy Martin, Unemployment Fraud Investigator, Department of Labor & Industry, and Priscilla Carrano, Senior Unemployment Claims Investigator for the Department of Labor & Industry, as well as R-1 in evidence, R-2 in evidence, R-3 in evidence and J-2 in evidence that Mr. Ramsey collected unemployment benefits on March 11, 1978, March 18, 1978 and March 25, 1978 totaling $247 during which time he was employed at Bayshore Exxon.In fact, Mr. Ramsey admits this. However, he explained that he thought he was entitled to the unemployment benefits because of payments which he erroneously thought were held back at the beginning of his claim.

However, when Mr. Ramsey appeared at an unemployment office to claim his benefits for the three weeks in question, he failed to advise the office of his new employment and he further signed a certification that he has reported all wages and all work performed during the period for which benefits are claimed (T 151-14 to 20). He signed this form, which was necessary for him to qualify for benefits, and yet failed to report his employment (T 152-1 to 4).

Furthermore, on part 7 of of petitioner's Personal Disclosure Form, entitled "Employment and Licensing Data" (J-1), petitioner listed his employment information for the period September, 1977 to April, 1978 as "State of New Jersey Unemployment Benefits". He omits entirely the history of his full-time employment with Bayshore Exxon during March and April of 1978. It is clear from this, and I so find, that Mr. Ramsey intentionally omitted his employment with Bayshore Exxon during March and April of 1978 because it would have clearly conflicted with his receipt of unemployment benefits. The intent of Mr. Ramsey, with regard to the ommission, is further supported by his failure to tell Detective Buch about his employment with Bayshore Exxon, even though Detective Buch reviewed each answer supplied by Mr. Ramsey on his Personal History Disclosure form and asked if there were any additions to those answers (T 81-14 to 25; T 82-1,2).

Based upon the foregoing findings, I CONCLUDE that Mr. Ramsey intentionally defrauded the Department of Labor & Industry of the State of New Jersey; that such conduct, occurring only six (6) months prior to the filing of the application for licensure, indicates that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, requiring disqualification of the applicant pursuant to the provisions of N.J.S.A. 5:12-86g.

I FURTHER CONCLUDE that the petitioner has failed to reveal facts material to qualification, i.e., his employment at Bayshore Exxon, and that said failure was a result of a specific intent on the part of Mr. Ramsey to prevent the Casino Control Commission from learning of the unlawful receipt of Unemployment Compensation Benefits. That failure requires that the application for licensure be denied pursuant to N.J.S.A. 5:12-86b.

The Division of Gaming Enforcement contends that there was an additional fraudulent receipt of unemployment benefits

which took place in August of 1978. However, the evidence concerning the dates of employment are simply not clear. The claimant ledger (R-1) shows that the petitioner did advise the Department of Labor & Industry that he earned $54 some time during the month of August and the appropriate benefit reduction was made. Therefore, I cannot find by a preponderance of evidence that there was any fraudulent receipt of benefits in August, 1978.

The final objection of the Division of Gaming Enforcement is based upon the arrest and conviction record of the petitioner. Regarding that record I find the following facts:

1. On May 5, 1965 Mr. Ramsey was arrested as a Juvenile Offender at the age of 16 for stealing a purse by forcibly taking it from a young girl. He pled guilty and was put on probation.

2. On February 6, 1967 Mr. Ramsey was arrested as a Juvenile for giving false information to the police. He was also charged with careless driving and leaving the scene of an accident. The false information consisted of advising the police that the car, which he had been driving, had been stolen. He pled guilty and was given probation.

3. On April 11, 1970 he was either found guilty or pled guilty to possessing an alcoholic beverage in a motor vehicle and possession of marijuana under 25 grams.

4. On July 20, 1975 he pled guilty to committing an assault and battery upon his wife.

All of these convictions were disclosed on the applicant's Personal History Disclosure Form and are not contested. The frequency of Mr. Ramsey's violations of the law create grave questions concerning his good character and integrity. Although letters of recommendation were offered into evidence (P-10a, b, c, d, & e) they do not constitute clear and convincing evidence of his good character, honesty and integrity and his reputation for same in the face of the substantial arrest and conviction record. Petitioner has also failed to establish his rehabilitation. The 1978 fraudulent receipt of unemployment benefits indicates that the petitioner is not rehabilitated.

For all of the foregoing reasons IT IS THEREFORE ORDERED that the application for licensure be DENIED.

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

I HEREBY FILE with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

DATE NORMAN D. SMITH, ALJ

Receipt Acknowledged

DATE AGENCY HEAD

Mailed to Parties

DATE OFFICE OF ADMINISTRATIVE LAW

mjl

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1258-80
CCC DOCKET NO. 80-EA-24

IN THE MATTER OF THE APPLICATION :
OF ANTHONY J. RANIERI FOR :
LICENSURE AS A CASINO HOTEL :
EMPLOYEE (WAITER) :

FINAL ORDER

A hearing having been conducted in the above-captioned matter before the honorable Jack Berman, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of those proceedings and the Initial Decision of the Administrative Law Judge, the exceptions and objections filed on behalf of the Division of Gaming Enforcement and the Applicant; and the Commission having resolved at its public meeting of November 26, 1980, to reject the Initial Decision of the Administrative Law Judge which recommended granting licensure, and further having resolved to grant the Applicant's motion to amend his application to be one for a casino hotel employee license, and further having resolved to deny the application for licensure;

IT IS on this 2nd day of December, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected in its entirety;

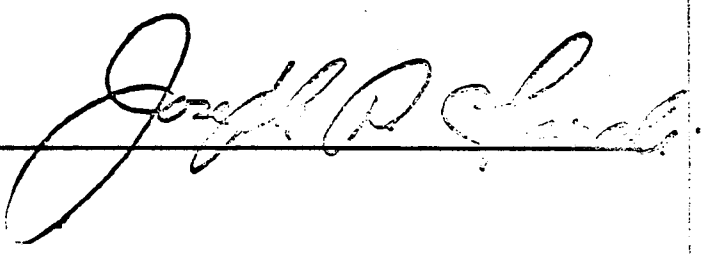
IT IS FURTHER ORDERED that the application of Anthony J. Ranieri for licensure as a casino hotel employee be and hereby is denied for the reasons stated on the record of the public

meeting of November 26, 1980 and in the Final Commission Decision on this matter to be issued by the Chairman, which is incorporated herein by reference and made a part hereof;

IT IS FURTHER ORDERED that the Chairman be and hereby is authorized to issue a Final Decision on behalf of the Commission explaining the reasons for the rejection of the Initial Decision and setting forth the reasons for denying the application of Anthony J. Ranieri for licensure as a casino hotel employee;

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: 

DATED: December 2, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1258-80

AGENCY DKT.NO. 80-EA-24

IN THE MATTER OF:

THE APPLICATION OF ANTHONY J. RANIERI FOR LICENSURE AS A CASINO EMPLOYEE (RESTAURANT)

Record Closed: September 30, 1980 Decided: October 2, 1980

Agency Received: Mailed to Parties:

APPEARANCES:

Gerard C. Gross, Esq., for Petitioner
(Tort, Jacobs, Gross, Rosenberger and Todd, attorneys)

Raymond J. Marquez, Deputy Attorney General, for Respondent
(John J. Degnan, Attorney General of New Jersey, attorney)

BEFORE **JACK BERMAN**, ALJ:

The petitioner, Anthony J. Ranieri, filed an application, including a personal history disclosure form with the Casino Control Commission for licensure to work as a casino hotel employee, waiter. Petitioner received a letter, dated February 8, 1980, from the Commission indicating that based upon an attached report of the Division of Gaming Enforcement (Division), "there is a substantial possibility that the Commission will deny your application." Based upon that letter the petitioner exercised his right to request a hearing on his application. The matter was then transmitted to the Office of

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

A prehearing conference was held on May 1, 1980, from which a prehearing order was issued. A public hearing was then held in Pleasantville, New Jersey on September 2, 1980.

At issue is:

A. Whether petitioner's record of arrest evinces the commission of acts which should lead to his disqualification under N.J.S.A. 5:12-86(g);

B. Whether the petitioner can establish by clear and convincing evidence that he has the reputation for good character, honesty and integrity for licensure as required by N.J.S.A. 5:12-89(b) as made applicable by N.J.S.A. 5:12-90(b); and

C. Whether the petitioner can demonstrate rehabilitation in accordance with N.J.S.A. 5:12-90(h) as a defense to issue A.

A list of the exhibits placed into evidence at the hearing appears in the attached appendix.

The Division's case consisted solely of the petitioner's arrest record which the parties stipulated to. (J-1 thru J-4 and R-1 thru R-3).

From it it is discerned that petitioner has been arrested eleven times. One arrest occurred in 1954, when he was 21 years old, for disorderly conduct for which he was discharged. In 1969, he was arrested for assault and battery, malicious mischief and threats as a result of a domestic dispute with his former wife, and received a suspended sentence on his plea of guilty.

The remainder of his arrests was for various forms of illegal gambling for which he was convicted twice, receiving a suspended sentence and a $200 fine. His most recent arrest occurred on March 21, 1978. All arrests occurred in Philadelphia, Pennsylvania. He has never been arrested or charged with any violation of law in the State of New Jersey.

The petitioner is 47 years old. He is divorced and has two children, one of whom, a minor, he supports. He has been a resident of the State of New Jersey since January, 1979.

He is currently employed at Resorts International Casino Hotel as a waiter in the Cappriccio Restaurant, having commenced employment in September 1979.

N.J.S.A. 5:12-86(g) refers to the "Commission ... of any act or acts" that are per se disqualifiers listed in N.J.S.A. 5:12-86. It is noted that that section lists N.J.S. 2C:37-1, et seq. (gambling offenses which constitute crimes of the third and fourth degrees). N.J.S. 2C:37-4 is specifically applicable here. It declares a person guilty of a crime of the fourth degree if such person maintains a gambling resort on premises which he has a "substantial proprietary or other authoritative control ... which are being used with his knowledge" for gambling and "he accepts or receives money" for it. The evidence before me reveals that in 1973, the petitioner was arrested for being a proprietor of a gaming house in Philadelphia. Petitioner's testimony was that he knew someone was using his rented premises for gambling purposes and that he received money for such use.

His testimony also reveals that in 1976 and in 1978 he again knowingly rented his premises for gambling purposes. Thus it is concluded that the petitioner committed acts constituting per se disqualifiers under the Act.

However, pursuant to section 90 (h) of the Act, petitioner shall not be denied a casino employee license on the basis of these acts, provided that he has affirmatively demonstrated his rehabilitation. In determining whether the petitioner has affirmatively demonstrated his rehabilitation, the following factors have been considered by me:

(1) The nature and duties of the position applied for. The petitioner is applying for a license as a casino hotel employee for the position of waiter which has been virtually his life-long occupation. He will have no contact with the casino itself or with any of the ancillary operations of the casino other than those directly involved in his job as a waiter.

(2) The nature and seriousness of the offenses. The evidence presented showed that the petitioner's participation in all the offenses charged was of an extremely low level. Nothing has been shown that the petitioner was anything other than an employee of an illegal gambling operation. Any benefits he derived were limited solely to whatever small salary he was paid by those who actually backed the operation.

(3) The circumstances under which the offenses occurred. Three witnesses testified that they had been reared in the same area of Philadelphia as petitioner. According to them it was a poor-economic area where gambling was a way of life and socially acceptable by large numbers of the populace in that area.

(4) The date of the offense. The petitioner's arrests date from 1954 through 1978. However, he has had no arrests from 1957 through 1967 and has not been involved with any difficulties with the law since March of 1978, and particularly since permanently moving to New Jersey, in January 1979.

(5) The age of the petitioner when the offenses were committed. The petitioner's last arrest occurred when he was approximately 45 years old.

(6) Whether the offenses were isolated or repeated incidents. The offenses were repeatedly scattered over a period of approximately 24 years.

(7) Any social conditions which may have contributed to the offense. As per the testimony previously summarized in factor #3 illegal gambling in the area where petitioner resided most of his life was quite common, and socially acceptable by large numbers of the populace in that area.

(8) Any evidence of rehabilitation including ... the recommendation of persons who have or have had the applicant under their supervision. The manager of the Cappricco Restaurant, testified that he did not know the petitioner prior to September 1979, but only through his employment as a waiter at the Cappriccio Restaurant. Further, that the petitioner was one of the best waiters they had and that he had no hesitation whatsoever in continuing his employment.

The Gourmet Captain who is petitioner's immediate supervisor, testified that he worked with the petitioner at the Cappriccio Restaurant and had, in fact, known him in Philadelphia when they were younger. He had knowledge of the petitioner's arrest record, but testified that illegal gambling was pervasive in Philadelphia, and also that the petitioner was a fine waiter and employee of the Cappriccio.

N.J.S.A. 5:12-89b(2) burdens the applicant to show by "clear and convincing evidence (his) reputation for good character, honesty and integrity." Five character witnesses testified that petitioner has a good reputation for honesty and integrity. One considered him a "great guy - always there when you need him." Another considered his reputation for honesty and integrity in Atlantic City as being "impeccable." Another testified that petitioner was "one of the most honest and self-reliant persons he has ever

met" and that petitioner is a "peacemaker." All witnesses were aware of petitioner's arrest record prior to rendering their testimony.

Having reviewed the testimony and other evidence offered in this matter (see Appendix of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, this Court **FINDS AND CONCLUDES:**

1. Petitioner has applied for a license to permit him to work as a casino hotel employee, waiter.

2(a). Petitioner has been arrested eleven times over 25 years. One arrest occurred when he was 21 years old in 1954, for disorderly conduct and for which he was discharged. In 1969, he was arrested for assault and battery, malicious mischief and threats as a result of a domestic dispute with his former wife and received a suspended sentence on his plea of guilty.

(b). The remainder of the arrests involve various forms of illegal gambling for which he was convicted twice; receiving a suspended sentence, and a $200 fine.

(c). All arrests occurred in Philadelphia, Pennsylvania.

3. Petitioner's acts in 1973, 1976 and 1978 constitute maintaining a gambling resort contrary to the provisions of N.J.S. 2C:37-1, et seq., and is specifically enumerated as an automatic disqualifier for licensure under Section 86c(2) of the Casino Control Act made applicable to petitioner under N.J.S.A. 5:12-86(g).

4. Petitioner has overcome his disqualification from licensure on the basis of his commission of an act (Section 86g) enumerated under Section 86c(2) of the Act by demonstrating his rehabilitation pursuant to Section 90(h) of the Act by clear and convincing evidence.

5. Petitioner has demonstrated by clear and convincing evidence that he possesses that degree of character, honesty and integrity, requisite for licensure as a casino hotel employee.

Based upon the facts adduced at the hearing and the applicable statutory provisions, this Court **CONCLUDES** that petitioner has demonstrated by clear and convincing evidence his rehabilitation, within the meaning of N.J.S.A. 5:12-90(h), and has sustained his affirmative burden of establishing by clear and convincing evidence his

requisite qualifications for licensure, within the meaning of N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

It is therefore **ORDERED** that a casino employee license, permitting petitioner to work as a casino hotel employee, waiter, be **GRANTED** to petitioner.

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

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

October 2, 1980
DATE

Jack Berman
JACK BERMAN, ALJ

Receipt Acknowledged:

October 6, 1980
DATE

David Amaji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

gyd

APPENDIX

EXHIBITS

J-1 Rap sheet re Petitioner - Philadelphia Police

J-2 Rap sheet re Petitioner - Philadelphia Police more extensive

J-3 Rap sheet - FBI

J-4 Rap sheet - Harrisburg State Police Authority

J-5 Personal History Disclosure Form of the Applicant

R-1 Arrest Report - 4/23/76

R-2 Arrest Report-4/3/76 by Ptl. Marconi - Philadelphia Police

R-3 Philadelphia Police Report - Officer Dansfield 3/21/78 arrest - 4 pages

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CL-1
JANUARY 23, 1980

IN THE MATTER OF THE APPLICATION :
OF RESORTS INTERNATIONAL HOTEL, :
INC. TO RENEW ITS PLENARY CASINO :
LICENSE. : FINAL COMMISSION DECISION

NEW JERSEY CASINO CONTROL COMMISSION:

Joseph P. Lordi, Chairman
Kenneth N. MacDonald, Vice-Chairman
Albert W. Merck, Commissioner
Alice Corsey, Commissioner
Prospero DeBona, Commissioner

I. INTRODUCTION

On May 15, 1978, Resorts International Hotel, Inc., (hereinafter "Applicant") was issued a Temporary Casino Permit by the Casino Control Commission pursuant to the provisions of P.L. 1978, c.7. See In the Matter Of an Application of Resorts International Hotel, Inc. for a Temporary Casino Permit, Docket No. TCP 78 (hereinafter "Temporary Permit Decision"). This permit became effective on May 26, 1978. Subsequently, on February 26, 1979, a plenary casino license was issued to the Applicant. In accordance with N.J.S.A. 5:12-87(e), this license was issued for a term of one year and expires on February 26, 1980.

On November 28, 1979, exactly 90 days prior to expiration, the Applicant filed an application for renewal of its plenary casino license. N.J.S.A. 5:12-88(b) prescribes that such an application

must be filed no later than 90 days prior to the expiration of the current license. The application consists of an updated Business Entity Disclosure Form with appropriate appendices and qualifier (key employee) renewal forms for Resorts International Hotel, Inc. and its parent company, Resorts International, Inc. In addition, the Applicant submitted certain documents outlining its performance during the past year under the Equal Employment Opportunity regulations, N.J.A.C. 19:53-1.1 et seq.

II. STANDARDS FOR RENEWAL

The renewal of a casino license is addressed by N.J.S.A. 5:12-88 and N.J.A.C. 19:42-3.6. These sections provide in substance that, subject to the power of the Commission to deny, refuse to renew, revoke or suspend licenses, the Commission shall renew a casino license upon the timely filing of a proper renewal application and payment of all license fees and taxes as required by law. Although they do not specifically set forth the criteria against which a renewal application is to be reviewed, N.J.S.A. 5:12-80 provides in part:

> a. It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications, and for a casino license the qualifications of each person who is required to be qualified under this act as well as the qualifications of the facility in which the casino is to be located.
>
> b. Any applicant, licensee, or other person who must be qualified pursuant to this act shall provide all information required by this act and satisfy all requests for information pertaining to qualification and in the form specified by the Commission...

It is thus clear that an applicant for renewal of a casino license must demonstrate by clear and convincing evidence that it, each qualifier and its casino hotel facility continue to meet the requirements for casino licensure before a renewal may be issued. Such information is to be provided in the form specified by the Commission.

The Commission receives and seeks vast quantities of information from and concerning a licensee during the course of the license term. The scope of this information encompasses every facet of the licensee's operation and conduct, and is reviewed by the Commission in varying contexts and in conjunction with various matters. It is this information, together with previous filings, the various documents submitted in conjunction with the application for renewal and the report of the Division of Gaming Enforcement which constitutes the record in this matter and which the Commission must consider in determining if the Applicant has met the statutory burden it must for renewal of its casino license.

III. THE CORPORATE ENTITY

Except for a change in corporate officers of the applicant corporation, no changes have occurred in the composition of the corporate entity of either the Applicant or its parent company during the last year which affect the Applicant's suitability for licensure. The Business Entity Disclosure Form of Resorts International Hotel, Inc. dated November 11, 1979 discloses that the

following individuals have become officers of the applicant corporation since the filing of its initial license application on December 22, 1978:

Marvin Ashner	President
Fredrick Schenck	Senior Vice President, Administration
Robert Fiore	Senior Vice President, Finance
Sandra Manno Shenfeld	Vice President, Advertising & Promotion
Alan Raab	Vice President, Advertising & Promotion
George Fetter	Vice President, Resident Manager
James Carr	Vice President, Casino Operations

Pursuant to N.J.S.A. 5:12-105(g), these individuals, with the exception of Mr. Carr who is presently licensed as a casino key employee, may not exercise any power of their respective offices until qualified and licensed in accordance with the provisions of N.J.S.A. 5:12-85(c) and 89. Ms. Shenfield and Messrs. Raab and Fetter have come to be corporate officers by way of promotion and may continue to perform functions other than key employee functions prior to appropriate licensing and qualification.

IV. CASINO HOTEL FACILITY

On September 19, 1979, a number of modifications and additions to the approved hotel facility were approved. See IN THE MATTER OF THE APPLICATION OF RESORTS INTERNATIONAL HOTEL, INC., A CASINO

LICENSEE, TO AMEND ITS CASINO LICENSE AND ITS CERTIFICATE OF OPERATION SO AS TO AUTHORIZE A 60,000 SQUARE FOOT BOARDWALK CASINO, THE ANNEXATION OF A 168 SLEEPING UNIT MOTEL BUILDING AND THE CONSTRUCTION OF THE BRADWAY SITE ADDITION, Docket No. 79-CLI (Addendum) (September 19, 1979). At that time, it was determined that the Applicant's approved hotel facility continued to comply with the requirements of the Casino Control Act, as discussed in the Temporary Permit Decision, and that the facility had sufficient qualifying space to support a 60,000 square foot casino. The relief granted in that matter was expressly conditioned upon certain actions by the Applicant, including completion of the Bradway addition on or before September 15, 1980 and completion of the Bradway addition pool and health club on or before June 30, 1980. The Applicant represents that despite its best efforts, delays in obtaining governmental building approvals have pushed back the estimated completion date of the building to November 1, 1980 and the pool to July 15, 1980. Work on all other commitments is proceeding substantially according to schedule. In consideration of the good faith efforts of the applicant to complete all commitments in a timely manner, the decision issued under Docket No. 79-CLI (Addendum) is hereby amended to condition the relief granted therein upon completion of the Bradway addition and Bradway addition pool by November 1, 1980 and July 15, 1980, respectively, subject to the continuing power of the Chairman to extend the completion date upon a showing of hardship or other good cause.

An additional modification to the approved hotel authorized on September 19, 1980 was the construction of tennis courts on the roof above the casino room at elevation 36'6". The Applicant represents that instead of locating the tennis courts there, it will construct them on the roof of a parking garage and sports complex which it commits to build on the site of the Coronet Motel on North Carolina Avenue, just north of the 168 room Ramada Inn structure which will shortly be annexed to the approved hotel.

The Chalfonte Hotel, directly across North Carolina Avenue from the approved hotel and physically annexed thereto by a bridge owned by the Applicant was acquired by Harrah's-Holiday Inn during the previous year. The purchaser has submitted a $100,000 casino license fee deposit to the Commission and has stated its intent to demolish the existing structure and erect a totally new casino hotel on the site by 1982. In exchange for the Chalfonte property, the Applicant received among other things the Seaside Hotel, directly across Pennsylvania Avenue from its approved hotel. It presently functions as both a guest hotel and office space for Resorts International staff. The Applicant has no present plans to further develop that property and must keep its operation of the Seaside Hotel totally separate and distinct from that of the approved hotel complex.

The sale of the Chalfonte was brought about in part by the settlement of what has come to be known as the Barco law suit. This suit concerns the right to purchase the 56 acre urban renewal

tract to the east of Virginia Avenue upon which the applicant has committed to build a 1,000 room casino hotel after resolution of the riparian rights issue with the State. In addition, as a condition of purchasing the land, the Applicant is required to and has, in fact, committed itself to the construction of 1,200 units of housing on that site. The Applicant represents that although it has not yet completed its master plan for development of this tract, the type of units to be erected will be subject to the requirements and approval of the Atlantic City Housing Authority and the federal Department of Housing and Urban Development. As the Applicant further develops its master plan for development of this area it shall, on an ongoing basis, advise and consult with Commission staff.

V. URBAN REDEVELOPMENT

On May 15, 1978, the applicant was granted a Statement of Compliance pursuant to N.J.S.A. 5:12-81 indicating that it had fulfilled the casino licensing requirements contained in N.J.S.A. 5:12-84(e). This Statement of Compliance remains in full force and effect until revoked by the Commission, based on a change of circumstances affecting such compliance. As noted in the decision of September 19, 1979, the further development of the casino hotel and related facilities such as the Ramada Inn, Bradway addition and Seaside/Terrace complex has neither displaced any residents nor caused the loss of any residential housing units.

As casino development in Atlantic City intensifies, so does the strain on housing, transportation and similar population support functions and facilities. As more individuals relocate to the Atlantic City area as employees of casino hotels and as more persons are displaced by casino development, these functions and facilities may be strained to the breaking point. Although it is difficult, if not impossible, to quantify the precise effect each successive casino development has on these problems, it is clear that they collectively contribute to them. To an appropriate extent, each licensee should be required to contribute proportionately toward their resolution.

At the present time, perhaps the two most serious problems generated by the rapid development of Atlantic City and its surrounding area are the lack of adequate housing and transportation. To address the housing problem, the Applicant has pledged to invest during the license year no less than five million dollars of equity capital in housing and efforts to develop housing in Atlantic City and its region. The Applicant represents that it will direct this money toward the cost of real property, improvements thereon, and items normally capitalized in the development of housing, and that it will use its best efforts to maximize the effect of this investment by the use of other non-recourse financing techniques so as to create a multiplier effect against this amount to the greatest extent possible. Further, the Applicant has pledged to meet periodically with Commission staff to discuss

its progress and to seek advice on the projects it is presently considering or may consider in the future. At the appropriate time the Applicant will present its proposal(s) for review and approval to Commission staff. This commitment is one wholly separate and apart from the Applicant's obligation to erect 1,200 units of housing on the urban renewal tract, as required by its terms of purchase from the Housing Authority. At this juncture, we make no determination whatsoever as to the eligibility of any project undertaken pursuant to this commitment under the two percent investment tax credit provided for in N.J.S.A. 5:12-144. We make no commitment that any such project or projects will be found eligible nor do we commit to consider them appropriate for eligibility. At the appropriate time the applicant may make proper application for consideration of these issues.

With respect to transportation, the Applicant represents that it is encouraging employee use of car pooling and intercept parking. Further, it is presently participating in developing the proposal of the Atlantic City Expressway Authority for an intercept parking lot over the Expressway.

VI. OPERATIONS

Exhibit C-1, a document titled Report on Resorts International Hotel, Inc.'s Application for Renewal of a Casino License prepared by the Commission's Division of Financial Evaluation and Control, outlines the Applicant's performance during the past year in the areas of financial stability; integrity and responsibility; casino operations; and business ability. To the extent relevant, the report examines

the performance of the Applicant's parent company, Resorts International Hotel, Inc. Among other things, it includes a review of the Applicant's financial position, profitability, solvency, casino staffing and operation, compliance with the Accounting and Internal Control Regulations, N.J.A.C. 19:45-1.1 et seq., patron complaints and general business ability as evidenced by its overall performance. Notwithstanding the pending charges filed by the Division of Gaming Enforcement concerning alleged violations pertaining to credit transactions in the casino (State v. Resorts International Hotel, Inc., et. al., Docket No. 79-21), the Report indicates that the Applicant has performed acceptably enough in these areas during the past year to warrant relicensure.

During the license year, the number of authorized slot machines in the Applicant's casino was expanded from 1,354 to 1,640, 1,600 of which are presently in use. Of this number 1,012 or 63.25 per cent are manufactured by Bally Manufacturing Company. In March, 1978 this Commission adopted a resolution restricting the number of slot machines allowed in a casino manufactured by any one manufacturer to a maximum of 50%. This restriction was subsequently imposed generally by regulation. See N.J.A.C. 19:46-1.32. Under the terms and conditions of these actions, the applicant is presently in violation of neither. Nonetheless, the purposes behind the regulation will best be served, and subsequent events now make it appropriate for the Applicant to bring its slot configuration into compliance with this regulation. The Applicant shall, within 30

days, devise a plan to bring its slot configuration into compliance with the "50 percent rule" and submit such plan to Commission staff for review and approval.

In the areas of Employee and Enterprise Licensing, the Casino Control Act and regulations adopted pursuant thereto require numerous and periodic submissions by a casino licensee. These submissions include work permit information and contract approval forms. Although the Applicant has made substantial progress in responding to these requirements, it has done so in a piecemeal fashion. It represents that its new computer system, which it expects to be operational in the near future, will enable it to respond to these requirements in a comprehensive manner. To address this matter, the Applicant has committed to develop within 90 days a comprehensive system of internal controls to address the statutory and regulatory requirements administered by the Eneterprise and Employee Licensing Sections. It shall meet periodically during this period with Commission staff for guidance and to report on its progress.

In the area of affirmative action, the Applicant currently employs a total of 5,049 persons at the casino hotel premises. Of these employees, 1,379 or 27.3% are minority individuals and 2,166 or 43% are women. At the uppermost level of the workforce there remains some underutilization of minority and female employees. Based on the Applicant's performance during the past year, we deem it appropriate and proper to require the applicant by February 1, 1981 as an interim goal to increase its female and minority work-

force at the "manager" and "official" level from its present 23.7% and 14.9% respectively to 34% and 20% respectively and, as an interim goal, to increase its female and minority workforce at the professional level from its present 35% and 12.3% respectively to 39% and 17% respectively. By no later than April 1, 1980, the Applicant shall formulate and submit for staff review and approval programs of recruitment and training designed to meet these goals. Additionally, by April 1, 1980, the Applicant shall formulate and submit for staff review and approval a plan to organize its administrative departments relating to personnel, labor relations, training, and affirmative action so as to address more efficiently and effectively the notion of upward mobility.

VII. FINDINGS AND CONCLUSIONS

Based on the information contained in the record, we find that Resorts International Hotel, Inc. continues to meet the requirement set forth in the Casino Control Act and the Regulations of the Commission for the issuance of a plenary casino license.

Said license is hereby renewed for a period of one year commencing February 26, 1980 subject to and expressly conditioned upon fulfillment of the conditions outlined below:

1. The Applicant shall, during the license year, invest a minimum of five million dollars of equity capital in residential housing in the Atlantic Ctiy region as described in the record of the casino license renewal hearing of January 23, 1980 and shall periodically meet with Commission staff to discuss its progress and seek advice on such investment.

2. The Applicant shall timely complete all commitments relating to the enhancement and expansion of its casino hotel complex as described in Commission Opinion CLI 79-1 (addendum), dated September 19, 1979, provided, that upon a showing of hardship or other good cause, the Chairman may extend the completion date of such commitments.

3. The Applicant shall develop a comprehensive internal control system to address the statutory and regulatory requirements administered by the Employee and Enterprise Licensing Sections of the Commission within 90 days and shall periodically meet with the Commission staff to discuss its progress and seek advice on such systems, provided that upon a showing of hardship or other good cause, the Chairman may extend the completion date of this condition.

4. The Applicant shall, within 30 days, develop a plan to reduce the number of slot machines in use on its casino floor manufactured by the Bally Manufacturing Company to a maximum of 50% of the number in use.

5. By no later than February 1, 1981, the Applicant shall increase the minority and female representatives in the "officials and managers" level of its workforce to 20% and 34% respectively as an interim goal.

6. By no later than February 1, 1981 the Applicant shall increase the minority and female representation in the "professional" level of its workforce to 17% and 39% respectively, as an interim goal.

7. By no later than April 1, 1980 the Applicant shall formulate and submit for staff review and approval programs of recruitment and training designed to facilitate compliance with conditions 5 and 6 above.

8. By no later than April 1, 1980, the Applicant shall formulate and submit for staff review and approval a plan to organize its administrative departments relating to personnel, labor relations, training and affirmative action so as to more effectively and efficiently address the notion of upward mobility.

9. Resorts International, Inc. shall take appropriate steps to appoint at least two (2) directors and at least three outside, independent persons to form an audit committee for the express purpose of monitoring compliance with directives of the New Jersey

and Bahamian gaming authorities, making such recommendations to the Board of Directors as it may feel appropriate to enhance the ability of Resorts International, Inc. to comply, and performing such other functions and responsibilities as stated in the Report of the Division of Gaming Enforcement. All agendas and minutes of all audit committee meetings must be filed with the Casino Control Commission and the Division of Gaming Enforcement.

10. The Director of Internal Audit for Resorts International, Inc. through its audit committee, shall report in writing to the Commission and Division on at least a monthly basis, or more often as circumstances so warrant, on the details of the corporation's efforts to comply with Bahamian directives and regulatory standards.

11. The audit committee shall draft and cause to be promulgated a code of conduct for all directors, officers and employees of Resorts International, Inc. and its subsidiaries, including appropriate provisions regarding conduct and relationships with governmental officials, and shall submit such code to the Commission for its approval within 30 days after the establishment of the audit committee.

12. Resorts International, Inc. shall instruct its employees and all of its subsidiary companies not to have any association whatsoever with James Neal under pain of disciplinary action, and, in addition, that any association on the part of any officer, director or principal employee of Resorts International, Inc. or any of its subsidiary companies with James Neal be cause for Commission remedial action against both the involved individual and Resorts International Hotel, Inc. in any appropriate manner up to and including disqualification from licensure.

NEW JERSEY CASINO
CONTROL COMMISSION

By: Joseph P. Lordi
Joseph P. Lordi
Chairman

Dated: _____

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-21

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

Charging Party,

v.

RESORTS INTERNATIONAL HOTEL, INC.; WALTER I. ROGERS, Vice President; JAMES D. CARR, Casino Manager; COREY T. CLERK, Casino Controller; GARY D. THOMPSON, Casino Cage Manager; GARY GRANT, Credit Manager,

Respondents.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission at its public meeting of July 24, 1980; and the Commission having considered the Stipulation of Settlement embodying the terms and conditions consented to by and between the parties together with the Report and Recommendation of Commissioner Prospero De Bona Jr.; and the Commission having found that the terms and conditions set forth in the Stipulation of Settlement are fair, reasonable and consistent with the public interest and policies of the Act;

It is on this 11th day of August, 1980 ORDERED that the Report and Recommendation and Stipulation of Settlement herein be and hereby are adopted by the Commission and are incorporated herein by reference and made a part hereof;

It is further ORDERED that the Complaint herein be and hereby is dismissed and that Respondent Resorts International Hotel, Inc. pay to the Commission a fine of $225,000; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

DATED: August 11, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. RESORTS INTERNATIONAL HOTEL, INC.; WALTER I. ROGERS, Vice President; JAMES D. CARR, Casino Manager; COREY T. CLERK, Casino Controller; GARY D. THOMPSON, Casino Cage Manager; GARY GRANT, Credit Manager, Respondents.	REPORT AND RECOMMENDATION

PROSPERO DE BONA, JR.
COMMISSIONER

On or about October 3, 1979, the Division of Gaming Enforcement filed a complaint against respondents alleging approximately 800 individual violations of the Casino Control Act and the Commission's regulations governing the issuance of gaming credit.

At the same time, the Division filed a request for emergent injunctive relief.

The controversy was assigned to me and on October 9, 1979, after a hearing in the Court House in Freehold, New Jersey, I issued an order designed to require respondent Resorts International Hotel, Inc. to restore and maintain the integrity of its credit procedures, to perform certain audits and inventories and to retain Price, Waterhouse, an independent accounting firm, to conduct additional inventories and audits of the credit records and otherwise to bring its credit procedures in conformity with the pertinent rules and regulations.

Subsequently, after reviewing the data developed in accordance with the Order, the Division moved to amend its complaint to reflect approximately 7,500 individual violations of the credit regulations. In April, that motion was granted. At the same time, various motions pertaining to discovery were heard and the problems resolved.

A tentative date for hearing was fixed. Meanwhile, however, the parties informed me, as Hearing Examiner, that they had arrived at a compromise which would terminate the litigation.

On Wednesday, June 11, 1980, the attorneys for the parties appeared before me to present a proposed Stipulation of Settlement for initial approval subject to the final determination of the full Commission.

At that time, it was represented to me that the respondent had complied completely with the emergency order previously issued and that the respondent Resorts International Hotel, Inc. had made and was continuing to make an effort to comply completely with the statute and the regulations pertaining to credit procedures.

It was further represented by the attorney for the Division that the respondents were currently in compliance.

It was also stated that there was no allegation or proof that the alleged infractions had been intentional or deliberate.

The Division submitted that there was no allegation of misappropriation of any money as a result of the alleged deviations.

However, the parties agreed that the violations were serious, and that it was of extreme importance that such improprieties not be tolerated.

The natures of the violations ranged from trivial to more important. They included notations on credit records in pencil instead of by pen and others such as the engagement in credit operations by unauthorized persons.

I noted during the colloquy that there was some question, which would have been an issue at the hearing, of whether the alleged 7,552 infractions should be treated as separate, individual violations or whether each type of infraction should be considered as a single violation: i.e., if a pencil were utilized improperly ten times, should we find that there were ten violations or simply one?

Accordingly, the parties proposed that the case be settled on the basis that Resorts International Hotel, Inc. pay a fine in the amount of $225,000.

The attorney for the Division observed that such a fine would be the greatest imposed against any casino in the State of New Jersey.

Being persuaded that the respondents have brought themselves into compliance with our laws and regulations and that the amount of the penalty is adequate, I recommend that the Commission accept and approve the Stipulation of Settlement, which includes provisions that respondent Resorts International Hotel, Inc. pay a fine in the amount of $225,000 and that all charges against all other respondents be dismissed with prejudice.

Copy of Stipulation is attached.

Respectfully submitted,

PROSPERO DE BONA,
HEARING EXAMINER

DATED: June 27, 1980

FILED

JUN 11 1980

CASINO CONTROL COMMISSION

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

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. RESORTS INTERNATIONAL HOTEL, INC.: WALTER I. ROGERS, Vice President; JAMES D. CARR, Casino Manager; COREY T. KLERK, Casino Controller; GARY D. THOMPSON, Casino Cage Manager GARY GRANT, Credit Manager, Respondents.	)	STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, John J. Degnan, Attorney General of New Jersey, Attorney for Charging Party, by Howard M. Barman, Deputy Attorney General, representing the Charging Party, State of New Jersey, Division of Gaming Enforcement, and Joel H. Sterns, Esquire, of the law office of Sterns, Herbert and

Weinroth, representing the Respondents, Resorts International Hotel, Inc., Walter I. Rogers, Vice President; James D. Carr, Casino Manager; Corey T. Klerk, Casino Controller; Gary D. Thompson; Casino Cage Manager; and Gary Grant, Credit Manager, and the matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1. Resorts International Hotel, Inc., acknowledges that in 1978-1979 it failed to comply in certain respects with provisions of the Casino Control Act and the regulations promulgated thereunder relating to credit approval procedures, the maintenance of permanent records, credit information and accounting records, the processing and deposit of checks, employee training, and the separation of functions. The failure to comply with the above procedures was the subject of an Emergency Order issued by the Honorable Prospero DeBona, Commissioner, on October 9, 1979, which directed Resorts to fully comply with all provisions of the Casino Control Act and regulations relating to accounting and internal controls, and with which Resorts did comply. The Division of Gaming Enforcement is presently satisfied that Resorts International Hotel, Inc. has fully complied with said Order.

2. Although the deviations from the regulations and statute noted above did not result in the improper diversion or accounting of casino revenues, they constituted a serious departure from the appropriate controls, and increased the possibility of improprieties, the likelihood of which would be decreased when these controls are maintained.

3. Respondent Resorts International Hotel, Inc. agrees that it will continue to comply with the appropriate accounting and internal controls procedures in the future.

4. The Division of Gaming Enforcement agrees to, and hereby does, dismiss

its complaint against the individual Respondents, Walter I. Rogers, Vice President; James D. Carr, Casino Manager; Corey T. Klerk, Casino Controller; Gary D. Thompson, Casino Cage Manager; and Gary Grant, Credit Manager, in the herein matter.

5. Respondent Resorts International Hotel, Inc. agrees to pay a fine of two hundred and twenty-five thousand dollars ($225,000.00).

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

Howard M. Barman
Deputy Attorney General
Attorney for Charging Party

Joel H. Sterns, Esq.
Sterns, Herbert and Weinroth
Attorney for Respondents

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 404-79
CCC DOCKET NO. 79-EA-16

IN THE MATTER OF THE APPLICATION :		
OF JOSEPH RICHARDS FOR LICENSURE :		
AS ASSISTANT TO THE DIRECTOR :		ORDER
OF ADMISSIONS OF A GAMING :		
SCHOOL. :		

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Richard McGill of the Office of Administrative Law; and the Commission having considered the entire record of proceedings, the Initial Decision of the Administrative Law Judge and the exceptions to the Initial Decision filed by the Division of Gaming Enforcement and by the Applicant; and the Commission having resolved at its public meeting of September 4, 1980 to reject the Initial Decision and remand this matter to the Office of Administrative Law for the reasons specified below,

IT IS on this 4th day of September 1980, ORDERED that this matter be remanded to the Office of Administrative Law for the purpose of adducing additional evidence and further for the purpose of making more detailed findings of fact and conclusions of law on the following issues:

1. Whether, by reason of the nature and scope of the Applicant's duties during the course of his employment at East Coast Gaming & Electronics School, he was and is a principal employee within the meaning of N.J.S.A. 5:12-38.

2. Whether the Applicant's employment at East Coast Gaming & Electronics School in an unlicensed capacity violates N.J.A.C. 19:44-5.1.

3. Assuming the Applicant's employment at East Coast Gaming & Electronics School was in violation of N.J.A.C. 19:44-5.1, was such violation intentional or in reckless disregard of the regulatory process.

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: September 4, 1980

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

Alan M. Stark, Esq.
200 Executive Drive
West Orange, New Jersey 07052

REPORT ON HEARING PROCEEDING
In Re: Joseph J. Richards
O.A.L. DKT. NO. C.C.C. 404-79
Agency Ref. 79-EA-16

and

Fredric E. Gushin, DAG
Division of Gaming Enforcement
Independence Hall
Trenton, New Jersey

and

Anthony J. Sposaro, Esq.
Casino Control Commission
379 W. State Street
Trenton, New Jersey 08625

Dear Counsels:

The enclosed copy of the Administrative Law Judge's Initial Decision of the proceeding identified above is made available for your review before a final decision is rendered by the Chairman of the Casino Control Commission.

You are invited to comment on the content of the decision with regard to testimony and evidence actually presented at the hearing. In rendering a decision, any comment that is submitted to the Chairman, Casino Control Commission, 379 West State Street, Trenton, New Jersey 08625, in writing, within ten (10) working days from receipt of the Initial Decision will be considered. A copy of such comment should also be sent to this office. Please indicate on the face of the envelope and at the top of the first page the words "ATTENTION: EXCEPTION FILE".

If a written response is not received by the date specified, it will be assumed that you do not object to the factual content of the report and a final decision will be processed.

Very truly yours,

Elizabeth J. Taggart, Esq.
for Ronald I. Parker, Esq.
Director, Judicial Management

DATE: April 22, 1980
RIP/tf
Enc.
Certified Mail No.: 7376218 (Stark) -

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In the Matter of the Application of Joseph J. Richards for Licensure as a Gaming School Employee	)	INITIAL DECISION OAL DKT. NO. CCC 404-79 AGENCY REF. NO. 79-EA-16

APPEARANCES:

Goldberg & Stark, by Leonard M. Goldberg, Esq., and Alan M. Stark, Esq., West Orange, N.J., for Joseph J. Richards

Fredric E. Gushin, Esq., Deputy Attorney General, Trenton, New Jersey, for the Division of Gaming Enforcement

Anthony J. Sposaro, Esq., Trenton, N.J., for the Casino Control Commission

BEFORE THE HONORABLE RICHARD McGILL, A.L.J.:

On August 25, 1978, Joseph J. Richards (hereinafter the "applicant") filed an application for a license as an admission clerk for slot machines. On February 3, 1979, the Division of Gaming Enforcement (hereinafter the "Division") submitted a report to the Casino Control Commission (hereinafter the "Commission") wherein the Division objected to the licensure of the applicant on the basis of his lack of sufficient administrative experience to provide him with enough knowledge and ability to competently and effectively undertake the responsibilities of the position for which licensure is sought and on the basis of the applicant's conviction for a gaming-related offense. The applicant was advised by letter dated February 13, 1979, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

By letter dated February 28, 1979, the applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. After a pre-hearing

conference, hearings were conducted on November 8, November 27 and November 30, 1979 at the Office of Administrative Law in Newark. Briefs were requested in the matter and the last paper was filed on March 20, 1980. A list of witnesses and exhibits is contained in the transcripts.

As a result of the pre-hearing conference, a pre-hearing order was issued wherein the issues to be resolved at the hearing were identified as follows:

(1) Whether Mr. Richards was convicted of conspiracy under N.J.S.A. 2A:98-1 or other statutory section.

(2) Whether a conviction under N.J.S.A. 2A:98-1 or any other section listed in N.J.S.A. 5:12-86 is an automatic disqualifier for licensure.

(3) Whether Mr. Richards has established by clear and convincing evidence the applicant's reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89(b)(2). Specifically, the issue concerns Mr. Richards' conviction for bookmaking under N.J.S.A. 2A:112-3, Mr. Richards' rehabilitation, and whether Mr. Richards contacted Frank Francesco to arrange financing for the Garden State Gaming Academy from members of an organized crime cartel, specifically, Angelo Bruno and the Testa family including John Testa.

(4) Whether Mr. Richards' conviction for bookmaking under N.J.S.A. 2A:112-3 indicates that his licensure would be inimical to the policy of the Act and to casino operations within the meaning of N.J.S.A. 5:12-86(c). The applicant maintains that Mr. Richards' licensure in light of his rehabilitation, activities since conviction, and the length of time since conviction would not be inimical to the policy of the Act and to casino operations.

(5) Whether Mr. Richards has sufficient administrative experience or training which would provide him with the necessary knowledge and ability to competently and effectively undertake the responsibilities of an admissions clerk for slot machines pursuant to N.J.A.C. 19:44-1.1 and N.J.A.C. 19:44-5.2.

Subsequent thereto, an additional issue was added. This issue pertains to whether the applicant was working in the East Coast Gaming and Electronics School ("East Coast") without a license in a capacity which requires licensure. At the hearing, the application was amended such that the application is for the position of Assistant to the Director of Admissions.

Summary of Testimony

The applicant testified that his current duties at East Coast include filling the vending machines, ordering supplies, performing maintenance work, acting as a chauffeur and as a security guard, and performing miscellaneous duties such as running for coffee. The applicant has been employed by the school for one and a half years.

With respect to his previous experience, the applicant testified that his early experience included working for the State Unemployment Office as an interviewer, working as a salesman and bartending. More recently, the applicant worked at the Claridge Hotel for a period of nine years. He started as a bartender and worked his way up to wine steward and then to food and beverage manager. As food and beverage manager, the applicant was in charge of the bar, the kitchen and anything else concerning the "back of the house." The applicant ordered food and ran banquets.

With respect to his experience in jobs dealing with public relations, the applicant stated that he worked for Bally quite a few years ago when they put on a pinball machine tournament. The applicant organized the tournament but was never paid for doing so. After leaving the Claridge Hotel, the applicant worked for the Lafayette Hotel where he prepared most of the ads for the newspaper and put on promotions related to convention business for the hotel.

With respect to his current position, the applicant stated that he works from 10:00 a.m. in the morning until 11:00 p.m. at night five days a week. The applicant stated that he is familiar with the admissions office at East Coast and feels that he is more than qualified to work in that office and to assist the Director of that office.

The applicant testified that in 1969 he was "picked up" for bookmaking. As reflected in Exhibit A-1, the applicant was convicted of one count of conspiracy and two counts of bookmaking. As a result, the applicant spent 56 days in jail. The applicant participated in a work-release program, during which time the applicant worked for the Guarantee Bank in Atlantic City in the repossession of automobiles. The applicant satisfactorily completed this program. The applicant also underwent a rehabilitation program through the State Law Enforcement Planning Agency (SLEPA). The applicant has an unlimited rehabilitative permit from the Division of Alcoholic Beverage Control, which permit gives the holder the right to tend bar and to carry out the duties of a bartender. Without this card, convicted persons may not work behind a bar. The applicant also underwent psychological counselling with a psychologist by the name of John Scioli to aid in his rehabilitation.

The applicant stated that prior to the offenses mentioned above, he had never been convicted of a crime. He also stated that he has not been convicted of a crime since that time. The applicant described himself as a family man living with his wife and daughter.

On cross-examination, the applicant again reviewed his experience. In response to a question as to why he did not include food and beverage manager at the Claridge Hotel in his description of duties on his Personal History Disclosure Form, the applicant explained that the duties of the food and beverage manager are about the same as that of wine steward which is listed on the form.

With respect to his present position, the applicant testified that he has no interaction whatsoever with the students and does not presently administer or grade tests. The applicant emphasized that Mrs. Viola Craig, the president of East Coast, makes the decisions and that he does not. He did state that Mrs. Craig uses him as a "sounding board." The applicant has no supervisory authority over other employees of East Coast. With respect to the position for which licensure is sought, the applicant stated that his duties will include helping in the recruitme of minorities. The applicant presently does not have any responsibility for any of the funds coming into East Coast. The applicant claimed that his experience at the Lafayette Hotel included public relations but the applicant had to acknowledge that on his Personal History Disclosure Form, he listed his duties as that of a bartender. The applicant explained that his duties were various. The applicant stated that up to this time, he has not done any public relations work for East Coast.

The applicant stated that he first thought about getting into the gaming school business in the months before gambling was legalized in Atlantic City. The applicant discussed the idea of a gaming school with Bob Weinstein who was a life long friend of the applicant. Since the school seemed like a good idea, they decided to work on it together. In their initial planning, they decided that the entire operation would be above-board and,on this basis, attempted to find investors. The school was to be called the Garden State Gaming School.

With respect to his conviction, the applicant stated that he was sentenced to jail for 250 days and fined $500. However, he served only 56 days before being released.

On further cross-examination, the applicant stated that when he started working for East Coast, he did not go on the payroll right away. He worked there putting the school together before actually going on the payroll. With respect to the charge of bookmaking, the applicant stated that he accepted bets from one person. The applicant placed bets with one R.C. Maxwell who lived in the Claridge Hotel where the applicant was working at that time. The applicant stated that he was not paid by the bookmaker but that Mr. Maxwell might give him $10 or $20 if he won the bet. At the Claridge Hotel the applicant was earning $69 a week as a bartender but as he moved up, his salary increased to $600 to $700 a week. This ended when the hotel went bankrupt.

On re-direct examination, the applicant explained that when there was a convention, he had as many as 200 bartenders and bottlers working for him and that when there was no convention, he would go as long as six weeks as the only bartender in the hotel. When there was a convention, the applicant would arrange for bartenders and waitresses for the period of time the convention was in the hotel.

John Scioli testified that he is a psychological therapist and a vocational trainer and evaluator. Mr. Scioli has worked in the area of rehabilitation. On the basis of his experience in the Atlantic City area in 1969, Mr. Scioli testified that illegal gambling in Atlantic City was a common practice. Having treated the applicant, Mr. Scioli was of the opinion that the applicant's rehabilitation was satisfactory and that with respect to the applicant's character, honesty and integrity, the witness stated that he did not know of anything unkind about the applicant. With respect to the applicant's reputation in the

community for good character, honesty and integrity, the witness stated that the people that he knew who knew the applicant spoke kindly of him. With regard to the public relations aspect of the position for which the applicant seeks licensure, the witness stated that the applicant could do the job satisfactorily. As for the administrative aspect of assisting with the admissions tests, the witness expressed a view that any person with a good basic elementary education could administer the test.

Earl R. Shutz, III testified that he is the Director of Admissions of East Coast. The witness stated that he didn't know anyone who didn't like the applicant. With respect to the applicant's reputation in the community for character, honesty and integrity, the witness stated that he had never heard anyone say anything detrimental about the applicant. With respect to whether the applicant could perform the duties of the position for which licensure is sought, the witness stated that he did not think the applicant would have any problem at all carrying out those duties.

Daniel C. Boudreau testified that he is employed by the Guarantee Bank in Atlantic City as a mortgage officer. Mr. Boudreau testified that in 1969 gambling was prevalent in Atlantic City. Mr. Boudreau knew the applicant from the time that the applicant was working at the Claridge Hotel. The applicant worked under Mr. Boudreau's supervision on the work-release program from prison and performed his work satisfactorily. With respect to the applicant's character, honesty and integrity, the witness stated that he applicant enjoys a very fine reputation. The witness also stated that he believed that the applicant has been rehabilitated. Having heard the duties of the position of Assistant to the Director of Admissions described, the witness gave the opinion that the applicant could perform those duties satisfactorily.

Edward J. Mong testified that he has known the applicant since 1936. Mr. Mong and the applicant went to school together, they worked together and they were in the Army together. Mr. Mong was an usher in the applicant's wedding and the applicant was the best man in Mr. Mong's wedding. With respect to the applicant's character, honesty and integrity, Mr. Mong stated that the applicant was never in any trouble and was a very honest fellow. With respect to the applicant's reputation in the community for honesty, integrity and character, Mr. Mong stated that he did not know of anyone that would say anything against the applicant. In 1969 when Mr. Mong learned that the applicant had been arrested for bookmaking he was very surprised. At this point, Mr. Mong believes that the applicant has been rehabilitated. On cross-examination, the witness acknowledged that in recent years, he has seen the applicant only once or twice a year.

Viola Craig testified that she is the sole owner and president of East Coast. In describing the current duties of the applicant, Mrs. Craig testified that the applicant does maintenance work around the school, fills machines, makes the telephone calls to order materials on which she has made the decision as to what to purchase, and runs errands when necessary such as delivering papers and picking up students. Mrs. Craig testified that she has known the applicant for about 15 years. In Atlantic City in 1969, the witness was working as a waitress and the applicant was working as a bartender. According to the witness, at that time customers frequently asked the hotel help for assistance in placing bets.

At one point in time, the witness was working as a waitress in the Claridge Hotel and had the opportunity to observe the applicant working as food and beverage manager. With respect to her assessment of his administrative abilities, the witness stated that he did a fairly good job. With respect to his ability to work with people and supervise people, she stated that he did very well.

/ The witness testified that the applicant's anticipated duties included marking tests and maintaining files for Mr. Shutz but that the decision as to who would be admitted remains with her. Based upon her observations of the applicant over the past 15 years, Mrs. Craig stated that she believed that he was qualified in training and ability for the position for which he was seeking licensure. With respect to the applicant's honesty and integrity, Mrs. Craig stated that she found him to be very honest. With respect to the applicant's reputation in the community for honesty and integrity, the witness stated that he was very well liked and that he could go out into the community and go to work tomorrow on the basis of his honesty. Aside from the applicant's conviction for bookmaking, the witness knew of no other illegal gaming activity on the part of the applicant. On cross-examination, the witness emphasized that she makes almost every decision and that the applicant's role would be primarily that of carrying out her directions. With respect to her knowledge of illegal gambling in Atlantic City, she stated that she was aware of this activity on the basis of what she heard from other people. When questioned as to whether the applicant would be able to purchase stock in the company if he were licensed, the witness stated that it could be a possibility.

The applicant was then called to the stand to testify as part of the case of the Division. The applicant testified that he had been involved in efforts to establish the Garden State Gaming School beginning about the time of the referendum on legali-

casino gambling. At that time, he contacted Bob Weinstein with his idea for a gaming school. Realizing that the gambling industry would be closely regulated, they felt that the entire operation had to be above reproach and that there was no way for any "bad money" to get involved in the project. They estimated that they would need approximately $100,000 to set up such a school. Bob Weinstein knew of a person by the name of Tony Narcea, who he believed might be able to finance the school. As a result, Mr. Weinstein arranged for a meeting with Narcea on Thanksgiving Day 1976. The applicant did not know Tony Narcea. At the meeting, the applicant for the first time met Frank Francesco,who said that he was going to represent Tony Narcea and that he would be in touch with Narcea for a meeting around Christmas. The meeting was held among the applicant, Bob Weinstein, Frank Francesco and his brother Al Francesco. The applicant had met Al Francesco some years before while working at the Claridge Hotel but claimed not to know him well. The applicant and Bob Weinstein explained their idea for a school and explained that their main problem was financing. Frank Francesco said that his boss in Philadelphia, Joseph Rosenfeld, had quite a bit of money and might be interested in the proposition along with Tony Narcea. At this point, the meeting ended and Bob Weinstein and the applicant left. The applicant estimated the meeting lasted approximately 45 minutes. The applicant described his impression of Frank Francesco as not liking him and stated that he seemed to be "like a little Napoleon" by which the applicant meant that Frank Francesco was very bossy.

From Thanksgiving Day 1976 onward, Frank Francesco was to play a part in the Garden State Gaming School. His role from the point of view of the applicant was to raise money from Rosenfeld and would take the position of president of Garden State Gaming School to protect Rosenfeld's investment in the business. The applicant claimed that he did not discuss Frank Francesco's background with him and did not know until recently that he grew up in the Philadelphia area. The applicant knew that Al Francesco was raised in Atlantic City and took it for granted that Frank Francesco was as well. The applicant stated that he was not aware that Frank Francesco knew Angelo Bruno and that he never even talked about Angelo Bruno. The applicant acknowledged that he was aware of Angelo Bruno's reputation as an organized crime figure. At the meeting, the discussion with respect to sources of funds was limited to Rosenfeld. The applicant denied that he asked Frank Francesco to raise money from organized crime sources for the school and also denied they even discussed raising money from organized crime sources.

For some time after the Thanksgiving Day meeting, the applicant along with Bob Weinstein and Frank Francesco attempted to raise financing for the proposed school. Frank Francesco succeeded in raising approximately $10,000 from a Dr. Rosatto but no other money was raised. Eventually, the group broke up when Frank Francesco found a potential investor who was willing to invest but wanted a 51% controlling interest . The applicant was unwilling to go along with this proposal with the result that the group broke up during the summer of 1977.

The applicant also denied asking Frank Francesco to raise money from members of the Testa family. The applicant acknowledged being aware of the reputation of the Testa family. The group was unsuccessful in raising any other financing for the school.

Frank Francesco testified that he is the president of the Atlantic Casino Training Academy and has been affiliated with that gaming school for approximately two years. Prior to that time, he was involved in efforts to establish the Garden State Gaming School. He began that effort in November of 1976 along with his brother Al, Bob Weinstein and the applicant. He became involved when he was advised by his cousin, Tony Narcea, that he had a friend who was interested in entering into a business arrangement. At the time, the witness was employed as a warehouse manager for Dependable Delivery Service in Philadelphia. Dependable Delivery Service is owned by Joseph Rosenfeld. A meeting was arranged for Thanksgiving Day 1976. Prior to that time, the witness had never met the applicant or Bob Weinstein. At the Thanksgiving Day meeting at which the applicant, Bob Weinstein, the witness and his brother Al were present, the applicant and Bob Weinstein explained their idea. When the discussion turned to raising funds for the gaming school, the figure of $500,000 was used for the amount needed to set up the gaming school. According to the witness, this figure was used by Bob Weinstein and the applicant. Mr. Francesco stated that he assumed that it was Rosenfeld's money that they were interested in for financing the school. At one point, Mr. Francesco had a private discussion with the applicant while his brother was discussing the matter with Bob Weinstein. The room was approximately 12 feet by 15 feet. During these separate discussions, Mr. Francesco stated that he didn't think they would need $500,000. The witness testified that at about this point, the applicant asked him to go to Angelo Bruno for financing, if financing could not be obtained elsewhere. According to Mr. Francesco, Angelo Bruno was an alleged organized crime figure. The witness stated that he believed that the applicant was serious in making this request. The witness estimated that the meeting took approximately an hour and a half. Mr. Francesco's reaction to this request was that he was concerned. Mr. Francesco denied ever soliciting funds from Angelo Bruno or any other organized crime source.

Despite this concern, Mr. Francesco attempted to raise money for the Garden State Gaming School. Mr. Francesco explained that he continued dealing with the applicant because the school was their idea and that he was willing to go along with it if they were willing to forget the idea of financing through an organized crime source. Mr. Francesco denied having any type of relationship with Angelo Bruno although he was aware of Bruno's reputation as an alleged organized crime figure. He also acknowledged having met Angelo Bruno 8 to 12 years ago when taking his aunt for a visit. Mr. Francesco admitted knowing John Testa and being aware that his brother Philip was a reputed organized crime figure. The applicant denied knowing a Frank Testa. Mr. Francesco claimed to have put approximately $4,000 or $5,000 into the Garden State Gaming School. The witness' association with the applicant ended sometime around October of 1977.

On cross-examination, Mr. Francesco stated that the last time he had seen Angelo Bruno was 8 or 10 years ago. On the occasions when he saw Angelo Bruno, he was dropping off his aunt, and the extent of his conversation was simply to say hello and goodbye. Mr. Francesco acknowledged knowing John Testa and Philip Testa, an alleged organized crime figure. Mr. Francesco said that he had not seen Philip Testa for four or five years. The witness stated that to the best of his knowledge, John Testa was not an organized crime figure and that the last time he saw John Testa was aprpoximately two and a half years ago. The last time the witness had seen John Testa he had met him on a street corner.

The witness further testified that after the Thanksgiving Day meeting, there were never any discussions between himself and the applicant concerning Angelo Bruno or any other organized crime figure.

On further cross-examination, the witness acknowledged that he testified in the Atlantic Casino Training Academy proceeding that he was approached by Bob Weinstein and the applicant apparently because they thought he could acquire backing from disreputable sources, specifically, Angelo Bruno.

At the time of the hearings, Mr. Francesco was under the impression that allegations against him to the effect that he brought a Mr. Testa to a meeting at Bob Weinstein's home and an allegation that his aunt was related to Angelo Bruno were made by the applicant, Bob Weinstein and Viola Craig. Subsequent to that testimony, the witness was advised by the State Police that Bob Weinstein had not made any allegations against him and that the allegations against him were made by the applicant and Viola Craig. Mr. Francesco could not remember which member of the State

Police gave him this information or under what circumstances the information was provided. In a subsequent proceeding, the witness testified that Bob Weinstein did not hear the conversation in which the request for financing from Angelo Bruno was made and that the conversation was strictly between the witness and the applicant. The witness acknowledged that following the conversation about Bob Weinstein, he changed his testimony. The witness explained that the reason he stated at the Atlantic Casino Training Academy hearing that the applicant and Bob Weinstein approached him to obtain financing from disreputable sources is that he believed that the applicant was speaking for both of them.

Exhibit A-4 is a statement of the witness' financial position that was to be used for the purpose of obtaining financing for the Garden State Gaming School. Mr. Francesco acknowledged that the financial statement did not reflect the $10,000 borrowed from Dr. Rosatto. The witness initially did not recall why he did not feel obligated to reveal this indebtedness but then recollected that Dr. Rosatto had given him the money to buy stock in the Garden State Gaming School. A breakdown of the $10,000 figure revealed that $2,500 was a personal loan to Mr. Francesco. This $2,500 loan was not revealed on the financial statement. The financial statement, dated July 31, 1977, under liabilities revealed $800 for notes payable autos and $1350 for accounts payable for total liabilities of $2,150. The witness stated that his American Express account at that point in time was in the area of $1,000 to $1,500, and that he owed approximately $2,000 to Household Finance. The witness expressed difficulty in remembering the exact amounts.

The witness acknowledged that he worked for the Maggio Cheese Company for about a year and that the owners of that company are reputedly tied to organized crime. The witness stated that at no time after the Thanksgiving Day 1976 meeting did the applicant ever suggest obtaining funds from organized crime sources. The applicant did not himself make any attempts to obtain funds from disreputable sources, and the witness did not know of any associations or contacts between the applicant and members of organized crime. With respect to the relationship between the witness and the applicant in their attempts to establish the Garden State Gaming School, the witness acknowledged that he was somewhat upset with the applicant. The witness also acknowledged that East Coast is a competitor of the Atlantic Casino Training Academy of which he is president.

On redirect examination, the witness stated that the financial statement, Exhibit A-4, was prepared by his attorney, Mr. Goldstadt, who was handling all his financial responsibilities and paying his debts at that time. The witness did not provide the information for that report since Mr. Goldstadt already had the information. The witness stated that the $1,350 which represented accounts payable at that time was accurate as far as he knew. With respect to the Maggio Cheese Company, the witness stated that he was 20 or 21 years old at the time and was just working in the warehouse moving cheese. At the time, Maggio Cheese Company had approximately 300 to 400 employees. The witness stated that he had no management responsibility. Mr. Francesco also testified that he never had any business dealings with Angelo Bruno and that Angelo Bruno never exercised any influence over him. The witness stated that he had not seen Angelo Bruno for somewhere between 8 and 12 years. In attempting to explain the apparent inconsistency with respect to his testimony concerning Bob Weinstein, the witness stated that in his earlier testimony, he had not been asked to distinguish between the applicant and Bob Weinstein and that he thought they were acting together with the applicant speaking for both of them. It was not until the Weinstein hearing that he was asked to distinguish between them and focus his testimony on Bob Weinstein alone. The witness stated that on the day his school was licensed, Bob Weinstein called and congratulated him and informed him that he had nothing to do with the allegations made against the witness and that it was Viola Craig and the applicant that were responsible for the allegations. The witness stated that he does not presently have any feelings one way or the other towards the applicant.

On further redirect examination the witness stated that at the Thanksgiving Day meeting, he mentioned that he was born and raised in South Philadelphia and that he was then living in New Jersey and working for Dependable Delivery Service. On recross-examination, the witness stated that he had never met the applicant prior to the Thanksgiving Day meeting and that he did not know how the applicant could otherwise know anything about him with respect to his prior background.

Robert J. Weinstein testified as a rebuttal witness on behalf of the applicant. In describing the plans which he and the applicant had developed for a gaming school, the witness stated that they had made a joint decision that they would not seek help from either politicians or from any members of organized crime.

With respect to Tony Narcea, Mr. Weinstein had a meeting with him several days before Thanksgiving Day of 1976 and arranged the meeting with Frank and Al Francesco. Mr. Weinstein only knew that they were Narcea's cousins and did not even know their last names. At the Thanksgiving Day meeting at which Mr. Weinstein was present, he did not hear any reference to Angelo Bruno or any other person connected with organized crime or any effort to seek funding from such persons. Such a request would have been totally inconsistent with all the conversations between the applicant and himself. Subsequent to the Thanksgiving Day meeting, the applicant never said anything about seeking funding from disreputable sources or organized crime sources. During the period of time they were working on the plan for a school, Mr. Weinstein and the applicant saw each other virtually on a daily basis. With respect to the possibility of financing from Joseph Rosenfeld of Dependable Delivery Service, Mr. Weinstein stated that Frank Francesco led him and the applicant to believe that financing would be forthcoming up until the time when Frank Francesco left his employment with Rosenfeld. This occurred in approximately July of 1977.

On cross-examination, the witness acknowledged that it was possible that he did not hear what was being said between the applicant and Frank Francesco.

On redirect examination, the witness stated that he could not remember ever discussing where the Francescos were raised or anything about their background at that meeting. To the best of the witness' knowledge, the applicant did not know Frank Francesco prior to the Thanksgiving Day meeting of 1976.

On recross-examination, the witness acknowledged that the applicant had worked with Al Francesco prior to the meeting. On further redirect examination, the witness stated that Al Francesco and the applicant had worked together but as far as he knew were not friendly.

Stephen C. Ocksrider testified that he is the supervisor of the financial review unit of the Division of Gaming Enforcement. Mr. Ocksrider conducted a routine financial review and audit of East Coast at which time he reviewed all disbursements of the school since its inception. During the period March 1979 to September 1979 American Express bills in the name of Joseph J. Richards were paid by East Coast. There were a total of 96 vouchers. There was one voucher in March, three in April, ten in May, 14 in June, 24 in July,

17 in August and 27 in September. The total amount paid was $6,217.16. The records revealed that no other clerks were having their bills paid by East Coast and that no other credit cards were being paid except that of Mrs. Craig, the school president.

Additional disbursements were made to the applicant as follows: $1,000 on December 9, 1978 for expenses, $1,000 on January 13, 1979 for expenses, $3,000 on May 15, 1979 for expenses and others for a total of $6,850.43. In addition, on July 20, 1979 a $6,000 bonus was paid to the applicant. Of this amount, $3,000 was an offset against a receivable which the applicant owed to the company. Net of withholding taxes, the applicant received approximately $800. During the period November 18, 1978 to October 5, 1979, the applicant received approximately $15,800 as salary plus bonus and a total of $28,867 including reimbursement for expenses.

The witness considered the charges to American Express questionable as business expenses because explanations on the vouchers were lacking or were illegable. He was unable to determine the purposes of the meetings or who was present. Two patterns emerged. First, the disbursements were improperly documented, and second, the applicant was participating in important business discussions related to the operations of East Coast which circumstance seemed unusual for a person in a clerical position.

On cross-examination, the witness stated that the charges were primarily restaurant bills for groups of persons. American Express bills in the name of Mrs. Craig began to appear in October with the exception of one bill in August. When it was revealed that Mrs. Craig did not have an American Express card until October of 1979, the witness stated that she may have had a temporary card before that but he also had to acknowledge that he had made the assumption that the August charge was Mrs. Craig's American Express bill even though he did not know for certain. The witness again stated that the problem with the charges was that the information with respect to the persons present and the purposes of the meetings was lacking or illegible. On approximately half of the charge slips there was some handwriting on the back. On the more recent charges, there was more likely to be handwriting on the back of the charge slip. The witness was aware that there had been a change in accountants for East Coast and that an audit had taken place for the period ending June 30, 1979. It was at about this time that the recordkeeping improved. The

witness acknowledged that he could not say definitely that there were any improper business expenses. There was no record of disbursements to the applicant for expenses from the period October 1977 through November 1978. All disbursements of East Coast for expenses have been made since November of 1978.

The applicant was recalled to the stand by the Division and questioned about specific American Express vouchers. The applicant testified that Viola Craig was present on all of the occasions when charges were made. The applicant was sometimes present but sometimes came in only to sign the check. In some instances, the applicant could remember the purposes of the meeting and who was present and in some instances, he could not. The applicant's recollection was sometimes inconsistent with the names on the back of the charge slip, and Viola Craig was not always listed on the back of the charge slips. The applicant also testified that none of the other employees have their credit card bills paid by East Coast. With respect to the bonus which the applicant acknowledged receiving, he explained that he worked almost a year without receiving any pay or any other compensation. The applicant, along with Mrs. Craig and Mr. Shutz, were the only present employees of East Coast who worked for a period of time before getting paid. The instructors and secretaries began getting paid immediately.

On cross-examination, the applicant stated that Viola Craig is a very good personal friend who he has known for 15 to 20 years. The applicant works 11 to 12 hours per day for $200 a week with no overtime. The applicant described his role as that of a man Friday doing whatever Mrs. Craig asked him to do. The applicant stated that he did not participate in executive decisions or supervise employees or students. The applicant acknowledged that Mrs. Craig sometimes "sounds out a thing" with him. With respect to the specific American Express charges, the applicant stated that he testified to the best of his recollection. The applicant also stated that Mrs. Craig was present on every occasion when the American Express Card was used. With respect to the charge slips, East Coast's new accountants expressed dissatisfaction to him about not keeping the blue sheet and not keeping a log of the expenditures. With respect to the $6,000 payment, the applicant stated that after taxes, he received $3,840 of which $3,000 went to East Coast leaving him only $840. The applicant explained that Mrs. Craig did not have an American Express Card until October 9, 1979 and as a result, he used his card as a convenience to his employer. With regard to the reimbursements for the out-of-pocket expenses incurred by the applicant prior to

his receiving a salary, the applicant stated that he came out "way behind." Aside from reimbursement for expenses, the applicant received a total of approximately $16,000 for a two year period. On redirect examination, the applicant acknowledged that he laid out his own money prior to the opening of the school.

Paul E. Forsythe, III testified that he is a manager with the CPA firm of Finkle and Co. in Fort Lee, New Jersey assigned to East Coast. Mr. Forsythe conducted an audit of East Coast during July and August of 1979. As a result of that audit certain internal control systems for credit cards were instituted. It was explained to the applicant and to Mrs. Craig that documentation was needed for credit card charges. On cross-examination, the witness stated that prior to the institution of the internal controls, there was not sufficient documentation. The witness also stated with respect to the charges to American Express that some items were questionable but not of a material amount such that he would adjust his audit.

Viola Craig testified that the applicant often did not attend the dinners but rather simply drove her to the dinners and returned to pick her up and sign for the check. On other occasions, for example, she would be going to dinner with men from Las Vegas under which circumstances she would prefer to take the applicant along with her. Mrs. Craig explained that after her husband died, she was unable to establish credit in her own name. Her former accountant advised her that she should use credit cards for her business expenses in order to have a record. Since the applicant had an American Express Card, she decided to use his card until such time as she got her own card. Mrs. Craig also explained that she has driven for only two and a half years and preferred to have someone else drive for her. With respect to the trip to Las Vegas, Mrs. Craig explained that she was interviewing teachers in her hotel room and preferred to have someone else present. While her son was present at the time he was a minor, and she felt that an additional person was necessary. Mrs. Craig stated that she sometimes asked for the applicant's opinion but that she made all executive decisions. The applicant does not supervise any employees.

On cross-examination, Mrs. Craig stated that the school does not use the credit cards of any of the instructors and does not pay the credit card bills of any of its employees. Mrs. Craig described the applicant's present role as that of a "go for" by which she means that he does errands. Mrs. Craig stated that the applicant started receiving a salary at about the same time she did, while the instructors were paid from the time the school opened.

On redirect examination, Mrs. Craig identified Exhibit A-13 which is a letter from American Express Company dated April 11, 1979 denying her application for an American Express Card. Mrs. Craig finally got an American Express Card in October of 1979. During the time the applicant's credit card was used by the witness, the applicant had no personal charges on the card. Mrs. Craig testified that East Coast formally advised the Commission of the applicant's present employment and his duties and that the school was advised by the Commission Staff that the applicant could work in his present position without a license.

The applicant was recalled to the stand and testified that to the best of his knowledge and understanding of the pertinent regulations and law, his present position does not require licensure and that he had been so advised by Jeffrey Gloss, a previous counsel to East Coast.

Near the close of the hearings, the parties stipulated that the applicant was convicted in the year 1973 of the two offenses set forth in the pre-hearing order and also that Gilbert Miller is a detective of the Division of Gaming Enforcement who is assigned to conduct an investigation of Joseph Richards in connection with the pending application for a casino license and that if Mr. Miller were called as a witness in this matter, he would testify that during his investigation of Mr. Richards and his background, he found no evidence that Mr. Richards was a member of any organized crime cartel or that Mr. Richards was associated with any known member of organized crime.

ISSUES

As a result of the hearings and of amendments to the Casino Control Act, three issues can readily be decided. The first issue is whether the applicant was convicted of conspiracy. On the basis of Exhibit S-1 and the stipulation of the parties, it is clear that the applicant was convicted of conspiracy. The second issue is whether such conviction is an automatic disqualifier for licensure. In light of the amendments to the Casino Control Act, specifically, N.J.S.A. 5:12-90(h), which provides that an applicant shall not be denied a casino employee license on the basis of any of the offenses enumerated in N.J.S.A. 5:12-86, provided that the applicant has affirmatively demonstrated his rehabilitation, it is clear that rehabilitation must be considered and that the conviction is not an automatic disqualifier for licensure. The issue then becomes whether the applicant is rehabilitated. The third issue is whether the applicant's conviction

for bookmaking under N.J.S.A. 2A:112-3 indicates that his licensure would be inimical to the policies of the Casino Control Act and to casino operations within the meaning of N.J.S.A. 5:12-86(c). Under the amendments to the Act, N.J.S.A. 2A:112-1 et seq. are enumerated offenses. Accordingly, the conviction for bookmaking under N.J.S.A. 2A:112-3 is now an enumerated offense and is in the same category as the conviction for conspiracy. It follows that the application must be denied unless rehabilitation is affirmatively demonstrated.

The issues which remain are:

(1) whether the applicant is rehabilitated such that his convictions will not result in disqualification;

(2) whether the applicant has demonstrated his reputation for good character, honesty and integrity by clear and convincing evidence; and

(3) whether the applicant has sufficient ability and experience to establish a reasonable likelihood of success and efficiency in the position for which licensure is sought.

There are two factual disputes which pertain to the first and second issues. One is whether the applicant contacted Frank Francesco to arrange financing for the Garden State Gaming School from members of an organized crime cartel, specifically, Angelo Bruno. The other is whether the applicant is working without a license in a capacity which requires licensure such as to reflect negatively on his good character.

As set forth in detail above, Frank Francesco testified that the applicant suggested that he arrange financing for the Garden State Gaming School from Angelo Bruno, a reputed organized crime figure. The applicant denied that he ever made this reque[illegible] With regard to this question of fact, it is striking that it seem[illegible] very improbable and illogical that the applicant would make such a request under the circumstances under which the request was allegedly made. The applicant and Weinstein both testified that th[illegible] had established between themselves that financing would not be so[illegible] licited from organized crime sources. In view of the control to which casino industries would clearly be subject, it would be qui[illegible] illogical to seek financing from such a source. At the time of the meeting with Francesco, the applicant and Weinstein were under the impression that they had a potential source of financing in Joseph Rosenfeld and hence were not in the position of being desperate for financing. Moreover, there is no other indication that the applicant had any ties with organized crime or otherwise attempted to seek financing from organized crime sources.

Other circumstances which make Francesco's version of the events seem unlikely are that the meeting was arranged by Weinstein and that the applicant did not know who they were meeting and had not previously met Frank Francesco. It seems unlikely that the applicant would make such a suggestion to a person whom he was meeting for the first time. Francesco claimed that at the outset of the meeting, he had discussed his background including that he was born and raised in Philadelphia, such that the applicant might have some idea of who he was. The applicant denied that he knew where Frank Francesco was raised, and Weinstein did not remember this discussion. This degree of background seems to be an unlikely way to start a meeting.

There are also reasons to doubt Francesco's credibility. Francesco has testified in three licensure proceedings. The first concerned the Atlantic Casino Training Academy, the second concerned Bob Weinstein, and the third is the present proceeding. At the time of the Atlantic Casino Training Academy proceeding, Francesco was under the impression that the applicant or Weinstein had made allegations against him to the effect that he had brought a member of the Testa family, a reputed organized crime figure, to a meeting at Bob Weinstein's house. In the Atlantic Casino Training Academy proceeding, Francesco testified that the applicant and Weinstein sought assistance from him in obtaining financing from organized crime sources. After learning that Weinstein had not made the accusation, Francesco testified in the Weinstein licensure proceeding that the applicant alone made the request and not Weinstein. Francesco's explanation of the difference in the testimony was that in the first proceeding, he was not asked to distinguish between the applicant and Weinstein and that he thought that the applicant was speaking for both of them at the meeting in question. This explanation is not entirely satisfactory since a review of the testimony in the proceeding reveals that Francesco could readily have distinguished between the applicant and Weinstein if he had wanted to do so and thereby avoid impugning the character of Weinstein. Francesco also used an inaccurate financial statement in attempting to raise financing for the Garden State Gaming School. Francesco's explanation was that the statement was prepared by his attorney. The fact remains that Francesco was familiar with the financial statement and apparently used it without insisting that the corrections be made.

Francesco also had reason to be biased against the applicant. The applicant and Francesco had worked together in an attempt to establish the Garden State Gaming School, and their relationship ended in acrimony. The applicant now works for a competitor. A final circumstance is that at the hearing, Francesco seemed to lack testimonial candor. Under all of these circumstance Francesco's testimony strains credibility to the breaking point and should not be given any weight. Accordingly, I accept the applicant

version of the events, specifically, that he did not ask Francesco to arrange financing from an organized crime source.

The next issue is whether the applicant has been working without a license in a capacity which requires licensure such as to indicate a lack of good character. It is established that the applicant attempted to found the Garden State Gaming School. With respect to East Coast, the applicant worked on the school before it opened and expended his own time and money initially without reimbursement. When the school was opened, the applicant was advised by counsel, who was then president of East Coast, that it would be permissible for him to work in his present capacity without a license. The applicant also sought the opinion of the Commission Staff and was advised that he could work in the capacity described without a license. It is noteworthy that the applicant is a personal friend of the president of East Coast, Viola Craig. It is against this backdrop that the applicant's role in the school must be considered.

The applicant's duties were described several times during the hearings, and based thereon I conclude that his role, aside from his maintenance duties, can best be described as a personal aide to the president of East Coast. While the applicant was often present when Viola Craig was conducting her duties, he had no executive or supervisory authority himself.

With respect to the American Express charges, the Division raised the concern that East Coast was paying the applicant's charge account bills. Viola Craig explained, however, that her former accountant advised her that she should use a credit card for company expenses so as to have a record of her expenses. Mrs. Craig further explained that after the death of her husband, she was unable to establish credit in her own name. Exhibit A-13 confirms that she was denied credit by American Express Company. In order to use a credit card and have a record of company expenses Mrs. Craig used the applicant's credit card until she was able to establish credit in her own name. While the applicant's record-keeping with respect to the purposes of the various meetings and the persons present left something to be desired, the explanation of the applicant and of Mrs. Craig indicate that Mrs. Craig was present on all occasions when charges were made and that the charges were not for the applicant's personal expenses.

With respect to certain payments made to the applicant totalling approximately $6,850, it was explained that they were reimbursement for expenses incurred prior to the applicant receiving a salary. During the year from November 1978 to October 1979, the applicant received approximately $10,000 in salary and $6,000 as a bonus. Approximately half of this bonus went to East Coast as repayment with the result that the applicant received approximately $840 net of withholding taxes. The applicant worked approximately one year prior to receiving a salary.

While it is evident that the applicant was working out of a personal commitment to the establishment of a gaming school and out of his friendship for Viola Craig, it does not appear that his role was that of a principal employee but rather was confined to that of a personal aide. While this fact situation may present room to differ as to whether the applicant came within the category "clerical personnel" as opposed to being a "principal employee," in light of the fact that the applicant was acting on the advice of counsel and sought the opinion of the Commission Staff, I am satisifed that the applicant dealt with the situation in an honest manner and that his conduct does not reflect negatively on his good character, honesty or integrity.

On the issue of the applicant's reputation for good character, honesty and integrity, Mr. Boudreau stated that the applicant has a very fine reputation in the community. Mr. Scioli and Mr. Shutz stated that they never heard anyone say anything unkind or detrimental about the applicant. Mr. Mong knew the applicant since childhood and considered him to be a very honest person. Mr. Mong stated that he did not know anyone who would say anything against the applicant. Mrs. Craig stated that she found the applicant to be very honest and that he could go out into the community tomorrow and work on the basis of his honesty. These witnesses all seemed to be responsibile persons whose testimony was entitled to credibility and weight.

The only factors which reflect negatively on the applicant's good character are his convictions. With respect to these convictions, the applicant maintains that he is rehabilitated. As provided in N.J.S.A. 5:12-90(h), the factors which must be considered with respect to rehabilitation are as follows:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

(8) Any evidence of rehabilitation including good conduct in prison or in the community, 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.

With respect to the first factor, the position applied for is that of Assistant to the Director of Admissions. The duties include marking tests, telephoning students to advise them of the commencement of classes, assisting in the recruitment of minorities, public relations and generally aiding in the admissions process. These duties fall into two categories. One is internal and administrative, and the other involves relating to the community and prospective students.

The offenses are gambling-related and hence would reflect in a particularly negative way on the casino industry. With respect to the applicant's anticipated duties, this offense is especially serious in regard to the second category. A gambling-related offense seems inherently inconsistent with the duties of public relations for a gaming school and recruitment of students.

The circumstances under which the offense occurred were that the applicant was working as a bartender and placed a bet at the request of a regular customer who lived in the hotel in which the applicant was working. The fact that the applicant was in effect doing a favor for a regular customer as opposed to soliciting bets is slightly mitigating.

The offense occurred in 1969 and hence was over 10 years ago. Since the offense is quite distant in time, the applicant certainly has had the opportunity to rehabilitate himself in the interim.

At the time of the offense the applicant was 39 years of age. Since the applicant was clearly an adult at the time of the offense, this factor reflects in a negative way on the applicant.

With respect to whether the offense was an isolated or repeated incident, the applicant was convicted of conspiracy for which the alleged overt act was submitting a list of wagers. At one point in the hearings, the applicant testified that the cus-

tomer mentioned above would, if he won, sometimes give him $10 or $20 or sometimes nothing. Apparently this was not a situation where the applicant placed one bet and was ultimately convicted of conspiracy and bookmaking. Rather, it appears that the applicant submitted wagers over a period of time. On the other hand, it appears that the applicant has not engaged in illegal gambling activities since the incident in question.

With respect to whether there were any social conditions which may have contributed to the offense, several witnesses stated that illegal gambling was widespread in Atlantic City at that time. This suggests that the applicant was departing less from community standards than might normally be inferred from such a conviction. This circumstance is slightly mitigating.

The applicant submitted extensive evidence of his rehabilitation. Mr. Scioli, who counselled the applicant, stated that he believed that the applicant's rehabilitation was satisfactory. Mr. Scioli also testified that rehabilitation is primarily a result of the person's own efforts. Here, the applicant successfully completed a work-release program with the Guarantee Bank in Atlantic City. The applicant has also successfully completed a vocational counselling and rehabilitation program funded by the State Law Enforcement Planning Agency. The applicant has received an unlimited rehabilitative permit from the Division of Alcoholic Beverage Control. The applicant has undergone psychological counselling to aid in his rehabilitation. It is noteworthy that in ten years since the incident that led to his convictions, the applicant has not had any subsequent convictions. Finally, persons for whom the applicant has worked, including Viola Craig, Daniel Boudreau and Earl R. Shutz, expressed confidence in the applicant's honesty and integrity.

This seems to be a situation where the applicant had a good record and a good reputation for honesty and good character but then made a mistake which led to his convictions. Since that time, the applicant has made a substantial effort to rehabilitate himself and to re-establish his reputation in the community. In view of the applicant's substantial efforts at rehabilitation and the favorable recommendations of responsible persons, it appears that the applicant is rehabilitated to the point where licensure for the internal administrative duties of the position for which licensure is sought is appropriate. With respect to the duties of public relations and recruitment of students, the nature of the offenses seems distinctly inconsistent with the role of representative of a gaming school to the community at large and to prospective students. Since this combination of duties and offenses seems particularly inimical to the policies of the Casino Control Act, it follows that a license should not be granted to the applicant to perform these duties.

The final issue is whether the applicant has sufficient administrative experience or training which would provide him with the necessary knowledge and ability to competently and effectively undertake the responsibilities of Assistant to the Director of Admissions. With respect to the administrative duties, Mr. Scioli, a vocational counsellor, stated that any person with a basic education could perform these duties. The applicant has some administrative experience as food and beverage manager of the Claridge Hotel as well as some public relati experience. Viola Craig, the president of East Coast, and Earl R. Shutz, III, the Director of Admissions of East Coast, testified that in their respective opinions, the applicant could perform the duties of Assistant to the Director of Admissions. In view of the fact that the position for which licensure is sough does not require any special skills and in view of the applicant experience and the testimony of persons who know the applicant and are familiar with the anticipated duties, it seems clear that the applicant has the knowledge and ability to carry out the duties of the position for which licensure is sought.

After consideration of the entire record, I FIND:

1. The applicant was convicted of conspiracy under N.J.S.A. 2A:98-1 and of bookmaking under N.J.S.A. 2A:112-3 as a result of an incident which occurred in 1969.

2. The applicant successfully completed a work-release program with the Guarantee Bank of Atlantic City.

3. The applicant underwent a rehabilitation program through the State Law Enforement Planning Agency.

4. The applicant has received an unlimited rehabilitative permit from the Division of Alcoholic Beverage Control.

5. The applicant has undergone psychological counselling with John Scioli to aid in his rehabilitation.

6. The applicant has received favorable recommendations from the persons who have supervised him, specifically, Daniel C. Boudreau, Viola Craig and Earl R. Shutz.

7. The applicant has no prior or subsequent convictions.

8. The applicant has been employed by East Coast for one and a half years and is generally familiar with its Admissions Office.

9. The applicant has worked at the Claridge Hotel where he advanced to the position of food and beverage manager, and as such he was in charge of the bar and kitchen including ordering food.

10. With respect to public relations, the applicant organized a pinball tournament for Bally.

11. The applicant worked for the Lafayette Hotel where he prepared ads for newspapers and conducted promotions.

12. The applicant has sufficient business ability and experience to successfully and efficiently carry out the duties of Assistant to the Director of Admissions of East Coast.

13. The applicant did not ask Frank Francesco to obtain financing for the Garden State Gaming School from Angelo Bruno, a reputed member of an organized crime cartel.

14. The charges on the applicant's American Express Card paid by East Coast were not for his personal expenses but rather were for the expenses of East Coast.

15. The reason that Viola Craig used the applicant's American Express Card for charges on behalf of East Coast was that she was unable to establish credit in her own name.

16. With one exception, the "bonuses" paid to the applicant were reimbursements for expenses incurred prior to the time that the applicant received a salary from East Coast.

17. The applicant's salary plus bonus, aside from reimbursement for expenses, from November 1978 to October 1979 was approximately $16,000.

18. The applicant's present duties at East Coast, aside from his maintenance duties, can best be described as a personal aide to Viola Craig, the president of East Coast.

19. The applicant is working in his present position on the advice of counsel, the former president of East Coast, that he could do so without a license.

20. The applicant did not knowingly work in a position which required licensure, such as to reflect negatively on his good character.

21. The applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity.

22. The applicant is sufficiently rehabilitated to be licensed to carry out the internal administrative duties at East Coast of the position for which licensure is sought.

23. The nature of the offenses of which the applicant was convicted is inconsistent with the duties of public relations and recruitment of students for a gaming school.

I CONCLUDE:

1. The applicant has sufficient business ability and experience to successfully and efficiently carry out the duties of Assistant to the Director of Admissions of East Coast.

2. The applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity.

3. Based upon the factors listed in N.J.S.A. 5:12-90(h), the applicant is sufficiently rehabilitated to be licensed for the internal administrative duties of Assistant to the Director of Admissions of East Coast.

4. The applicant's convictions for conspiracy and bookmaking, as gambling-related offenses, are fundamentally inconsistent with the duties of public relations and recruitment of students for a gaming school, and accordingly, licensure for such duties is inappropriate.

Accordingly, it is HEREBY ORDERED that the applicant be issued a license to carry out the internal administrative duties of Assistant to the Director of Admissions of East Coast.

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

I HEREBY FILE with the Chairperson of the Casino Control Commission, Joseph P. Lordi, my Initial Decision in this matter and the record in these proceedings.

Apr. 17, 1980
DATE

Richard McGill
RICHARD McGILL, A.L.J.

Receipt Acknowledged:

DATE

AGENCY HEAD

Mailed to Parties:

April 22, 1980
DATE

Elizabeth A. Lawson, Cg
FOR OFFICE OF ADMINISTRATIVE LAW

kam

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-147

IN THE MATTER OF THE APPLICATION :
OF JOHN J. RUIZ FOR LICENSURE AS : FINAL ORDER
A CASINO EMPLOYEE (DEALER) :

This matter having been opened to the Casino Control Commission at its public meeting on September 5, 1980, and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, no exceptions having been filed, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge as modified herein and to deny John J. Ruiz' application for licensure,

It is on this 5th day of September 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission subject to the following modifications:

A. The Administrative Law Judge's finding that the Applicant's attack on a New York Municipal Court Judge on August 23, 1978, "constitutes an aggravated assault in violation of N.J.S.A. 2C:12-1(b), a crime of the second degree, specifically enumerated as a disqualifying act in N.J.S.A. 5:12-86(c) as recently amended," which finding is amply supported by the evidence, results in the Applicant's disqualification

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

B. To the Administrative Law Judge's remarks concerning rehabilitation, we add the further clarification that any reapplication for licensure must be in accordance with N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that the application of John J. Ruiz be and hereby is denied based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof, subject to the modifications set forth in paragraphs A. and B. above; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: 9/5/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

JOHN J. RUIZ,	:	INITIAL DECISION
	:	
PETITIONER,	:	OAL DKT. NO. CCC 4662-79
	:	AGENCY DKT. NO. 79-EA-147
DIVISION OF GAMING ENFORCEMENT,	:	
	:	
RESPONDENT.	:	

APPEARANCES:

David G. Sciarra, Esq., on behalf of the Petitioner
Joseph A. Mussomeli, Esq., Deputy Attorney General on behalf of the Respondent.

WITNESSES:

John J. Ruiz
Tim Shade
Detective Charles Crescenz

EXHIBITS:

J-1 Personal History Disclosure Form
P-1 Medical Records
P-2 Letter from Moore & Berk
R-1 Police Log
R-2 Affidavit
R-3 Affidavit
R-4 Affidavit
R-5 Affidavit
R-6 Affidavit
R-7 Affidavit
R-8 Affidavit
R-9 Affidavit
R-10 Affidavit
R-11 Affidavit
R-12 Affidavit
R-13 Clinical Summary
R-14 Essex County Probation Department Report
R-15 Essex County Probation Department Report
R-16 Exam Report

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ:

On March 1, 1979 the petitioner filed his application with the Casino Control Commission for licensure as a casino employee (dealer). On September 21, 1979 the Commission advised petitioner of its intent to deny his application and of his right to a hearing. The petitioner requested a hearing by letter received by the Casino Control Commission on October 3, 1979. The matter was certified as a contested case and transferred to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1 et seq.

A hearing was held on April 7, 1980 and the record was closed on April 15, 1980 upon receipt of the final memorandum of the Division of Gaming Enforcement.

The evidence in this case concerns the petitioner's arrest record and the underlying facts that gave rise to those arrests. Those facts are largely undisputed, and the petitioner himself spoke freely of them during his testimony. I find the facts concerning those arrests to be as follows:

He was arrested in February 1973 as a result of his failure to pay court ordered support for his wife and children. He was arrested and convicted of possession of a firearm in the State of New York in June 1975. The latter charge was the result of a visit from his brother for a weekend of hunting. The brother brought the hand gun, which was registered in New Jersey, with him to the Arrowhead Ranch in New York State where petitioner was working. Petitioner's brother inadvertently left the gun and some other personal possessions when he returned to New Jersey. This incident resulted in a $100 fine which petitioner paid. I do not find these two arrests to significantly affect the petitioner's qualifications for licensure.

In 1973 he was arrested as a fugitive from justice for failing to respond to a Puerto Rican bench warrant for his arrest. This incident began in 1968 when he was accused of selling a five dollar bag of marijuana to an under cover agent in Puerto Rico where he was living and working at the time. The warrant was issued on information and belief and the petitioner was arrested initially because of his similarity in appearance to the person described in the warrant. The warrant was a "John Doe" warrant. He returned to New Jersey pending trial with the permission of the Court in Puerto Rico so that he could be with his pregnant wife. Four times, he returned to Puerto Rico at his own expense when summoned to appear for trial. Each time, the trial was postponed for reasons beyond his control. He ultimately refused to return again to Puerto Rico and the fugitive from justice warrant was issued. Puerto Rico refused to proceed with extradition and the entire matter was ultimately dismissed. I conclude

that this incident does not negatively reflect upon the petitioner's qualifications for licensure.

At 1:44 a.m. on the morning of May 19, 1977, the Police Department of the town of Liberty, New York received a call from Yetta Belusky that her husband, John Ruiz, a Viet Nam veteran, had gone beserk and was wrecking the apartment. When police arrived at the scene Mr. Ruiz was swinging a stick and began throwing karate chops at the officers. A fire department pumper engine was required to hose Mr. Ruiz down before he regained his senses and return quietly to his home. This incident is recounted in the log of the Liberty Police which is R-1 in evidence. Mr. Ruiz also confirms the basic facts of the incident (T 75 line 9 to T 77 line 9). He admits having claimed at the time to have been a Viet Nam veteran and having actually thought that he was a Viet Nam veteran; although, he now knows that he was never in Viet Nam (T 75 line 20 to T 76 line 6). There is no evidence in the record to indicate what action, if any, was taken against him by the police department as a result of this incident.

At 2 a.m. on the morning of August 23, 1978 petitioner was at the Lincoln Bar on Mill Street in the village of Liberty. He had been drinking and taking medication which included Dilantin and possibly another medication. He created a disturbance at the bar and then walked out into the street. He flagged down a passing patrol car and asked to talk to Patrolman McGibbon, who was apparently a friend of his. He said he was going to have to do something crazy. He wanted to be killed and hoped that the police would do it. Ruiz was taken to police headquarters where he attacked Patrolman Brown, who had driven him there. He then announced that he was going to the next room to beat the municipal judge, Richard Hering. Judge Hering was conducting an arraignment on an unrelated case. When Judge Hering walked out of the adjacent room and into the desk area, Ruiz flashed a knife and jumped over the desk yelling that he was going to kill Judge Hering. He came within three inches of cutting Judge Hering but was stopped by police officers. He ran out of police headquarters and was chased by several policemen who ultimately subdued him with great difficulty. All the while he kept requesting that they kill him, saying that he wanted to die. The details of this incident can be observed in R-2 through R-12 in evidence, which are affidavits of the police officers and the municipal court judge who was involved. Mr. Ruiz's own description of these events appears on page 35 of the transcript and continues to page 38. However, Mr. Ruiz later told an examining physician that he could not remember much of this incident (R-13 in evidence).

A psychiatrist examined Mr. Ruiz on the morning of the incident and found him to be suffering from acute depression with suicidal and homicidal intentions. He was probably schizophrenic, paranoid with marked agitation. His prognosis was very guarded according to the psychiatrist. The psychiatrist also observed that Mr. Ruiz was "deluded, hallucinatory, paranoid, unable to think or reason logically or realistically, cannot control his impulses, acting out destructively." (R-16).

The petitioner was committed to the Mid-Hudson Psychiatric Center where he remained for slightly more than a month.

As a result of his false claims that he was a Viet Nam veteran, the municipal prosecutor and the municipal judge entered into a plea bargaining agreement with his attorney. The reckless endangerment charges which had been brought against him were dismissed and he was convicted of resisting arrest. He was placed on a three year probation with conditions that included attendance at a mental health clinic and treatment by a doctor of his choice. The probation began on March 10, 1979 and will continue until March 10, 1982.

His probation officer has been a Mr. Tim Shade, Atlantic County Probation Department, who testified in this matter. Mr. Ruiz has to this date kept his monthly appointments with Mr. Shade and has further fulfilled his other conditions of probation. Mr. Shade recommends Mr. Ruiz for licensure. However, on cross-examination, he admitted that he has no expertise in psychiatry and that he cannot give any assurances that a ciolent incident will not happen again (T 93 line 22 to T 94 line 3). It is clear that Mr. Shade recommends all of his clients for employment since he considers that to be an important aspect of rehabilitation (T 94 line 4 to line 12).

The petitioner has apparently been suffering from a seizure disorder since 1965 for which he is receiving veteran's benefits (P-1). However, it is not clear from the record what the exact relationship is between his medical problems and his psychiatric problems.

I CONCLUDE that the events of August 23, 1978 and May 19, 1977, the criminal attacks on persons and property and the false claim that he was a Viet Nam veteran, combined to evidence a lack of good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89 2b as incorporated by reference in N.J.S.A. 5:12-90b. I FURTHER FIND that the attack on Judge Hering constitutes an aggravated assault in violation of N.J.S.A. 2C:12-1b, a crime of the second degree, specifically enumerated as a disqualifying act in N.J.S.A. 5:12-86c as recently amended.

With regard to rehabilation, the record

is far from clear and convincing. This petitioner should at least complete the three year probationary period and present clear medical testimony before rehabilitation can be said to have been accomplished.

I FURTHER FIND the aforesaid acts to 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.

For all of the foregoing reasons, IT IS HEREBY ORDERED that petitioner's application for licensure be denied.

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

I HEREBY FILE with the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

May 27, 1980
DATE

NORMAN D. SMITH, ALJ

May 29, 1980
DATE

Receipt Acknowledged
BY:
AGENCY HEAD
R. BENJAMIN COHEN

May 30, 1980
DATE

Mailed to Parties
Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

mjl

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-11

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. STEPHEN SKLAR, Respondent.	:	FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting of November 5, 1980; and the Commission having carefully considered the entire record of the proceedings and the Order of Settlement issued by former Commissioner Albert W. Merck as Hearing Examiner and dated June 12, 1980; and the said Order of Settlement having been subscribed to by the Respondent and the Charging Party on August 1 and September 19, 1980, respectively; and the Commission having found the terms of the said Order of Settlement to be just, reasonable and consistent with the policies of the Casino Control Act and with the public interest; and the Commission having resolved at its public meeting aforesaid to adopt and approve the same;

IT IS on this 4th day of December 1980, ORDERED that the Order of Settlement in this matter, which is incorporated herein by reference and made a part hereof, be and hereby is adopted and approved by the Commission except as otherwise provided below; and

IT IS FURTHER ORDERED that the Complaint in this matter be and is hereby dismissed; and

IT IS FURTHER ORDERED that Respondent's casino employee license be and hereby is suspended for a period of one (1) year commencing on October 27, 1980 based upon his admission that he did in fact commit the wrongful acts alleged in the Complaint in this matter; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 4, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NUMBER 79-11

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. STEPHEN SKLAR, Respondent.	ORDER OF SETTLEMENT

The matter in difference in the above-entitled action having been amicably adjusted by and between the parties hereto, it is hereby stipulated and agreed by and between the respective parties as follows:

A. PROPOSED SETTLEMENT

Respondent admits that he did, in fact, commit the allegations set forth in the Complaint in violation of N.J.A.C. 19:47-2.3 et seq., and consents to the entry of a Final Order of the Commission so finding without a hearing. The Division of Gaming Enforcement and the Respondent consent to the entry of an Order by the Commission suspending the Respondent's casino employee license for a period of one (1) year from the date of issuance of the Commission's Final Order.

B. FINAL DISPOSITION BY COMMISSION

Final disposition of this matter in accordance with the foregoing proposed settlement upon which the parties have agreed will not occur until and unless the said settlement is approved by majority vote of the Casino Control Commission. Said settlement will not be submitted to the Commission for approval until and unless the Division and Respondent have affirmed their agreement upon the proposed settlement in writing by signing this Order in the spaces designated below.

It is on this day of June 1980,

ORDERED that this Order of Settlement be served upon the Respondent's attorney for his and the Respondent's signature forthwith and that it be promptly served upon the Division for the signature of its representative upon the return of said Order to the Commission by Respondent.

COMMISSIONER ALBERT W. MERCK
HEARING EXAMINER

BY: David Arrajj /ldb
David Arrajj
Senior Assistant Counsel

DATED: June 12 1980

I hereby consent to both the form and substance of the foregoing Order of Settlement. I further hereby affirm that the foregoing Order of Settlement accurately memorializes the agreements reached in this matter on January 30, 1980.

DATED: Aug. 1, 1980

Stephen Sklar
STEPHEN SKLAR,
Respondent

DATED: 8 8 80

WILLIAM W. SHULTZ, ESQUIRE
Attorney for Respondent Sklar

DATED: Sept. 19, 1980

Patricia Arons
PATRICIA ARONS
Deputy Attorney General
Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-28

IN THE MATTER OF THE APPLICATION :	
OF LINDA SMITH FOR LICENSURE :	
RENEWAL AS A CASINO EMPLOYEE :	FINAL ORDER
(COCKTAIL WAITRESS) :	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Commission having considered the entire record of that hearing and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of September 17, 1980, to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure renewal,

IT IS on this 24th day of October 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Linda Smith for renewal of her licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: October 24, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF MS. LINDA SMITH FOR RENEWAL LICENSURE AS A CASINO EMPLOYEE (Cocktail Waitress)	INITIAL DECISION OAL DKT. NO. CCC 1333-80 AGENCY DKT. NO. 80-EA-28

APPEARANCES:

Donald V. Feeley, Esq., appeared on behalf of the applicant, Ms. Linda Smith

John J. Degnan, Attorney General of the State of New Jersey by **Robert J. Melillo,** Deputy Attorney General for the Division of Gaming Enforcement

BEFORE THE HONORABLE **R. JACKSON DWYER,** A.L.J.

Ms. Linda Smith (applicant) filed a Personal History Disclosure Form (PHD) on April 28, 1978, and was licensed by the Casino Control Commission (Commission) as an alcoholic beverage employee (cocktail waitress). In April of 1979 she filed her renewal application for licensure. Question 12 on the renewal application asked the applicant: "since the last filing of an application for licensure for the renewal of this application with the Commission have you been indicted, charged, or detained, held, taken into custody or arrested by any police or law enforcement authority . . .". The applicant placed a check mark in the box designated "no". On May 22, 1978, the applicant was arrested in Ardmore, Pennsylvania and charged with theft by deception, theft by receiving stolen property, and theft by bad checks. On December 28, 1979, the Division of Gaming Enforcement (Division) wrote to the Casino Control Commission objecting to the renewal of the applicant's casino employee license. On March 3, 1980 the Commission wrote to the applicant's counsel informing him that "the Commission will consider the issuance of an order supsending Ms. Smith's license pending final disposition of a hearing on her renewal application . . .". On March 5, 1980 the Commission wrote to applicant's counsel that it had received her request for a hearing. In April of 1980, the Commission

temporarily suspended the applicant's license pending the outcome of a hearing.

This matter has been transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. On May 21, 1980 a prehearing conference was held. A hearing was also held on June 19, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on July 14, 1980 and from Donald V. Feeley, Esq. on July 21, 1980. I have closed the hearing on the latter date.

I perceive that no purpose would be achieved by summarizing the testimony of the witnesses. The basic facts stand uncontroverted.

After having canvassed the entire record, including the testimony of the applicant, her character witnesses, the exhibits submitted into evidence, I FIND that the following facts are undisputed:

1. The applicant, Ms. Linda Smith filed a Personal History Disclosure Form (PHD) for licensure as a casino employee (cocktail waitress) which was filed with the Commission on April 28, 1978.

2. The applicant was arrested in Ardmore, Pennsylvania on May 22, 1978 and charged with theft by deception, theft by receiving stolen property and theft by bad checks.

3. The applicant purchased a $44.00 pair of shoes and attempted to purchase a $90.00 dress on May 22, 1978 with checks drawn on her account at the First Pennsylvania Bank. That account had been closed by the bank on May 8, 1978 as a result of overdrafts.

4. The applicant appeared at a preliminary hearing, and was released on bail. She failed to appear at her scheduled trial date. A bench warrant was issued for her arrest.

5. After the applicant filled out her PHD, she was licensed by the Casino Control Commission as a casino employee (cocktail waitress). In April of 1979 she filed a renewal application for licensure. In response to question 12 on the renewal application, the applicant stated that, since her last filing of an application for licensure with the Commission, she had not been arrested, charged or detained, held or taken into custody by any police or law enforcement authority.

6. When the applicant answered question 12 on her renewal application in the negative, she was aware of the pending charges against her in Pennsylvania. She made a knowing misstatement on her renewal application because she was afraid that if she answered the question truthfully she would lose her job.

7. When the applicant was arrested on May 22, 1978, she knew that insufficient funds were in her account to cover her checks.

8. The applicant was interviewed by Detective Sargeant Kenneth Prescott of the New Jersey Division of State Police, temporarily assigned to the Division of Gaming Enforcement. The applicant admitted, during that interview, that she was aware of the pending charges against her in Pennsylvania, and that she intentionally failed to disclose the fact of her arrest in Pennsylvania on her renewal application.

9. Sargeant Prescott did not tell or mislead the applicant into believing that if she returned to Pennsylvania to stand trial that her renewal application would be approved.

10. The applicant returned to Pennsylvania to stand trial on pending charges. On October 30, 1979, she pleaded guilty to

the offense of theft by bad checks and was admitted into Pennsylvania's accelerated rehabilitative disposition program. The charges of theft by deception and theft by receiving stolen property were held in abeyance pending satisfactory completion of a one year probationary period.

11. In December of 1979 the Division of Gaming Enforcement informed the applicant and the Casino Control Commission that it objected to the renewal of the applicant's casino employee license.

12. The Casino Control Commission suspended the applicant's casino employee license pending the outcome of the instant hearing..

13. The applicant produced two character witnesses; Joseph Grimes, a retired police officer, and Ms. Anita Smith, her sister. Grimes asserted that, in his opinion, the applicant's failure to answer criminal charges in Pennsylvania, which resulted in a bench warrant being issued, should not reflect adversely upon her good character, honesty and integrity.

CONCLUSIONS OF LAW

N.J.S.A. 5:12086b provides:

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

(a). . .

(b)...failure of the applicant to reveal any fact material to qualification, or misleading as to a material fact pertaining to the qualification criteria;...".

The applicant's failure to disclose her arrest and conviction in Pennsylvania on her renewal application was both intentional and material; and, in my opinion, a per se

disqualification under the statute.

For the sake of completeness, I further **CONCLUDE** that the applicant has also failed to meet her burden by clear and convincing evidence that she possessed the requisite degree of good character, honesty and integrity which is a prerequisite to her continued licensure as a casino employee under N.J.S.A. 5:12-95, N.J.S.A. 5:12-90e, and N.J.S.A. 5:12-89b(2). It is uncontroverted that the applicant made a knowing misstatement on her renewal application because she was "afraid that she would lose her job", that she attempted to pass checks when, according to her testimony, she knew that insufficient funds were in her account, and that she failed to return to Pennsylvania on her scheduled trial date to answer charges of theft by deception, theft by receiving stolen property, and theft by bad checks.

The applicant's conduct is contrary to the declared purposes of the statutes.

I CONCLUDE there is no support in the record for the applicant's assertion that the Division of Gaming Enforcement should be estopped to raise objections to the renewal of the applicant's licensure.

I CONCLUDE that the application of Ms. Linda Smith for renewal of her casino employee license (cocktail waitress) should be **DENIED**.

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

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

August 11, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

August 12, 1980
DATE

Joseph P. Lordi
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 13, 1980
DATE

Elizabeth J. Lozzano, Cs
OFFICE OF ADMINISTRATIVE LAW

ywg

IN THE MATTER OF THE APPLICATION
OF DOUGLAS L. STANLEY FOR LICENSURE
AS A CASINO EMPLOYEE (BLACKJACK DEALER)

OAL Docket No. ccc 0021-80
Agency Docket No. 79-EA-197

The Initial Decision attached hereto became the Final Decision in this matter on July 21, 1980, by operation of law. See N.J.S.A. 52:14B-10(c).

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF	:	INITIAL DECISION
THE APPLICATION OF	:	
DOUGLAS L. STANLEY	:	OAL DKT. #CCC 0021-80
FOR LICENSURE AS A	:	
CASINO EMPLOYEE	:	AGENCY DKT. #79-EA-197
(BLACKJACK DEALER)		

APPEARANCES:

Peter Abatemarco, Esq., attorney of record

Raymond Newman, Esq., a member of the Pennsylvania Bar, American Civil Liberties Union, appeared pro haec vice on behalf of the Applicant, Douglas L. Stanley

John J. Degnan, Attorney General for the State of New Jersey, by: Joseph A. Mussomeli, Deputy Attorney General, for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In November of 1978, Douglas L. Stanley (Applicant) filed an application, including a Personal History Disclosure Form, with the Casino Control Commission (Commission) for licensure to work as a casino employee (dealer).

On October 15, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Commission wherein the Division stated that the Applicant had disclosed convictions for two disorderly persons offenses but had failed to disclose an arrest in 1973 on charges that were later dismissed and further stated that "the Division does not interpose an objection to this individual's licensure as a casino employee". The Applicant was advised by letter from the Commission's General Counsel, dated December 13, 1979 that there was a "substantial possibility" that the Commission would deny his application. He was also informed that he had a right to a hearing.

The Applicant requested a hearing on his application 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 February 29, 1980. A hearing was held on April 21, 1980 in Atlantic City, New Jersey. Proposed Findings of Fact and Conclusions of Law were received from Deputy Attorney General Joseph A. Mussomeli on April 24, 1980 and from Leonard E. Newman, Esq., on May 21, 1980. The hearing was closed on the latter date.

Prior to the commencement of the hearing, the following exhibits were marked into evidence by stipulation:

JE-1 A letter from the Egg Harbour Township Municipal Court, signed by Claire Yoxheimer, Deputy Court Clerk, that the Applicant was convicted of shoplifting on January 13, 1978 and fined $125, and assessed $25 court costs.

JE-2 Photocopy of both sides of an index card from the Egg Harbour Township Municipal Court reflecting that the Applicant was arrested on February 12, 1973 for lewdness and for the possession of a controlled dangerous substance. Both charges were dismissed.

JE-3 The third exhibit was a xerox of an index card (both sides) reflecting that the Applicant was charged with assault and battery and lewdness on March 30, 1973. He was charged also with the possession of marijuana (under 25 grams) and possession of a controlled dangerous substance (amphetamines) on September 19, 1976.

JE-4 An investigation report by the Atlantic City Police Department dated September 19, 1976 pertaining to the Applicant's arrest for the possession of a controlled dangerous substance (amphetamines).

JE-5 A rap sheet obtained from the United States Department of Justice, Federal Bureau of Investigation, which lists the Applicant's arrest and the disposition of the various charges.

JE-6 Applicant's Personal History Disclosure Form.

The Division also stipulated that the Applicant disclosed a juvenile record which had been expunged.

Douglas L. Stanley testified that he filled out a Personal History Disclosure Form (PHD) (JE-6) on December 25, 1978 for licensure as a casino employee (blackjack dealer). Question #46 on the PHD reads: "Have you or has any member of your immediate family, (as defined on page 4 of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" The Applicant marked the block designated "yes", and listed the following offenses: "Possession of marajuana and controlled dangerous substance before the Municipal Court in Atlantic City on October 19, 1977." The matter was discharged. He was charged with a "disorderly persons offense before the Egg Harbour Township Municipal Court on December 14, 1977. He was convicted and fined $200.00.

Question #49 on the PHD reads: "Have you ever used, distributed or possessed any narcotic, hallucinogenic drug, barbituate, amphetamine or any other substance that is listed in Schedule I through V of N.J.S.A. 24:21-20 during the past ten-year period other than pursuant to a valid prescription issued by a licensed physician?" The Applicant stated that he placed an "X" after the block designated "Yes" and wrote "Possessed marijuana - 10-19-77". He added that he possessed under 25 grams and received a conditional discharge, as it was his first offense.

He was interviewed by a Division investigator, Ms. Antoinette Burton, on June 27, 1979 approximately eight months after he filled out his PHD. When Ms. Burton asked him if he would like to add anything to his PHD, he remembered that he had been charged with attempted rape; however, the offense was expunged from the records. He told the investigator that he had "disclosed everything that he knew". He was not confronted by Ms. Burton ith any of his arrests and/or convictions.

He is now aware that he failed to disclose an arrest for assault and battery and lewdness as set forth on JE-3. The background circumstances of that arrest were: He attended a March of Dimes telethon. Numerous people, at that affair, were drinking. A Joseph Barrett "hit me so I pressed charges against him. He pressed charges against me. He charged me with atrocious assault and battery and lewdness. The charges were dropped against me and both of us were reprimanded by the judge. We were told to stay away from each other." Applicant stated that he inadvertently forgot to disclose the charges, probably because they had been dismissed by the court. He is aware that the Casino Control Act requires that he possess good character, honesty and integrity. He asserted that he possesses those qualities.

With respect to his arrest for the possession of marijuana in 1977, Applicant stated that a police officer found amphetamines in his possession, together with a small amount of marijuana (under 25 grams). He had a prescription for the amphetamines. He denied that he was "selling pills". The court granted him a "conditional discharge" as a first offender.

Oh December 14, 1977, he was arrested for shoplifting a jacket worth $45. At that time, Applicant stated that he was traveling with a "bad element of people". It was his only shoplifting offense. He has not been arrested since 1977.

He is now employed as a cook. He also has seasonal employment as a lifeguard with the Atlantic City Beach Patrol. He has taken a course in cardio-pulmonary resusitation. He has approximately $200 in a bank account. He had no bank account in 1977. He does not now drink or smoke. His present hobbies include jogging and running. In 1977 he attended dealer school and took courses in blackjack and roulette.

On cross-examination, Applicant testified that in 1977 he worked as a lifeguard during the summer months; however, he was substantially unemployed during the winter. He periodically worked for his father, who was an interior decorator. When he shoplifted a jacket, he "wanted to try everything once", and was "hanging out with a bad element".

He was arrested with amphetamines in his possession in 1977. He did not recall the exact number of pills in his possession; however, the drug was prescribed by Dr. George Slotoroff for weight reduction. He weighed 153 lbs. in 1977; he now weighs 140 lbs. He now controls his weight by jogging. According to his best recollection, he had only one type (color) of pill in his possession when he was arrested. He went to Dr. Slotoroff "on his own accord" and probably learned of him "through word of mouth". In retrospect, he feels that it was "ridiculous" to have taken pills for weight reduction.

While working on the Atlantic City Beach Patrol, he was required to enforce various beach regulations and, on a few occasions, he caught "pocketbook thieves". . He conceded that while he was enforcing regulations as a lifeguard, he was violating other laws.

When he was 16 years of age, he was charged with attempted rape, some time in 1965. That record was expunged. The complainant did not appear in court. He has paid for a blackjack course, and is presently "paying off" a roulette course.

On redirect, Applicant identified the following exhibits:

A-1 A newspaper photograph depicting him in a rescue operation and pulling an unidentified bather to safety.

A-2 Character references from Joseph Rush, a teacher at Claymount High School and Assistant Chief of the Atlantic City Beach Patrol.

A-3 His sister, Mary Stanley, courtroom executive at Resorts International.

A-4 Richard Sless, a teacher at the Lafayette Avenue School in Atlantic City.

A-5 Joseph D. Rush, Deputy Assistant Chief, Atlantic City Beach Patrol.

FINDINGS OF FACT:

1. The Applicant filled out a Personal History Disclosure Form (PHD) in November for licensure as a casino employee (blackjack dealer).

2. Question #46 on the PHD reads: "Have you or has any member of your immediate family (as defined on page 4 of this application) ever been arrested, indicted, charged with or convicted of a criminal offense in this State or in any other jurisdiction?" The Applicant marked the block designated "yes", and revealed that he was arrested for "possession of marijuana and controlled dangerous substance" and appeared before the Municipal Court in Atlantic City on October 19, 1977. The matter was "discharged". He also

revealed that he was charged with a "disorderly persons offense" before the Egg Harbour Township Municipal Court on December 14, 1977. He was convicted and fined $200.

3. Question #49 on the PHD reads: "Have you ever used, distributed or possessed any narcotic, hallucinogenic drug, barbituate, amphetamine or any other substance this is listed in Schedule I through V of N.J.S.A. 24:21-20 during the past ten-year period other than pursuant to a valid prescription issued by a licensed physician? The Applicant placed an "X" after the block designated "yes" and wrote "possessed marijuana - 10-19-77". He possessed under 25 grams and received a conditional discharge as it was his first offense.

4. The Applicant was interviewed by Division investigator Ms. Antoinette Burton on June 27, 1978 approximately eight months afterhe filled out his PHD. Ms. Burton asked him if he would care to supplement his PHD. He remembered that he had been charged with attempted rape. However, the offense had been expunged from the records. He told Ms. Burton that he had "disclosed everything that I knew".

5. The Applicant failed to disclose on his PHD and his interview with Ms. Burton the fact that he had been arrested for assault and battery and lewdness as indicated on JE-3. Those charges were dismissed against the Applicant.

6. The Applicant inadvertently failed to disclose the charges of assault and battery and lewdness and did not attempt to mislead the Division investigator, Ms. Antoinette Burton, or the Commission when he filled out his PHD.

7. The Applicant submitted excellent character references, especially from Joseph D. Rush, Jr., Deputy Assistant Chief, Atlantic City Beach Patrol, which have been thoroughly reviewed. He is presently employed as a cook and works part time on the Atlantic City Beach Patrol. He has approximately $200 in the bank. He doesn't drink or smoke. His pasttimes include jogging and running. He has completed courses in blackjack and roulette.

CONCLUSIONS OF LAW:

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

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

(a) . . . . . .

(b) . . . . . failure of the applicant to reveal any fact material to qualification, or misleading as to a material fact pertaining to the qualification criteria;.....".

The Commission has held that the failure to disclose (or provide a misleading) material fact would be considered sufficient for disqualification only after an analysis of the factors surrounding that failure. Some of those factors to be considered are whether it was willful, whether it was "a conscious disregard for the regulatory system", inadvertent or an ignorant failure". Reasonable discretion should be applied in each case.

The Applicant candidly listed two convictions on his PHD for shoplifting and for the possession of marijuana (under 25 grams). I find that the Applicant was both forthright and credible when he testified that when he failed to list an arrest for assault and battery and lewdness in 1973, which charges were ultimately dismissed, that the ommission was inadvertent and unintentional.

I CONCLUDE that the Applicant did not knowingly intend to conceal material information or to mislead the Commission and the Division within the contemplation of N.J.S.A. 5:12-86(b).

N.J.S.A. 5:12-89(b)2, as incorporated by N.J.S.A. 5:12-90(b) provides in pertinent part:

> "Each applicant . . . . . shall produce such information, documentation, and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity".

The Applicant's failure to disclose his arrest for assault and battery and lewdness was inadvertent. His two convictions consist of the possession of a small amount of marijuana (under 25 grams) and the shoplifting of a coat worth approximately $45. Those disorderly persons offenses do not evince any pattern of criminal recidivism. Moreover, the convictions are not per se statutory disqualifiers under N.J.S.A. 5:12-86(c) (1), (2) and (3); and it would be a strained construction to bring them, singly or together, within the language of "any other offense" under N.J.S.A. 5:12-86(c) (4).

The Applicant's testimony and his character references reflect that he has made a turn-about during the past two years. His habits, associations, ambitions, sense of goals, and maturation reveal character growth.

The credible proofs in the whole record fail to indicate that the Applicant's licensure would undermine public confidence in the integrity of the regulatory process and gaming operations, or would, in any way, be inimicial to the policy of the Casino Control Act and to Casino operations.

I CONCLUDE that the Applicant has established by clear and convincing evidence his present reputation for good character, honesty and integrity under the Act.

It is, therefore, my recommended decision that a casino license permitting the Applicant to work as a Blackjack Dealer be GRANTED.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1, et seq.

I HEREBY FILE with Joseph P. Lordi, Chairperson of the Casino Control Commission, my Initial Decision in this matter and the record in these proceedings.

May 28, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

June 4 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

IJ

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4661-
CCC DOCKET NO. 79-EA-126

IN THE MATTER OF THE APPLICATION :	
OF JEROME TALLIAFERRO FOR :	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :	
(DEALER) :	

A hearing having been conducted on June 26, 1980 in the above-captioned matter before the Administrative Law Judge Norman Smith of the Office of Administrative Law; and the Commission having considered the entire record of these proceedings, the Initial Decision of the Administrative Law Judge and the exceptions filed by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting of October 22, 1980 to adopt the Initial Decision and to deny the application for licensure;

IT IS on this 25th day of November 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted; and

IT IS FURTHER ORDERED that the application of Jerome Taliaferro for licensure as a casino employee (dealer) be and hereby 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 copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: November 25, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

JEROME TALIAFERRO,	:	INITIAL DECISION
PETITIONER,	:	OAL DKT. NO. CCC 4661-79
DIVISION OF GAMING ENFORCEMENT,	:	AGENCY DKT. NO. 79-EA-126
RESPONDENT.	:	

APPEARANCES:

David Sciarra, Esq., on behalf of the Petitioner

Robert Melillo, Deputy Attorney General, on behalf of the Respondent

WITNESSES:

Jerome Taliaferro
Linda Taliaferro
Detective Lieb, New Jersey State Police

EXHIBITS:

P-1 Personal History Disclosure Form
P-2 Letter from Joseph Hoffman
P-3 Letter from Steven S. Clar
P-4 Hospital Records
R-1 Criminal History Record, Department of Law and Public Safety
R-2 Arrest Record, Clifton, New Jersey, July 19, 1976
R-3 Arrest record, Nutley, New Jersey, September 13, 1977
R-4 Arrest Record, Nutley, New Jersey, October 18, 1977
R-5 Juvenile Offense Record

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

This matter concerns the application of Jerome Taliaferro to the Casino Control Commission for a license as a casino employee (dealer) pursuant to N.J.S.A. 5:12-90. The Division

of Gaming Enforcement objected to petitioner's licensure and 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 hearing was held on June 26, 1980 and the final memorandum of law, on behalf of the petitioner, was received on July 15, 1980 at which time the record was closed.

The Division objects to Mr. Taliaferro's licensure on the basis of his arrest record. Much of that record consists of juvenile offenses and the petitioner objected to the admission of those offenses into evidence. I reserved decision during the hearing pending receipt of legal memoranda, which have now been filed.

The petitioner concedes that the Casino Control Commission has the authority to compel disclosure of a juvenile record, but contends that it should not be admitted into evidence. However, the clear mandate of the Casino Control Act is to ascertain all information "... without limitation, ... pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the the year period immediately preceding the filing of the application." N.J.S.A. 5:12-89 b(2). Once the Commission learns of information that is relevant to the issues of good character, honesty and integrity, it must consider those issues unless there is some lawful impediment. The juvenile offenses of Mr. Taliaferro have not been expunged and have been lawfully disclosed to the Commission. Those offenses are certainly relevant to the petitioner's qualifications. Therefore, the objection is overruled and the juvenile offense record is admitted into evidence.

Mr. Taliaferro was raised in a house with nine brothers and four sisters. His father left the family while Mr. Taliaferro

was a young boy, leaving his mother to support the family as a barmaid, with help from public assistance when appropriate. Petitioner's parents drank alcoholic beverages regularly in the home. Mr. Taliaferro, together with many of his brothers, began drinking at an early age, twelve years old in petitioner's case. He had no idea that there was anything wrong or unusual about drinking as much as a quart of hard liquor a day. He quickly became dependent on alcohol and suffered from that dependency for seventeen years. During that period, he compiled a lengthy record of anti-social behavior, as a juvenile and adult, that is set forth specifically in R-1 and R-5. They include larcenies, assaults and batteries, trespassing, resisting arrest, urinating in a theater (as a fifteen year old), and shoplifting. He left school after the tenth grade at the urging of his mother so that he could help support his family. He attended cooking school for a nine-month period and successfully completed the course. He has earned his living with that skill ever since.

In 1972 Mr. Taliaferro married. He and his wife, Linda, have three children aged seven years, four years, and five months, respectively, at the time of the hearing. Mrs. Taliaferro was unaware of her husband's alcoholism when she married him. Petitioner has had an unusual ability to continue to work and perform the duties of his various jobs even while drinking continuously. From March to October, 1978, he was the chef and kitchen supervisor for a Ramada Inn in Clifton and supervised the work of 12 subordinates. He left this position due to illness.

Mrs. Taliaferro joined Alinon, an organization for the spouses of alcoholics, and continually urged her husband to join Alcoholics Anonymous. He fought this suggestion until he

was hospitalized in 1976 with alcohol related medical problems. On June 14, 1976, Mr. Taliaferro enrolled in Alcoholics Anonymous. Since that date, he has not had a single drink. He has worked at more than one job at a time to support his family. Letters of recommendation (P-2 and P-3) were filed by his landlord and his alcoholics anonymous sponsor.

In July, 1976 he pled guilty to uttering bad checks. His wife had written the checks for Christmas presents the previous December, in expectation of Mr. Taliaferro's Christmas bonus. However, petitioner spent that money on alcohol and the checks bounced. Petitioner wanted to protect his pregnant wife from the rigors of a court appearance so he appeared himself and entered the guilty plea.

The final incident of substance occurred in September, 1979. After learning of the Division's objection to licensure and other personal problems, petitioner smoked marijuana and was arrested for that offense. He volunteered the facts of this occurrence and did not seek to hide it from the Division. He resorted to marijuana on this one occasion as a result of his despondency and his pledge to avoid alcohol at all costs.

Mr. Taliaferro testified before me. During that testimony, he displayed a surprising quality of dignity and candor. He is a man who has in him a genuine desire to attain respectability. His wife and his children have no doubt been strong, motivating factors for him. He has fought against the devastating effects of a dismal childhood; one that failed to prepare him to succeed at anything.

The Casino Control Act requires me to find that an applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence. Were it not for the marijuana use in September, 1979, I would have no problem finding that the petitioner has met his burden. However, having been put on

notice that the Division objected to his application, that a hearing would be held, that he would have to overcome the clear negative implications of his arrest record, he nevertheless used marijuana illegally. If there was ever a time for abstinence, it was the period between the objection of the Division and the hearing. The Appelate Division has observed that "The epithet 'honest' implies a sense of general probity which is the antithesis of criminal tendency or conduct, and which certainly, we think, would imply 'law-abiding' man." State v. Micci, 46 N.J. Super. 454 (App. Div. 1957). The recent occurrence of the marijuana incident, in the face of the personal scrutiny which Mr. Taliaferro knew he was about to undergo, demonstrates that he is not yet ready to forswear illegal conduct.

It is my duty to enforce the very strict policy that the Legislature has adopted for our State, and not to weigh the appropriateness of that policy in any given case. Were it in my power, I would grant a license to Mr. Taliaferro to become effective only after the completion of a probationary period of one year from the date of this decision. Unfortunately, a review of the Casino Control Act fails to find authority for the entry of such an order. Therefore, based upon the facts that I have described, which I find to be true, I CONCLUDE that the petitioner has failed to establish his good character, honesty and integrity by clear and convincing evidence, as required by N.J.S.A. 5:12-89b2. This conclusion requires denial of petitioner's application for licensure.

I do not adopt the Division's contention that the conduct of the petitioner is inimical to the policy of the Casino Control Act in violation of N.J.S.A. 5:12-86c. The final contention of the Division, that petitioner has failed to disclose his criminal record in violation of N.J.S.A.

5:12-86b has not been established. I find as a fact that petitioner did disclose the existence of a juvenile and adult criminal record but was simply unable to provide the details of those offenses, despite a good faith effort to do so.

IT IS HEREBY ORDERED that petitioner's application for licensure 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.

8/26/80
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged

8/27/80
DATE

CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties

DATE

OFFICE OF ADMINISTRATIVE LAW

mjl

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-58
OAL DOCKET NO. CCC 2638-80

IN THE MATTER OF THE APPLICATION :	
OF RAYMOND FRANCIS TENPENNY, JR.FOR:	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :	
(SECURITY OFFICER). :	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law and the Commission having considered the entire record of that hearing, the Initial Decision of the Administrative Law Judge, and the exceptions filed by the Applicant, no exceptions or objections having been filed by the Division of Gaming Enforcement, and the Commission having resolved at its public meeting of December 16, 1980 to adopt the Initial Decision of the Administrative Law Judge and to deny the application for licensure,

IT IS on this 30th day of December 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and is hereby adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Raymond Francis Tenpenny, Jr., for a casino employee license be and is hereby denied on the basis of the reasons stated in the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: December 30, 1980.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2638-80

AGENCY DKT. NO. 80-EA-58

IN THE MATTER OF:

RAYMOND FRANCIS TENPENNY,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: September 23, 1980

Received by Agency: 11/7/80

Decided: November 7, 1980

Mailed to Parties: 11/12/80

APPEARANCES:

James J. Mahoney, Esq. for Applicant (Thomas E. Durkin, Jr., Attorney)

Patricia J. Arons, Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the application of Raymond Francis Tenpenny to the Casino Control Commission for licensure to work in a casino as a security officer. By letter report to the Casino Control Commission dated March 8, 1980, the Division of Gaming Enforcement recommended that the Applicant be denied licensure. The Applicant requested a hearing on his license application and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq..

At issue is whether Applicant should be disqualified from licensure as a security officer on the grounds that he has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria. If not so disqualified, the proofs in the whole record regarding the disqualification criteria may nonetheless be considered as to the remaining issue of whether Applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

The relevant section of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) relied upon by the Division of Gaming Enforcement in its opposition to Applicant's licensure is N.J.S.A. 5:12-90, which incorporates criteria set forth in section 89b of the Act, including the requirement that the Applicant shall show by "clear and convincing evidence the Applicant's reputation for good character, honesty and integrity." Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

The Applicant has prior employment experience as a Casino Security Officer. This experience was gained during 1978 at the Stardust Hotel in Las Vegas, Nevada. The Applicant voluntarily terminated his employment in Los Vegas due to an illness of a relative. His termination slip from the Stardust Hotel (Exhibit P-1) indicates that he was eligible to be rehired.

In connection with his application for licensure, the Applicant filed a Personal History Disclosure Form with the Casino Control Commission on April 27, 1979. The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b of the Casino Control Act arises from the Applicant's admitted failure to disclose his criminal and disorderly persons arrest and conviction record in response to question No. 46 of his Personal History Disclosure Form, which requires complete disclosure of an Applicant's criminal and disorderly persons arrest and conviction record. The Applicant's arrest and conviction record is as follows:

DATE OF ARREST	OFFENSE	DISPOSITION
1970	Interfering with Police	Fined $10.00
1971	Possession of Alcoholic Beverages in a Motor Vehicle	Fined $75.00
1971	Loitering	Fined $25.00
1973	Possession of marijuana	Dismissed
1975	Drunk and disorderly and resisting arrest	Fined $25.00
1976	Disturbing assemblies	Not guilty
1976	Drunk and Disorderly	Fined $50.00, suspended
1976	Interfering with any person	County Workhouse for 2 days

The Applicant testified that he understood Question No. 46 when he prepared his Personal History Disclosure Form. He explained that he did not dislose his arrest and conviction record in his April 1979 Disclosure Form because he did not feel his record was relevant to his application, since he had been hired in 1978 as a Security Officer for a casino in Las Vegas. According to the Applicant, he did not disclose his record when successfully applying for his position in Las Vegas, and he relied upon the same approach when applying for a license to work in a similar position in Atlantic City.

The Applicant testified that he responded to an inquiry from an investigator as to why he had not disclosed his arrest and conviction record on his application by attempting to file with the Casino Control Commission an amended Disclosure Form setting forth his entire arrest and conviction record (Exhibit P-2). According to the Applicant, he disclosed to Division of Gaming Enforcement Investigator Braslow his entire record, and explained to the investigator that it had not been disclosed in his application because the Applicant did not think the offenses were relevant.

Investigator Larry S. Braslow testified on behalf of the Division of Gaming Enforcement. According to the investigator, he spoke with the Applicant by telephone on January 17, 1980 concerning each of the questions on the Applicant's Personal History Disclosure Form. It was the investigator's testimony that the applicant stated he understood question No. 46 concerning arrests and convictions, and then denied that he had an arrest record. Investigator Braslow stated that he gave the Applicant every

opportunity to disclose his arrests voluntarily, but the Applicant denied each of them until the investigator specifically confronted him with their existence.

The Applicant testified that he has had no criminal involvement since the disposition in 1976 of the last offense listed on his amended disclosure form. The Applicant asserted that he is ashamed of the offenses which occurred when he was young, and that he has matured since that time. The Applicant's father, Raymond F. Tenpenny Sr., testified that the Applicant is now a new person, possessing the qualities of integrity and good character. Mr. Tenpenny testified that his son sought his assistance in obtaining an attorney so that his son could amend his application to make full disclosure of his arrest and conviction record.

The Applicant has disputed Investigator Braslow's testimony that the Applicant denied having an arrest and conviction record at the time he was interviewed by the investigator. However, the testimony of Investigator Braslow produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the testimony of the Applicant. Furthermore, it is apparent from the Applicant's own explanation for his original failure to disclose his arrest and conviction record that he made a conscious choice to omit requested information from his Disclosure Form, based upon his own assessment of its relevance. The Applicant understood what information was being requested by question No. 46 of the Personal History Disclosure Form, and the relevance of the information sought should have been readily apparent simply from the presence of the request on the disclosure form. The Applicant's arrest and conviction record is clearly significant as to the evaluation of his qualifications for licensure, and as such it constitutes material facts within the meaning of the disqualification criteria of section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who, inter alia, fails to reveal any fact material to qualification.

The Applicant's intentional omission of his arrest and conviction record from his original Personal History Disclosure Form, and his attempt to conceal his record from the Division Investigator, evidence a conscious disregard for the Casino regulatory system. The Applicant's non-disclosure therefore falls squarely within the meaning of the disqualification criteria of section 86b of the Casino Control Act. This nondisclosure is not cured by the Applicant's submission of an amended disclosure form to the Casino Control Commission at a date subsequent to the transmittal of this matter to the Office of Administrative Law for determination as a contested case.

The credible proofs in the entire record do not dictate the conclusion that the Applicant lacks good character as that trait would normally be understood in a context removed from casino gaming. However, his conscious disregard for the casino regulatory system, as evidenced by his non-disclosure of material facts, does reflect adversely upon his attempt to affirmatively demonstrate his good character, honesty and integrity within the context of legalized gaming.

Having reviewed the testimony and other evidence offered in this matter (See Inventory of Exhibits attached hereto), and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I FIND:

1. Applicant has applied for a license to permit him to work in a casino as a security officer.

2. Applicant failed to disclose in his original Personal History Disclosure Form any information concerning his arrest and conviction record, which record is set forth above and is incorporated herein as if set forth at length.

3. Applicant's failure to disclose on his original Personal History Disclosure Form any information concerning the aforementioned arrest and conviction record was intentional, rather than inadvertent.

4. The Applicant intentionally attempted to conceal his arrest and conviction record from a Division of Gaming Enforcement Investigator.

5. The arrest and conviction information which Applicant failed to disclose on his original Personal History Disclosure Form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

6. Applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

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

> "An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict State regulations to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided."

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the Applicant is disqualified from receiving a casino employee license to work as a security officer, based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a. It is, therefore, ORDERED that the application of Raymond Francis Tenpenny for licensure as a casino employee be denied.

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

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

November 7, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 7, 1980
DATE

David Amaji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

November 12, 1980
DATE

Reginald L. Parker
OFFICE OF ADMINISTRATIVE LAW

PB

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1 Voluntary Termination Slip dated March 4, 1978
P-2 Amended Disclosure Page dated September 3, 1980

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Not in evidence
R-2 Not in evidence
R-3 Not in evidence

WITNESSES

FOR THE APPLICANT:

Raymond F. Tenpenny
Raymond F. Tenpenny Sr.

FOR THE DIVISION:

Larry S. Braslow

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1053-80
CCC DOCKET NO. 80-EA-9

IN THE MATTER OF THE APPLICATION :
OF CATHERINE THOMPSON FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :
(FLOORPERSON) AND GAMING SCHOOL :
INSTRUCTOR. :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge Richard J. Voliva, Jr., of the Office of Administrative Law and the Commission having considered the entire record of these proceedings, the Initial Decision of the Administrative Law Judge, the exceptions filed by the Division of Gaming Enforcement and the arguments of counsel at its October 22, 1980 public meeting,

IT IS on this 17th day of November, 1980, ORDERED that the result recommended in the Initial Decision be and is hereby adopted, except as otherwise ordered below, substantially for the reasons stated in the Initial Decision; and

IT IS FURTHER ORDERED that the Applicant is hereby licensed as a casino employee in the position of floorperson in blackjack with the condition that the Applicant must be employed as a dealer in this game in a New Jersey casino for a period of 45 complete working days before assuming supervisory duties; and

IT IS FURTHER ORDERED that licensure of the Applicant as a gaming school instructor be and is hereby denied; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: November 17, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF	)	INITIAL DECISION
THE APPLICATION OF	)	**OAL DKT. NO. CCC 1053-80**
CATHERINE THOMPSON FOR	)	**AGENCY DKT. NO. 80-EA-9**
LICENSURE AS A CASINO	)	
EMPLOYEE (FLOORPERSON) AND	)	
GAMING SCHOOL INSTRUCTOR (BLACKJACK))		

APPEARANCES:

Seymour L. Marcus, Esq., on behalf of Catherine Thompson

John J. Degnan, Attorney General of New Jersey, by Deputy Attorney General **Michael Grodjeski,** on behalf of the Division of Gaming Enforcement, Department of Law and Public Safety

BEFORE THE HONORABLE **RICHARD L. VOLIVA,** JR., A.L.J.:

This matter concerns the application of Catherine Thompson, petitioner, to the Casino Control Commission for licensure as a casino employee (floorperson) and as a gaming school instructor (blackjack). N.J.S.A. 5:12-90; N.J.S.A. 5:12-92. Her application, including a Personal History Disclosure Form, was filed with the Commission on March 9, 1979 (J-1, see attached List of Exhibits Admitted into Evidence). Ms. Thompson was advised by letter from the Commission, dated January 28, 1980, that based upon information received by letter from the Division of Gaming Enforcement, Department of Law and Public Safety, respondent, dated December 24, 1979, there was a "substantial possibility" the Commission would deny her application and that she had a right to a hearing. Ms. Thompson requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on May 23, 1980. The matter was heard and the record closed on July 10, 1980.

The qualification criteria which must be satisfied for licensure as a casino employee are set forth in N.J.S.A 5:12-90, and that for licensure as gaming school

instructor in N.J.S.A. 5:12-92b. Ms. Thompson had the burden of establishing by a clear and convincing evidence that she satisfied the criteria. N.J.S.A. 5:12-89b. The applicant's testimony, her Personal History Disclosure Form (J-1), and the lack of objection by the Division, established by clear and convincing evidence all of the criteria for licensure as a floorperson and instructor, with the exception of the Division's objection under N.J.S.A. 5:12-89b(3). The Division contended the applicant's experience and business ability was stale, since it terminated in 1968, and, therefore, the applicant did not qualify for licensure. Specifically at issue was whether Ms. Thompson could establish by clear and convincing evidence that she:

> "....has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved." N.J.S.A. 5:12-89b(3).

Neither the Casino Control Act, nor any rules adopted thereunder set forth specific experiential criteria for licensure as a floorperson. In an effort to establish a guideline the Division offered proposed rule N.J.A.C. 19:41-7.17(n) and (o) which, according to the testimony of Detective Sergeant Stephen O. Gelardi of the New Jersey State Police and assigned to the Division, has been relied upon by the Division in evaluating the experience of applicants (R-1). Det. Sgt. Gelardi's testimony that the proposed rule sets forth a reasonable guideline by which to measure prior gaming experience was essentially accepted by the applicant. The proposed rule establishes a rebuttable presumption that a time period of five or more years of absence of employment from the gaming industry shall be construed as too remote and not sufficient to satisfy the experiential criteria. It must be reiterated at this point that the Division concedes that Ms. Thompson otherwise possesses the requisite experience for licensure as floorperson. At issue is whether the applicant's experience is sufficient to rebut the proposed presumption of staleness. N.J.A.C. 19:41-7.17(o).

In addition to N.J.S.A. 5:12-92b and N.J.S.A. 5:12-89b(3), N.J.A.C. 19:44-5.2(a)2 is the only authority which sets forth the qualifications for licensure as a gaming school instructor. The applicant must prove that she "....has a thorough knowledge of the regulations of the Commission relevant to the position...." and have had at least two years experience in a similar position to that about which instruction is to be given. N.J.A.C. 19:44-5.2(a)2. The Division also objects to licensure as a gaming school instructor on the basis of staleness.

Ms. Thompson was employed by various casinos in Nevada as a blackjack dealer between May, 1961 and October, 1968. There were no work related problems during that period. Between 1968 and the submission of her application the applicant did not work as a dealer. However, due to the objections raised by the Division, Ms. Thompson returned to Las Vegas, Nevada and on April 5, 1980 commenced working as a blackjack dealer in the casino at Caesar's Palace. She worked for approximately one month before being laid off for economic conditions and overstaffing of the casino. During this period she worked approximately six eight-hour days per week. She had no difficulty regaining her dealing skills and was immediately put on the high limit tables. This was supported by the affidavits of Albert Faccinto, Casino Manager of Caesar's Palace, and Alfred Marshall, Manager of Caesar's Palace (P-1 and P-2, respectively).

While employed by Harvey's Resort, South Lake Tahoe, Nevada, between 1961 and 1966, Ms. Thompson, along with other senior dealers, frequently trained new dealers. At first this training program, although relatively formal, was minimal and did not use a manual. As the casino operation increased in size, so did the size of the dealer class. A manual was eventually developed.

Ms. Thompson's testimony concerning her ability to immediately resume dealing with no difficulties and, in fact, be assigned to the high limit tables, was directly supported by the affidavits of Mr. Faccinto and Mr. Marshall (P-1 and P-2). The applicant was a most credible witness and competent individual. The Division offered the testimony of Det. Sgt. Gelardi to refute these proofs. Although I accept the Detective Sergeant as generally qualified in the area of casino employee licensing for purposes of this hearing, I reject his testimony that the applicant's recent experience of one month is insufficient to update her previous eight years of experience and serve to qualify her for licensure. Significantly, there was no first hand observation of the applicant by the Detective Sergeant. Such an opinion cannot effectively refute the direct testimony of the applicant and the unchallenged affidavits of her immediate supervisor and the casino manager. The testimony on Ms. Thompson's behalf is sufficient to overcome the presumption set forth in the proposed rule and establishes by clear and convincing evidence her experiential qualifications for licensure as a floorperson.

The evidence concerning Ms. Thompson's application for licensure as a gaming school instructor established that her recent experience as a blackjack dealer in Nevada was sufficient to update her prior experience to meet the experiential factor. However, the applicant offered no proofs that she had a "....thorough knowledge of the regulations

of the Commission relevant to the position...." for which she would be an instructor N.J.A.C. 19:44-5.2(a). In fact, on cross-examination the applicant exhibited only a general understanding of the Commission's regulations concerning the position. But for the applicant's lack of a thorough knowledge of the relevant regulations of the Commission, she established her qualifications for licensure as a gaming school instructor (blackjack).

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

1. Ms. Thompson applied for licensure as a casino employee (floorperson) and as a gaming school instructor (blackjack).

2. The applicant was employed between May, 1961 and October, 1968 as a blackjack dealer by various casinos in Nevada.

3. The applicant has established by clear and convincing evidence and the Division concedes, that she is qualified for licensure both as a casino employee (floorperson) and as a gaming school instructor (blackjack), except for the staleness of her work experience.

4. Commencing on April 5, 1980, the applicant was employed at Caesar's Palace in Las Vegas, Nevada as a blackjack dealer for a period of one month.

5. As a result of her recent experience dealing blackjack in Nevada, the applicant was able to update her prior experience sufficient to overcome the presumption of staleness and to satisfy the qualification criteria for licensure as a casino employee (floorperson).

6. The applicant's recent experience was sufficient to establish the experiential requirements for licensure as a gaming school instructor (blackjack).

7. The applicant possesses a general knowledge, but not a thorough knowledge, of the relevant regulations of the Commission concerning the position of blackjack dealer for purposes of licensure as a gaming school instructor.

Therefore, I CONCLUDE that Ms. Thompson has established by clear and convincing evidence her qualifications for licensure as a casino employee (floorperson), but not her qualifications for licensure as a gaming school instructor (blackjack).

Therefore, I ORDER that the application of Catherine Thompson for licensure as a casino employee (floorperson) be GRANTED and, I FURTHER ORDER that her application for licensure as a gaming school instructor (blackjack) be DENIED.

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

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

August 22, 1980
DATE

Richard L Voliva Jr.
RICHARD L. VOLIVA, JR., A.L.J.

Receipt Acknowledged:

August 25, 1980
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 26 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Application for Licensure and Personal History Disclosure Form, Catherine Thompson (28 pages).

P-1 Affidavit of Albert Faccinto, June 2, 1980.

P-2 Affidavit of Alfred Marshall, June 2, 1980.

R-1 Proposed N.J.A.C. 19:41-7.17, et seq (9 pages).

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-4660-79
CCC DOCKET NO. 79-EA-149

IN THE MATTER OF THE APPLICATION :
OF ANTONIO TUFI FOR LICENSURE AS : FINAL ORDER
A CASINO KEY EMPLOYEE :

A hearing having been conducted in the above-captioned matter before the Honorable Norman D. Smith, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, the exceptions and objections filed on behalf of the Division of Gaming Enforcement and the Applicant; and the Commission having resolved at its public meeting of November 5, 1980, to adopt the Initial Decision as modified herein and to deny the application for licensure;

IT IS on this 25th day of November, 1980, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision in which it is found that the Applicant knowingly violated federal law be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the application of Antonio Tufi for licensure as a casino key employee be and hereby is denied for the reasons stated in the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

By: _____
JOSEPH P. LORDI, CHAIRMAN

DATED: November 25, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

ANTONIO TUFI,	:	INITIAL DECISION
	:	
PETITIONER,	:	OAL DKT. NO. CCC 4660-79
	:	
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	AGENCY DKT. NO. 79 EA 14
	:	
RESPONDENT.	:	

APPEARANCES:

For the Petitioner, Donald G. Targan, Esq.

For the Respondent, John J. Degnan, Attorney General, (Fredric E. Gushin, Deputy Attorney General)

LIST OF WITNESSES:

See Schedule A

LIST OF EXHIBITS:

See Schedule B

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

This matter concerns the application of Antonio Tufi to the Casino Control Commission for a key employee license as Director of Research and Development of Gaming Equipment for Resorts International, pursuant to N.J.S.A. 5:12-89. The hearing was held on 14 days and concluded on May 23, 1980. The final Memorandum of Law was received from petitioner on July 7, 1980 at which time the record was closed.

The Division of Gaming Enforcement contends that Mr. Tufi lacks the good character, honesty and integrity required by N.J.S.A. 5:12-89b 2 for licensure as a key employee. It further claims that Mr. Tufi is an associate of a career offender or career offender cartel, requiring disqualification pursuant to N.J.S.A. 5:12-86f. Finally, the Division asserts that Mr. Tufi withheld material information from Division investigators.

Mr. Tufi was born in Italy where he attended vocational school. He followed in a brother's footsteps by attending a gambling school in England, whose successful graduates were then recruited by the gaming industry in the Bahamas. He went to Paradise Island in the Bahamas as a boxman in craps. There he became adept at blackjack as well. He also accumulated a respectable knowledge of the design and operation of slot machines and other gaming equipment. Resorts International sought to employ that knowledge by naming Mr. Tufi to a key employee position entitled "Director of Research and Development of Gaming Equipment."

Substantial, credible testimony was produced and largely undisputed concerning Mr. Tufi's performance of his duties for Resorts International in Atlantic City. He was in charge of the installation and maintenance of slot machines. He also instructed employees of the Division of Gaming Enforcement how slot machines worked and how they could be abused. Mr. Tufi earned for himself a reputation for high skill, good character, honesty and integrity among fellow employees at Resorts International and among those employees of the Division of Gaming Enforcement who came into contact with him on a regular basis on the casino floor.

The Division relies on certain specific instances of conduct to support its objections to licensure. They are as follows:

1. Mr. Tufi illegally failed to declare cash to U.S. customs. In May, 1976 Mr. Tufi made one of several trips from the Bahamas, where he lived and worked, to Miami, Florida, where he invested in an Italian restaurant. On this particular trip he brought with him $11,000 in cash to begin his investment.

Federal law requires anyone carrying more than $5,000 in cash into the United States to declare that money to customs officials. 31 U.S.C. 1101. Forms must be filled out by each person before he is permitted to clear customs. One of the questions specifically inquires whether the person is carrying more than $5,000 in currency. Mr. Tufi responded to that question in the negative. Large warning signs are usually posted at airports notifying entrants to the United States of the reporting requirement. There is no eyewitness testimony that the signs were posted on that day in May, 1976 when petitioner failed to comply with federal law. Mr. Tufi claims that his failure to report the $11,000 was a misunderstanding arising from his inexperience in bringing money into the country and his language limitation. Mr. Tufi does speak with a heavy Italian accent. However, after listening to him at length, I am convinced that he has no difficulty reading, writing or speaking the English language.

Mr. Tufi's intention becomes clear in sworn testimony that he gave to Division of Gaming Enforcement investigators in a series of depositions taken during the investigation of the present application.

On August 27, 1979, he testified under oath that he brought the $11,000 into this country on more than one trip. He asserted that he did not declare the money because it did not exceed $5,000 in any one trip and it did not have to be declared. (R-9). However, on September 11, 1979, he clearly admitted his former testimony to be a lie. (R-14). He lied under oath to the Division investigator so that the Casino Control Commission would be unaware that he violated federal law.

This carefully crafted misrepresentation and subsequent recanting strengthens the probability that Mr. Tufi knowingly failed to declare the $11,000 he carried into this country. At the same time, it renders low the credibility of his professed ignorance of the requirement to declare currency in excess of $5,000. I FIND that Mr. Tufi knowingly violated Federal Law by failing to declare $11,000 in currency upon entrance into the United States. He subsequently lied about it under oath to an investigator of the Division of Gaming Enforcement for the sole purpose of keeping that information from the Casino Control Commission.

In July, 1976 Mr. Tufi made another trip from the Bahamas to Miami, this time carrying $37,000 in cash. He was given the cash by Mr. Manes, his supervisor in the Bahamas, to deliver to James Neal. Mr. Tufi incorrectly declared this money as his own, violating federal reporting requirements. At the hearing, Mr. Tufi first attempted to portray his error as an inadvertance, resulting from a misunderstanding on the part of customs officials, who simply assumed the money was his and filled out the form accordingly. That is the scenario proferred by the petitioner in his proposed findings of fact (nos. 449 & 453). Mr. Tufi

claims that the general confusion was increased by his inability to understand the question that asked if he was carrying the money as anyone's agent or attorney.

However, on cross-examination by Deputy Attorney General Gushin, Mr. Tufi reluctantly admitted that he was instructed by James Neal to declare the money as his own, well in advance of that trip. In his August 27, 1979 sworn testimony before a division investigator, Mr. Tufi also attempted to describe the $37,000 as his own. He developed an elaborate set of false circumstances to explain it; that he saved it from his salary, kept it in a safe deposit box in the Bahamas before the trip and in his wife's house in Miami after the trip. At that point, Sergeant Romanowski, who conducted the deposition, reminded the petitioner of his obligation to tell the truth. Mr. Tufi proceeded to recant his story completely. He admitted that he lied; that the money was not his; that James Neal instructed him to declare it as petitioners' own; that he knowingly did so in compliance with his instructions.

At the hearing, Mr. Tufi claimed that he was confused and ill during the August 27 deposition, resulting in inaccurate testimony. Ill or not, the clarity of Mr. Tufi's testimony at the August 27 deposition is manifest and his attempt to attribute it to confusion is incredible.

I find as fact that Mr. Tufi knowingly lied to customs officers in July, 1970 by declaring $37,000 in cash to be his own, on specific instructions from James Neal.

The intentional violations of Federal laws and the subsequent misrepresentations, under oath, concerning them,

render it imposible to find that the petitioner has established by clear and convincing evidence that he is a man of good character, honesty and integrity as required by N.J.S.A. 5:12-89b 2. The false testimony to Division investigators constitutes a failure of the petitioner to reveal facts material to qualification, as well as the supplying of information which is untrue or misleading as to a material fact pertaining to qualification criteria in violation of N.J.S.A. 5:12-86b. Each of those conclusions require denial of petitioner's license.

2. Mr. Tufi was issued a permanent alien registration visa, known as a green card, by the United States Consolate Office on June 10, 1977. Extensive factual and expert testimony and legal argument were presented regarding Mr. Tufi's qualifications for that card and whether or not it should have been issued. However, the issuance of that card constituted a federal administrative determination that has never been challenged in the forums specifically provided for that purpose. The validity of that card cannot be collaterally attacked in this proceeding. The Office of Administrative Law and the Casino Control Commission have no jurisdiction to declare that card invalid. Were I or the Commission to determine that the card should not have been issued, it would stand as a valid card, nevertheless. Finally, even if I decided that Mr. Tufi did not qualify for the card, I would not have reached a conclusion relevant to any of the issues found in the Casino Control Act.

Therefore, I will not rule on the issue of the green card's validity, because I see that issue as not properly before me.

The Division contends that Mr. Tufi gave fraudulent information when he applied for the green card. That allegation is relevant to the extent that it sheds light on Mr. Tufi's good character, honesty and integrity.

One of the green card requirements was an investment in a business of at least $10,000. Mr. Tufi invested at least $35,000 in an Italian Restaurant known as Tufi's. That restaurant closed 10 days after the issuance of the visa. The Division rests almost exclusively on that event to support its allegation that Mr. Tufi never intended to maintain his investment after he obtained his green card and, therefore, he misrepresented his intent to the United States Government for the purpose of obtaining that card. However, the uncontroverted evidence demonstrates, and I so find that:

1. He personally observed the location of the site and the neighboring business to determine his chances of success.

2. He entered into a two-year lease with an option to renew, which he exercised.

3. He renovated the interior of the existing restaurant at a cost of approximately $18,000.

4. He distributed business cards and flyers to advertise the business, in addition to newspaper ads.

5. He sought to obtain free parking arrangements and a liquor license.

6. He hired a manager, a cook and a waitress. He ultimately fired the manager and replaced him when it appeared that he was not performing up to expectations.

7. He placed his wife in the restaurant daily and called her each evening from the Bahamas for news of the operation.

8. He came to Miami every 2 weeks to review the operation of the business.

9. The business was in debt and in need of capital contributions when he closed it.

I conclude that Mr. Tufi made a good faith effort to establish a going business in order to comply with federal law. He certainly harbored a desire to see the business flourish and he would have kept it operating if it did. However, once the green card was issued, he saw no reason to continue to operate a losing business.

I conclude that Mr. Tufi did not misrepresent his intentions to operate a business at the time of his visa application.

The Division also labels the petitioner's promise on his application that he would be the operator of the business as a misrepresentation, because petitioner was not at the restaurant daily. However, it is clear that Mr. Tufi did operate the business in a general sense. The distinction between degrees of absentee ownership and daily operation may

be ripe for legal analysis, but I cannot find such distinctions to have existed in Mr. Tufi's mind. I find no misrepresentation here.

I CONCLUDE that Mr. Tufi did not defraud the United States Government regarding his investment in and operation of Tufi's Restaurant.

3. Mr. Tufi is allegedly an associate of a career offender or career offender cartel as defined in N.J.S.A. 5:12-86f. The Division rests its allegation on Mr. Tufi's relationship with three men: Dino and Eduardo Cellini and James Neal. However, the evidence establishes that Mr. Tufi's relationship with Dino Cellini was almost nonexistent. The facts are found as follows:

1. Dino Cellini was the operator of the London gaming school that Mr. Tufi attended.

2. Mr. Tufi saw Dino Cellini for a few minutes in Rome in late 1972 or early 1973 during a visit to Eduardo Cellini.

3. Dino Cellini is now dead.

The foregoing is the sum and substance of Mr. Tufi's connection with Dino Cellini. I CONCLUDE that petitioner's former association with Dino Cellini is not inimical to the policies of the Casino Control Act or to gaming operations.

Regarding Eduardo Cellini, I find:

1. He was casino manager of the Paradise Island Casino from 1968-1970.

2. Mr. Tufi knew him during that time through his employment.

3. Mr. Tufi bought stock in a corporation headed by Eduardo Cellini, as did many employees of the casino.

4. On a trip to Italy, in late 1972 or early 1973, petitioner paid a brief courtesy call on Mr. Cellini at his home in Rome.

5. Eduardo Cellini's telephone number appeared in Mr. Tufi's personal telephone book.

6. Mr. Tufi last saw Eduardo Cellini briefly in the office of James Neal in 1977.

I CONCLUDE that Mr. Tufi has a casual acquaintance with Eduardo Cellini arising out of his employment. His association was no greater than that of Resorts International, Cellini's employer. The Commission has already reviewed that relationship in depth and determined that it was not a disqualifying one. In the Matter of the Application of Resorts International for a Casino License, P. 47. The Commission further observed that an association through employment is not necessarily an association inimical to the policies of the Casino Control Act or to gaming operations. Id. at p. 48. Therefore, I CONCLUDE that the petitioner's association with Eduardo Cellini is not a disqualifying one.

Mr. Tufi's relationship with Mr. Neal is more extensive. I find the following facts:

1. He met Mr. Neal between 1968 and 1970 when they both worked for Paradise Island.

2. Mr. Tufi asked Neal if he could recommend an attorney to handle Tufi's immigration application to the United States. Neal recommended his own attorney, James Sabatino of Miami.

3. Tufi employed Sabatino who, together with Neal, convinced petitioner to lease a restaurant owned by Neal. Neal then became Tufi's landlord.

4. Neal persuaded the petitioner to carry $37,000 in cash into this country for Neal, declaring it as Tufi's own. This transaction has been described in detail.

5. The restaurant investment turned out to be a poor one. Petitioner lost money and Neal profited.

Because Neal was able to convince Mr. Tufi to violate the law on Neal's behalf, it is important to analyze whether Neal is a career offender or a member of a career offender cartel. A career offender cartel is defined by the statute as any group of persons who operate together as career offenders. The primary question then is: What evidence has the Division produced to establish that Mr. Neal's behavior has been pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State? The answer is none.

The problem with the evidence is not that it is hearsay, but that it carries no probative force. Memoranda from one person out of court to another person out of court, that they have "learned" things from unidentified fourth and fifth persons whose opportunity to observe the facts is totally

undescribed, do not carry sufficient weight to support findings. See e.g. R-26 and R-28.

Further, the vague linking of Neal's name to others with notorious reputations does not make Neal a career offender. The statutory definition must be met.

The closest evidence of criminal conduct by Neal is his admission to Ernest Tiberino, formerly of the IRS, that he had engaged in bookmaking sometime prior to 1948, but not since. There is no evidence of the duration of the bookmaking activity; whether it was a solitary lark or a continuing enterprise. It ceased thirty-two years ago, when Mr. Tufi was a 6-year old boy in Italy.

I recognize that a license in the casino industry is a privilege and that the burden of establishing qualifications is on the applicant by clear and convincing evidence. Nevertheless, a hearing is also a matter of statutory right. Findings of fact must be based upon evidence produced at the hearing that carries probative force relevant to the issues set forth in the statute. I cannot find from the evidence before me that James Neal is a career offender. Therefore, petitioner's relationship with Mr. Neal is not disqualifying.

4. Mr. Tufi allegedly committed an assault and battery on Ruth Speed, with whom he lived, on two occasions. The entire testimony to support this allegation comes from detectives who spoke to Miss Speed, and from Municipal court complaints that she signed.

However, Miss Speed subsequently told a Division investigator it had all been a misunderstanding and she had nothing

derogatory to say about Mr. Tufi. She also withdrew both Municipal court complaints.

Miss Speed did not testify at the hearing. Mr. Tufi denies the allegation. He points out Miss Speed's anger over his refusal to ask his wife for a divorce as motivation for the false charges.

Based upon that evidence, I cannot find that Mr. Tufi assaulted Ruth Speed.

5. Mr. Tufi failed to disclose his ownership of stock in the T.E.E.I. Corporation, headed by Eduardo Cellini, on his Personal History Disclosure Form. The Division asserts that this failure was intentional in an attempt to conceal Mr. Tufi's connection with Eduardo Cellini. Mr. Tufi attributes the failure to inadvertence. I find Mr. Tufi's explanation to be credible. I do not believe that Mr. Tufi foresaw, at the time he prepared his application, that an innocent investment would pose an obstacle to licensure. I FIND that he considered his investment in T.E.E.I., which was done in concert with many casino employees, to be innocent.

Therefore, I FIND that Mr. Tufi did not intentionally fail to disclose his ownership of T.E.E.I. stock.

The Casino Control Commission has held that a mere inadvertent failure to disclose facts does not constitute a disqualification under N.J.S.A. 5:12-86b. In the Matter of Resorts International.

For the reasons set forth in the first objection discussed in this opinion, IT IS HEREBY ORDERED that the petitioner's application for licensure 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.

8/8/80
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged

Aug. 13, 1980
DATE

CASINO CONTROL COMMISSION
BY: R. BENJAMIN COHEN

Mailed to Parties

August 14, 1980
DATE

OFFICE OF ADMINISTRATIVE LAW

mjl

SCHEDULE A

LIST OF WITNESSES:

Paul Steven Anderson
James D. Carr
Domenico Catini
Peter Hook
Rochelle Jefferson
Bruce Robert Lampa
Joseph G. LiPari
John F. McTernan
Bernard Mormelo
Fred Romanowski
Leon Rosen
Irwin Schechter
Ernest J. Tiberino
Joyce Tufi
Antonio Tufi
Robert E. Van Etten
Lewis Venuti
James Michael Vogt
Marie Martin Walton
Joseph Wolf

SCHEDULE B

LIST OF EXHIBITS

DOCUMENTS MARKED INTO EVIDENCE:

P-2	Tufi's Business Card
P-3a	Photograph
P-3b	Photograph
P-3c	Photograph
P-3d	Photograph
P-4a	Business Lease, 6/1/76
P-4b	Letter from J. Sabatino, Esq., to A. Tufi, 5/24/76
P-4c	Closing statement between Little River Properties, Inc., and A. Tufi, 5/24/76
P-4d	Letter from J. Sabatino, Esq., to A. Tufi 7/2/76
P-5	Advertising Circular for Tufi's Restaurant
P-6	Manila folder of receipts, etc. for Tufi's Restaurant
P-7	Note, 9/27/76
P-8	Packet of checks
P-9	Capital contributions for Tufi's Restaurant
P-10	Time cards
P-11	Licenses
P-12	Packet of checks, deposit slips and bank stubs
P-13	Packet of receipts and invoices
P-14b	Note
P-14c	Note
P-14d	Series of Notes from a bank in Miami to Tufi's Pizzeria
P-15	Check, $21.68, fan rental
P-16	Check, 6/29/77, $6000
P-17	Stubs and checks, beginning 6/29/77
P-18	Bills, beginning 6/29/77
P-19	Checks, beginning 12/24/76
P-20	Checks, from July, 1977 to October, 1978
P-21	Bank statement, First State Bank of Miami
P-22	Mortgage application
P-23	Certificato di Profitto, 5/11/57
P-24	Attestato, 12 Maggio, 1959
P-25	Letter, 9/8/58
P-26	Certificato, 5 Settembre, 1959
P-27	Certificato, 23/3/1960
P-28	Letter dated 3/6/78 from Mr. Richards to Mr. Aronin
P-29	Series of documents headed by "Application for Status as Permanent Resident"

P-30	Letter, May 24, 1976, from James R. Sabatino to U.S. Department of Justice
P-31	Application for Immigration Visa and supporting documents
P-32	Series of correspondence from James R. Sabatino first one dated June 24, 1976
P-33	1976 Non-Resident Alien Income Tax Return for Tufi
P-34	1977 U.S. Individual Income Tax Return for Tufi
P-35	1978 U.S. Individual Income Tax Return for Tufi
P-36	Photostatic copy of Passport for Antonio Tufi
P-37	Photostatic copies of visa and alien reistrations of Antonio Tufi, Joyce Tufi and Maria Tufi
P-38	Transcript from Atlantic City Municipal Court certified by Eva Hayes
P-39	United States of America Consular Receipt, dated June 8, 1977
P-43	Notice of Approval of Nonimmigrant Petition, 10/3/77 and a letter from F.A. Richards, to Edward M. Mullin, V.P., Intertel, 9/28/77
P-44	Five-page document

R-1	Immigration visa
R-2	Immigration visa and alien registration
R-7	Personal History Disclosure Form of Mr. Tufi
R-8	Memorandum dated April 18, 1979 from Linda Gimlett to Pat Caldwell with attached application
R-9	Sworn Interview of Antonio Tufi dated August 27, 1979
R-10	Application for labor certification signed by Antonio Tufi
R-11	Transcript dated March 5, 1980, interview between Detective Vogt and Antonio Tufi
R-12	Letter dated June 3, 1977 from Mr. Sabatino to U.S. Department of Justice, Immigration and Naturalization
R-13	Petition to classify nonimmigrant as temporary worker or trainee and letter dated June 15, 1977
R-14	Deposition of Antonio Tufi dated September 11, 1979
R-15	Copy of computer printout from United States Customs Service
R-16	Red telephone address book of Mr. Tufi
R-17	Two-page complaint dated 3/4/79
R-18	Complaint filed Ruth Speed against A. Tufi 7/12/79
R-20	FBI identification record on Myer Lansky

R-21	Indictment of Myer Lansky and Dino Cellino
R-22	Appendix 18, 9/23/69
R-23	Appendix 19, 10/8/69
R-24	Letter from F.A. Richards to Arthur Barnett, Director of Immigration, 11/22/69, appendix 20
R-26	Letter dated 12/23/71 from F.A. Richards to Robert O. Peloquin
R-28	Appendix 36 to Resorts Report, 6/20/74
R-29	Appendix 36 to Resorts Report
R-31	Memo from J.M. Hutcheson
R-33	Report of International Transportation of Currency or Monetary Instruments
R-35	Foreign Affairs Manual
R-36	Employment application of Mr. Tufi to Resorts International, Inc., 6/21/77 with attached documents
R-32	Customs Declaration Form (R-32 was marked into evidence by the Administrative Law Judge after the close of the hearing pursuant to an order entered during the hearing.)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 0063-80
CCC DOCKET NO. 79-EA-199

IN THE MATTER OF THE APPLICATION :	
OF IRVIN L. VAN HOUTEN FOR LICENSURE :	
	FINAL ORDER
AS A CASINO EMPLOYEE :	
(ALCOHOLIC BEVERAGE EMPLOYEE) :	

A hearing having been conducted in the above-captioned matter before the Honorable R. Jackson Dwyer, Administrative Law Judge, of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge and the exceptions thereto filed by the parties; and the Commission having resolved at its public meeting of September 5, 1980 to adopt the Initial Decision and to deny Irvin L. Van Houten's application for licensure,

It is on this 6th day of September, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

It is further ORDERED that the application of Irvin L. Van Houten be and hereby is denied based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

It is further ORDERED that the application of Irvin L. Van Houten for licensure as a casino employee be and hereby is denied based upon failure to affirmatively demonstrate either his rehabilitation pursuant to N.J.S.A. 5:19-90(h) or his

reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSPEH P. LORDI, CHAIRMAN

DATED: 9/5/80

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF IRVIN L. VAN HOUTEN FOR LICENSUARE AS A CASINO EMPLOYEE (alcoholic beverage employee)	:	INITIAL DECISION OAL DKT. NO. CCC 0063-80 AGENCY DKT. NO. 79-EA-199

APPEARANCES:

Irvin L. Van Houten appeared pro se

John J. Degnan, Attorney General of the State of New Jersey by Raymond J. Marquez, Deputy Attorney General for the Division of Gaming Enforcement

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J.:

In February of 1979, Irvin L. Van Houten (applicant) filed an application, including a Personal History Disclosure Form (PHD) with the Casino Control Commission (Commission) for licensure to work as a casino employee (alcoholic beverage employee). The applicant was advised by letter dated December 13, 1979 from the Commission's General Counsel, based upon information received by letter from the Division of Gaming Enforcement (Division), dated November 15, 1979, that there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing. The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 6, 1980 and a hearing was held on May 2, 1980. Proposed findings of fact and conclusions of law were received from

Deputy Attorney General Raymond Marquez on June 25, 1980. Having received no comments from the applicant to the Deputy Attorney General's memorandum, I have closed the record as of July 14, 1980.

The applicant testified briefly. He was sentenced to two to three years for loan sharking and his term commenced on February 22, 1977 and terminated on February 22, 1978. He spent twelve months and a day at the Jones Farm, a minimum security facility of the New Jersey State Prison. He had been employed as a bartender for eighteen years at LeBistro, a super club in Atlantic City. He is now working as a counter clerk in a magazine store. He wants to better his economic prospects and produced a mailgram offering him a position as a bartender at the Bally Casino (P-1).

On cross examination the applicant testified that he lent money to ten to fifteen clients at 20% for a period of twelve weeks or a per annum rate in excess of 50%. He was engaged in the loan sharking business for a period of approximately two years. A copy of his indictment was placed into evidence as (R-1 a, b, c, and d) which sets forth the periods of the usurious loans from April 5, 1974 to November 21, 1975. As the result of a plea bargain agreement (R-2 a, b and c) Counts I, III and IV were dismissed and the applicant pled guilty to Counts II and V of the indictment. Judge Manuel H. Greenberg sentenced the applicant to two to three years at the New Jersey State Prison on each Count; the periods of time were to run concurrently with one another. The applicant was also fined $5,000. Judge Greenberg set forth the reasons for a custodial sentence and a fine in Exhibit (R-4).

The applicant kept an ordinary copy book with the names of his approximately ten to fifteen customers and asserted that the total sum of his loans never exceeded $7,500. He entered a retraxit plea on January 18, 1977 as set forth in (R-5).

The applicant's parole is not yet up; he still owes $3,700 on the $5,000 fine. He conceded that he approached a Ms. Jean Beck, a/k/a Eugenia Baioccio, a prosecution witness, and attempted to persuade her to testify that he did not charge her usurious interest on her loan "to ease the pain".

The applicant offered two character witnesses, Alfred Thomas and Donald Phillips. Thomas related that he and the applicant were employed in different capacities ath the LeBistro. They developed a friendship. When the applicant was released from the Jones Farm, he put the applicant to work managing the kitchen of a restaurant. He found the applicant to be completely trustworthy. Phillips, a Special Assistant to the President of the American Guild of Variety Artists, and also active in entertainment union activities, stated that he and the applicant also worked together at the LeBistro. Phillips has known the applicant and his family for over 30 years and stated that he is a "totally loyal and responsible" person". He also characterized him as hard working and compassionate.

Both Thomas and Phillips were unaware of the applicant's loan sharking activities.

The Division of Gaming Enforcement presented its case through exhibits introduced as business record exceptions to the hearsay rule. Those documents were put into evidence both during the applicant's cross examination and during the direct examination of Detective Charles Crescenz, a State Trooper temporarily assigned to the Division of Gaming Enforcement.

After having considered the entire record, including the testimony of the applicant and his character witnesses together with the exhibits submitted into evidence by the Division of Gaming Enforcement and Deputy Attorney General Marquez's memorandum, I make the follwing findings of fact:

1. On February 22, 1977 the applicant was convicted and sentenced for the unlawful possession of loan sharking records in violation of N.J.S.A. 2A:119A-4, and usury in violation of N.J.S.A. 2A:119A-1, as charged in Counts II and V of the State Grand Jury Indictment #33-76-6a. By virtue of a plea bargain agreement, the applicant pled guilty to the two charges and the State agreed to dismiss the three other charges and to run the convictions concurrently.

2. The applicant was sentenced on each conviction to two to three years; the sentences were to run concurrently, and he was fined $5,000 as "appropriate as a punitive measure in this type of case".

3. The sentencing Judge, Manuel H. Greenberg, gave his reasons for a custodial sentence as follows:

> "In view of defendant's actual involvement in a significant fashion in the illegal operations concerned a substantial period of incarceration is required. The primary consideration of the Court is to deter others from being so involved. In this type of case the Court feels that its general policy is known to persons who are engaging or might be tempted to engage in operations of the type in question, so that the deterrent effect on others is genuine. A fine is also appropriate as a punitive measure in this type of case".

4. The applicant was incarcerated at the Jones State Prison Farm, a minimum security facility at New Jersey State Prison from February 22, 1979 through February 22, 1978. He is presently on parole and still owes $3,700 on the $5,000 fine.

5. Between April 5, 1979 and November 25, 1975 some ten to fifteen persons borrowed money from the applicant at rates of interest exceeding 50% per annum. When the applicant was arrested, law enforcement authorities found his records containing outstanding balances owed and payments made by his clients. This gambling paraphernalia was seized pursuant to a valid search warrant.

6. The applicant is presently employed as a counter clerk at a newspaper and magazine retail shop. When the applicant was engaged in loan sharking activities he was employed as a bartender at LeBistro, an Atlantic City super club.

7. The applicant has been offered a position as a bartender at Bally's Atlantic City casino.

8. The applicant produced two character witnesses, Alfred Thomas and Donald Phillips. Both character witnesses worked with the applicant at LeBistro and asserted that he was honest and trustworthy. Neither character witness was aware of the fact that the applicant was engaged in loan sharking activities.

9. The applicant presented no evidence at the hearing of counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling such as would evidence rehabilitation.

CONCLUSIONS OF LAW

Convictions for the possession of loan sharking records, N.J.S.A. 2A:119A-4 and usury, N.J.S.A. 2A:119A-1, as charged in State Grand Jury Indictment 33-76-6A are per se disqualifiers under N.J.S.A. 5:12-86(c)(2) as incorporated by reference under N.J.S.A. 5:12-90(c) of the Act if the conviction occurred within ten years prior to the application.

I CONCLUDE that the applicant's usurious conduct is "inimicable to the policies of this Act" and requires disqualification under N.J.S.A. 5:12-86(c)(4) as incorporated by N.J.S.A. 5:12-90(e) of the Act.

The applicant admitted that he engaged in loan sharking operations for a period of one and a half years. Under N.J.S.A. 5:12-86(e) the Act contains an express disqualifying provision for those persons who pursue economic gain in an occupational manner or other context which violates the criminal or civil public policies of this State.

Such usurious conduct, as engaged in by the applicant, strikes at the very essence of the regulatory policies of the Casino Control Act.

Pursuant to N.J.S.A.5:12-86(c)(4) an applicant can defeat the automatic disqualification of that provision if he shows that his offense is older than ten years, the subject of a judicial expungement order or by "clear and convincing evidence that the act or acts which constitute the offense . . . would not form the basis for disqualification pursuant to paragraph (1) of this section". The applicant's convictions are not subject to an expungement order and they occurred within the past ten years. Under N.J.S.A. 5:12-86(c)(1) the offenses contained in N.J.S. 2C:21-1 et seq, which constitute crimes of the second or third degree, are also to be considered as disqualifying. The applicant's acts, wherein he usuriously charged interest rates in excess of 50% per annum, are equivalent to the offenses proscribed in that section since N.J.S.2C:21-19 defines usury as a second degree crime if the rate of interest charged "exceeds 50% per annum or the equivalent rate for a longer or shorter period".

The applicant also attempted to establish his rehabilitation under N.J.S.A. 5:12-90h. The factors set forth in the statute are:

(1) The nature and duties of the position applied for. The applicant seeks to be licensed as an alcoholic beverage employee. That position will bring him into contact with the gaming public. He testified that, while he was engaged as a bartender at the LeBistro, he did not conduct any of his loan sharking activities with the patrons of that super club.

(2) The nature and seriousness of the offense. Loan sharking is offensive to the policies and the spirit of the casino control act. The applicant was actively engaged in loan sharking for over a year and a half and admitted that at varying periods of time he had between ten and fifteen customers. He charged those customers in excess of 50% per annum. He attempted to influence the testimony of a prosecution witness, Jean Beck, a/k/a Eugenia Baioccio, to testify that she did not have to pay usurious interest on her loan. Judge Greenberg imposed both a custodial sentence and a fine and spoke of the need to deter others who might be similarly circumstanced.

(3) The circumstances under which the offense occurred. The applicant engaged in loan sharking activities and extracted interest in excess of 50% per annum. Under the new criminal code this is presently a crime of the second degree. There is nothing to suggest that the applicant would not have continued in the pursuit of these activities but for law enforcement intervention.

(4) Date of offense. The applicant entered a retraxit pleas on January 18, 1977 and pled guility to Counts II and V of State Grand Jury Indictment #33-76-6A. The exhibits in evidence indicate that he engaged in loan sharking activities on or about April 5, 1974 and until about November 21, 1975. A period well within the ten year period prior to his present application for licensure which was filed with the Casino Control Commission on February 12, 1979.

(5) The age of the applicant when the offense was committed. The applicant was approximately 62 years of age.

(6) Whether the offense was an isolated or repeated incident. The applicant's criminal conduct was not isolated but was ongoing actively involving ten to fifteen customers who were attempting to pay back usurious interest.

(7) Any special conditions which may have contributed to the offense. There is no evidence to suggest that the applicant was from a deprived or under-privileged environment. He was gainfully employed as a bartender at the LeBistro for eighteen years and was not engaged in these activities as a safety valve to lessen his economic misfortunes. He appears to have been engaged in these usurious activites for greed.

(8) Any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, accuisition of additional academic or vocational schooling, successful participation in work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. Since the applicant was released from the Jones State Prison Farm in February of 1978, he has had no further criminal episodes. He is still on parole and has not yet paid some $3,700 of a $5,000 fine imposed by Judge Greenberg. The record indicates no special training, vocational, educational, counseling or psychiatric treatment programs. The applicant is presently employed as a counter clerk at a newspaper and magazine store, and has been offered a position at the Bally Casino. He asserts that he will never violate any criminal statutues in the future and that he desires an opportunity to better is economic prospects.

It is, therefore, my recommended decision that the application of Irvin L. Van Houten for licensure as a casino employee (alcoholic beverage employee) be DENIED.

This recommended decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make a final decision in this matter. However, if the 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 21, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, A.L.J.

Receipt Acknowledged:

July 25, 1980
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 80-EL-7

IN THE MATTER OF THE EXCLUSION :
OF NICHOLAS V. VIRGILIO :
FROM CASINO HOTEL FACILITIES : ORDER

This matter having originally been brought before the Commission by the petition of the Division of Gaming Enforcement to place the name of Nicholas V. Virgilio on the Exclusion List, and it appearing that Mr. Virgilio was served with a copy of this petition and advised of his right to request a hearing, and it appearing that Mr. Virgilio did request such hearing and that the matter was thereafter transferred to the Office of Administrative Law, and it further appearing that Mr. Virgilio subsequently abandoned his hearing request, and the Commission, at its public meeting of September 4, 1980, having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge, and having further determined that Mr. Virgilio's presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey and licensed gaming therein by virtue of his criminal record, and having further determined that the placement of Mr. Virgilio's name on the Exclusion List is appropriate pursuant to the authority of Section 71 of the Casino Control Act and

N.J.A.C. 19:48-1.1 et seq., it is therefore, on this 10th day of September 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and it is further

ORDERED that the name of Nicholas V. Virgilio be placed on the Commission's Exclusion List; and it is further

ORDERED that Nicholas V. Virgilio be and hereby is declared to be an excluded person pursuant to Section 71 of the Casino Control Act and N.J.A.C. 19:48-1.1 et seq., and it is further

ORDERED that Nicholas V. Virgilio shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City; and it is further

ORDERED that a true copy of this Order shall be served upon Nicholas V. Virgilio, the Division of Gaming Enforcement, and every casino licensee and temporary casino permittee within five (5) days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

By: _____

Joseph P. Lordi, Chairman

DATED: September 10, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:	)	INITIAL DECISION
THE EXCLUSION OF NICHOLAS V. VIRGILIO FROM CASINO HOTEL FACILITIES	)	OAL DKT. NO. CCC 2387-80 AGENCY DKT. NO. 80-EL-7

APPEARANCES:

John J. Degnan, Attorney General
by: Howard M. Barman, Deputy Attorney General
for the Division of Gaming Enforcement
Department of Law and Public Safety

BEFORE THE HONORABLE JOSEPH F. FIDLER, A.L.J.:

This matter concerns the petition of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on March 6, 1980, requesting that the name of Nicholas V. Virgilio be placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment pursuant to Section 71 of the New Jersey Casino Control Act. Mr. Virgilio was advised by letter from the Casino Control Commission dated March 19, 1980 that he had the right to a hearing on the exclusion petition filed by the Division of Gaming Enforcement.

Mr. Virgilio requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A Prehearing Conference was scheduled for Monday, June 30, 1980, at the Office of Administrative Law, Trenton, New Jersey.

All parties were properly notified of the scheduled prehearing by Notice of Prehearing Conference dated June 4, 1980. On the scheduled prehearing date, no one appeared on behalf of Mr. Virgilio. Deputy Attorney General Howard M. Barman appeared on behalf of the Division of Gaming Enforcement. The Office of Administrative Law procedures concerning the non-appearance of a party were explained to Deputy Attorney General Barman who was then excused.

By letter to Mr. Virgilio dated July 16, 1980, a copy of which is attached hereto, Mr. Virgilio was asked to submit his reasons for his non-appearance. No response was received from Mr. Virgilio.

Based upon the foregoing, I FIND:

1. No appearance was entered by Nicholas V. Virgilio, or a representative on his behalf, on the scheduled prehearing date.

2. The Office of Administrative Law has received no communication from Mr. Virgilio, or a representative on his behalf, offering an explanation for his failure to appear.

Based upon the foregoing discussion and the specific Findings of Fact, I CONCLUDE that Nicholas V. Virgilio has abandoned his request for a hearing.

For the foregoing reasons, it is ORDERED that the proceedings in this matter before the Office of Administrative Law are 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.

August 11, 1980
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, A.L.J.

Receipt Acknowledged:

August 12, 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

cas

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

Mr. Nicholas V. Virgiolio
2516 Artic Ave.
Atlantic City, NJ 08401

RE: ABANDONED CASE - OAL DKT.# CCC 2387-80

Dear Mr. Virgilio:

Pursuant to your request, a hearing was scheduled on June 30, 1980 at the Office of Administrative Law in Trenton, New Jersey. Notice of the time and place of this hearing was included in our notice to you dated June 4, 1980.

We have been advised that you failed to appear for the scheduled hearing, and gave no notice of your intention not to appear. A representative of the Casino Control Commission was present, as arranged, to participate in the hearing.

We will, therefore, consider your request for a hearing to have been abandoned unless we have 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 hearing or were unable to appear due to an unforeseen emergency.

Very truly yours,

Thomas F. Lowe

THOMAS F. LOWE
ASSISTANT DIRECTOR
JUDICIAL MANAGEMENT

DATE: 7/16/80
TFL:aas

CC: BENJAMIN COHEN, GENERAL COUNSEL
CASINO CONTROL COMMISSION

(CAL - A/12 - 6/23/80)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1054-80
CCC DOCKET NO. 80-EA-26

IN THE MATTER OF THE APPLICATION :		
OF RICHARD A. WAGNER FOR	:	FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE	:	
(BLACKJACK DEALER)	:	

A hearing having been conducted on July 7, 1980 in the above-captioned matter before the Administrative Law Judge James A. Ospenson of the Office of Administrative Law; and the Commission having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the letter of exception filed by the Applicant relative thereto; and the Commission having resolved at its public meeting of September 4, 1980 to affirm and adopt the Initial Decision of the Administrative Law Judge and to deny the instant application for licensure,

It is on this 5TH day of Sept. 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted; and

It is further ORDERED that the application of Richard A. Wagner for licensure as a casino employee (blackjack dealer) be and hereby 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 disqualified from licensure by reason of his intentional failure to disclose

information requested by the Commission, namely his arrest and conviction records, contrary to N.J.S.A. 5:12-86(b), and his inability to clearly and convincingly establish his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b); and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
JOSEPH P. LORDI,
Chairman

DATED: Sept. 5, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

In the Matter of the Application of Richard A. Wagner for Licensure as a Casino Employee (Blackjack Dealer)	)	INITIAL DECISION OAL DKT. NO. CCC 1054-80

APPEARANCES:

Richard A. Wagner, applicant, pro se

John J. Degnan, Attorney General of New Jersey, for the Division of Gaming Enforcement by John E. Adams, Jr., Deputy Attorney General

EXHIBITS MARKED IN EVIDENCE:

J-1	PHDF-2
J-2	Certification by Hammonton Municipal Court clerk re applicant's arrest on 6/22/77 and conviction on 6/28/77 for violation of N.J.S.A. 2A:170-26 (simple assault and battery), N.J.S.A. 2A:170-36 (malicious damage), and N.J.S.A. 2A:170-29(b) (obstructing duties of an officer), and dispositions thereof.
J-3	Certification by Buena Vista Municipal Court clerk re applicant's arrest and conviction for violation of N.J.S.A. 2A:170-41.1 (possession of stolen property under $200) on 5/28/75 and conviction for violation of N.J.S.A. 24:21-20(a)(4) (possession of marijuana under 25 grams) on 4/25/76, and dispositions thereof.
J-4	Court Docket, Hammonton Municipal Court, C-J633-4, charges and conviction of applicant on 6/28/77 for violations of N.J.S.A. 2A:170-26 and 2A:170-29(b), and dispositions (See J-2).

EXHIBITS (cont'd)

J-5	Court Docket, Hammonton Municipal Court, C-J632, charge and convictions of applicant on 6/28/77 for violation of N.J.S.A. 2A:170-26, and dispositions (See J-2).
J-6	N.J. State Police arrest report and lab report re applicant's arrest on 11/23/75 for possession of marijuana in Buena Vista Township (See J-3).
J-7	N.J. State Police arrest report re applicant's arrest on 4/9/75 for possession of stolen motorcycle parts in Buena Vista Township, and disposition (See J-3).
J-8	Hammonton Police Dept. arrest report re applicant's arrest on 6/22/77 for assault and battery, malicious mischief and interference. (see J-2)

BEFORE THE HONORABLE JAMES A. OSPENSON, A.L.J.:

This is a casino control licensure proceeding in which Richard A. Wagner applies for casino employee licensing (blackjack dealer) under N.J.S.A. 5:12-7, 89(b),90. Having filed his application on March 30, 1979, the applicant was informed by the Commission, on February 8, 1980, that based on information contained in the investigative report of the Division of Gaming Enforcement on December 28, 1979, there was "a substantial possibility that the Commission will deny your application." On February 19, 1980, applicant exercised his right to request a hearing on the proposed denial pursuant to N.J.A.C. 19:42-2.2. The matter was thereupon transmitted to the Office of Administrative Law on February 25, 1980 for hearing and determination as a contested case in accordance with N.J.S.A. 52:14B-9,10.

A prehearing conference was held on April 22, 1980 in the Office of Administrative Law and an order entered. The matter proceeded to formal hearing on July 7, 1980, and the record was closed.

At issue are the following:

(a) Whether, by applicant's disclosing an arrest for (but failing to disclose in question #46 of the PHDF-2 form his conviction on guilty plea to) a charge of violation of N.J.S.A. 24:21-20(a)(4) (possession of marijuana under 25 grams) in Buena Vista Municipal Court in April, 1976, there was a disqualifying material misleading disclosure, contrary to N.J.S.A. 5:12-86(b).

(b) Whether, by applicant's failure to disclose in answer to question #46 of the PHDF-2 form an arrest for and later conviction on a charge of violation of N.J.S.A. 2A:170-41.1 (receiving stolen property under $200) in Buena Vista Municipal Court in May 1975, there was a disqualifying material nondisclosure, contrary to N.J.S.A. 5:12-86(b).

(c) Whether, by applicant's failure to disclose in answer to question #46 of the PHDF-2 form arrests for and convictions on charges of violation of N.J.S.A. 2A:170-26 (simple assault and battery) and N.J.S.A. 2A:170-36 (malicious mischief) in Hammonton Municipal Court in June 1977, there was a disqualifying material non-disclosure, contrary to N.J.S.A. 5:12-86(b).

(d) Whether the circumstances in (a), (b), and (c) above represent a disqualifying character impairment under N.J.S.A. 5:12-89(b)(2).

Richard A. Wagner is a 23 year old resident of the Atlantic City area. He is married. He attended Camden County Vocational Technical High School, Pennsauken, to the level of the 11th grade. For three years prior to filing his application for casino licensing, he was employed as a machine tender. He has completed a 160 hour course in blackjack dealing at Casino Career Institute, Atlantic City.

In answer to question #46 of the Personal History Disclosure Form-2, whether he or any member of his family had ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or any other jurisdiction, applicant disclosed only the charge of possession of marijuana (under 28 grams) in March 1976. The charge, he said, was dropped. He did not disclose other arrests and convictions for assault and battery, malicious damage, obstructing duties of an officer, and possession of stolen property that are the subject of the joint exhibits marked J-2 through J-8.

On June 27, 1977, the applicant was arrested by Hammonton Police Officers who responded to complaints of a family disturbance at applicant's residence about 1:20 a.m. Upon arrival, they were let into the hall leading to applicant's apartment by his wife. Applicant came down the stairs offering to fight "all you f--- cops." He had to be restrained and when placed in the police car proceeded to kick out the right rear window. A complaint was signed against him by his wife for striking her and by police officers for interfering with police and for damage to the police vehicle. On June 28, 1977, applicant appeared in court, pleaded guilty to charges of violation of 2A:170-26, 29(b), and 36 and was fined $50 on each count, which was suspended, and court costs of $25 on each count, which were imposed. J-2, 4, 5, 8.

In his testimony, applicant said that he had been drinking that night and an argument with his wife ensued. He admitted being intoxicated and having slapped her in their home. He said he kicked out the window of the police vehicle because the officers hit him. He admitted, however, he filed no charges against the officers and later the next day apologized to them. His wife was not hurt, he said. He said he did not disclose these matters on his Personal History Disclosure Form-2 because the entire matter, he thought, constituted merely a marital difficulty and not a violation of the criminal laws. Although he offered to pay for damage to the police vehicle as required by the municipal court judge, he said, the town clerk in the municipality would not let him because the loss was covered by insurance. He admitted his non-disclosure was not because he did not remember the incident but insisted again that the matter was a marital problem only and for that reason, he felt, not reportable.

On April 9, 1975, applicant was arrested by New Jersey State Police for possession of stolen property. The charge in the original complaint was N.J.S.A. 2A:139-1, an indictable offense, which the grand jury later recommended be downgraded to a disorderly persons offense under N.J.S.A. 2A:170-41.1. From the record in evidence (J-3,7) it appeared that investigating State Police officers developed information from the owner of certain stolen motorcycle parts that the parts were located at applicant's home in Collings Lakes. The applicant was interviewed by the officers. He told them he had purchased the items from some juveniles who lived nearby in Collings Lake and had paid them $10 for certain tires. Applicant said the juvenile gave him some of the other motorcycle parts. The items recovered from applicant's possession were valued at $389. They included a gas tank, tire rims, tires, fenders, seats, a carburator, a handle bar, a muffler, a side cover, two axles and a pair of shock absorbers. When the juveniles from whom applicant insisted he bought the parts were interviewed, according to police records, they denied having sold applicant the items and suggested instead that applicant in all probability had stolen them himself. On May 28, 1975, applicant appeared in Buena Vista Municipal Court and pleaded guilty to the downgraded charge of violation of N.J.S.A. 2A:170-41.1. He was fined $100 and $25 costs. J-3,7.

In his testimony applicant insisted he had purchased these items from friends who lived in Collings Lake near his home. He said he paid, he thought, about $25 for all of the motorcycle parts. He felt it was a bargain and was not suspicious about the price. He said he paid by cash but took no receipt. When the State Police came, applicant said he cooperated and turned the property over to the officers. He denied ever having stolen the property himself. Although he pleaded guilty, he said, he told the judge he did not know the property was stolen. As to why he failed to disclose the arrest and conviction on the Personal History Disclosure Form-2, applicant said that his personal life was in an uproar at the time because he had just become a father, he had a new job, and the matter "apparently slipped my mind."

On November 23, 1975, applicant was arrested by New Jersey State Police officers on Beach Road, Collings Lake, Buena Vista Township and charged with possession of marijuana (over 25 grams) under N.J.S.A. 24:21-20(a)(4).

From investigative records it appeared that the officers while on routine patrol observed a blue van at the side of the roadway with two occupants. As the troop car approached the van, the passenger, applicant, became visibly alarmed and began to move around as if to attempt to hide something. Both occupants exited the vehicle immediately. The officers detected an odor of marijuana smoke. A search of the persons of the occupants revealed nothing, but officers found a homemade cigarette with green vegetation in it near the feet of the applicant. A search of the vehicle revealed a brown paper bag under the driver's seat containing six plastic bags with green vegetation. Quantitative and qualitative analysis by the State Police laboratory later was positive for cannabis sativa with a total weight of 140.05 grams. On January 13, 1976, the Atlantic County Grand Jury returned a no bill of indictment in the matter and recommended downgrade of the charge against applicant to unlawful possession of marijuana under 25 grams. On April 25, 1976, applicant appeared in Buena Vista Municipal Court and pleaded guilty to the downgraded charge under N.J.S.A. 24:21-20(a)(4). He was fined $50 and court costs of $25. J-3,6.

In his testimony, applicant said that on the evening in question he was with a friend and had just finished smoking a joint when police came and found marijuana under the seat. He admitted the conviction. Asked why he failed to disclose the conviction on the Personal History Disclosure Form-2, applicant said at the time he wasn't really sure what had happened and that he thought the charges had been dropped.

An investigator employed by the Division of Gaming Enforcement, Ronald Lemanowicz, testified he spoke with applicant on August 16, 1979 for the purpose of going over the Personal History Disclosure Form-2. Concerning the stolen property charge, he said, applicant told him he had forgotten it because the charges were supposedly dropped. Concerning the marijuana and assault and battery charges, applicant never told the investigator the excuses he offered in his testimony at the hearing.

DISCUSSION

Is applicant disqualified from licensure for non-disclosure of arrests and convictions on the Personal History Disclosure Form-2? The Casino Control Act provides that the commission shall deny a casino license to any appli-

cant "....for failure of the applicant to provide information, documentation and assurances required by the Act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria...". N.J.S.A. 5:12-86(b). Although not every misleading disclosure or non-disclosure will disqualify applicants, for example, when they are merely inadvertent or ignorant failures to disclose, it seems quite clear that deliberate non-disclosures or specious and misleading disclosures must be regarded as disqualifying when they occasion obstacles and impediments to the investigatory/regulatory process and evince a conscious disregard of it by the applicant. Here, one may perceive, is such a case. Legislative policy incorporate into the Casino Act is clear that licensure is not a matter of property right and that the licensing/regulatory process must be so undertaken as to further public confidence and trust in it. N.J.S.A. 5:12-1, et seq. Here, applicant's non-disclosure cannot be credited as either inadvertent or mistaken. The instructions to applicants in filling out the Personal History Disclosure Form-2 are clear, especially as to the requirements for answering question #46. There is no suggestion in the record, nor can I conclude from the demeanor of the applicant in testimony that he was confused about the disclosure requirement. Similarly, I do not credit applicant's excuse that his personal problems at the time he filed his application were such that he was either distracted or uncertain as to what was required of him in the application process. The corollary, therefore, is that applicant's non-disclosures were specious and were intended to conceal parts of his background and character that he felt would militate against his chances for success in the licensing process.

CONCLUSIONS

Having reviewed the exhibits and having heard and observed the witnesses, I FIND and DECLARE as follows:

1. The foregoing discussion, to the extent of any mediate conclusions of fact, is incorporated herein.

2. Richard A. Wagner has applied for casino employee licensing as a blackjack dealer.

3. Applicant was arrested for, convicted of and fined for assault and battery, malicious mischief, and obstructing, molesting and interfering with the duties of an officer in Hammonton, in June 1977.

4. Applicant was arrested for, convicted of and fined for possession of marijuana under 25 grams in Buena Vista in November 1975.

5. Applicant was arrested for, convicted of and fined for unlawful possession of stolen property in Buena Vista in May 1975.

6. Although applicant disclosed an arrest for possession of marijuana, he did not disclose on his PHDF-2 a conviction thereon. Instead, he said the charge was dropped.

7. Applicant did not disclose any of the other arrests or convictions on his PHDF-2.

8. The misleading disclosure and the non-disclosures of arrests and convictions were intentional and specious and represented an obstruction and conscious disregard of the investigatory/regulatory licensing process.

9. As a result thereof, applicant has failed to meet and presently satisfy the burden of establishing his reputation for good character, honesty and integrity.

10. As a further result thereof, applicant is disqualified from casino employee licensure.

Based upon the evidence adduced and the findings made, therefore, I CONCLUDE applicant is disqualified from casino employee licensure and his application, therefore, is hereby DENIED.

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

I HEREBY FILE my Initial Decision with Joseph P. Lordi for consideration.

July 14, 1980
DATE

James A. Ospenson
JAMES A. OSPENSON, A.L.J.

Receipt Acknowledged:

July 18, 1980
DATE

AGENCY HEAD

Mailed to Parties:

DATE

FOR OFFICE OF ADMINISTRATIVE L

km

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4071-79
CCC DOCKET NO. 79-EA-122

IN THE MATTER OF THE APPLICATION :
OF KENNETH J. YERIKE FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE. :

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge and the exceptions filed by the Division of Gaming Enforcement relative thereto; and the Commission having resolved at its public hearing of October 1, 1980 to affirm in part and reject in part the Initial Decision of the Administrative Law Judge and to grant the application for licensure,

IT IS on this 15th day of October, 1980,

ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is affirmed in part and rejected in part; and

IT IS FURTHER ORDERED that the application of Kenneth J. Yerike for licensure as a casino employee (dealer/boxman) be and hereby is granted as supported by the findings of fact and conclusions of law set forth in the Final Commission Decision

in this matter which shall be issued forthwith by the Chairman on behalf of the Commission and which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: October 15, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4171-79
CCC DOCKET NO. 79-EA-122

IN THE MATTER OF THE APPLICATION OF :

KENNETH JOHN YERIKE FOR LICENSURE : FINAL COMMISSION DECISION

AS A CASINO EMPLOYEE :

Kenneth I. Hyman, Esquire, appeared for the Applicant.

Robert J. Melillo, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter arises from the application of Kenneth John Yerike [hereinafter: Applicant] for licensure as a casino employee in the position of dealer/boxman in the game of craps. On February 4, 1980, a Prehearing Order was issued which identified four potentially disqualifying factors. The Administrative Law Judge [hereinafter: A.L.J.] filed his Initial Decision with the Casino Control Commission on August 21, 1980, a copy of which is appended hereto at A-1 to 7. The ALJ found in favor of the Applicant on all four contested issues. While not excepting to the conclusion reached in the Initial Decision, the Division of Gaming Enforcement [hereinafter: Division] does take exception to the stated bases for two findings contained therein. For the reasons which follow, the Commission adopts the Initial Decision with the modifications we impose below which were suggested in the Division's written exceptions.

. The first issue identified in the Prehearing Order involves matters the Applicant failed to disclose in his Personal History Disclosure Form [hereinafter: PHDF]. See N.J.S.A. 5:12-90(e) and 86(b). The Applicant's answers to questions 33 and 46 in his PHDF present difficulties.

Question 33 inquires: "Were you ever discharged or asked to resign from employment?" The Applicant indicated "yes", and revealed one such occurrence. However, he in fact failed to disclose a second termination. The Applicant testified that in April 1975, he was employed as a dealer in the Little Caesar Casino in Las Vegas, Nevada. On one occasion during working hours in the course of this employment, the Applicant became convinced that the boxman at his craps table, allegedly under the influence of drugs, was unable to perform his duties. In response to this situation, the Applicant assumed control of the game in violation of internal casino regulations. He was immediately discharged. However, soon thereafter, when the facts became fully known, the Applicant was offered reinstatement by the casino manager.

The Applicant asserted he had not intended to mislead the Commission with regard to this termination. He further stated that he had not set forth this discharge in response to question 33 because he had been assured by the manager of Little Caesar's Casino that no reference to the incident would appear in his personnel file.

The A.L.J. found that since the Applicant's discharge

resulted from a mistaken apprehension of the actual facts and was subsequently rectified by an offer of reinstatement, and since the Applicant was assured by management that no record of the incident would exist, the nondisclosure was not made deliberately or in bad faith, and therefore did not require his disqualification pursuant to N.J.S.A. 5:12-86(b).[1]

The Division, in its exception letter dated August 27, 1980, does not urge that this finding be rejected, but takes issue with the "reasoning" used by the A.L.J. The Division asserts that the Initial Decision relies too heavily upon the Applicant's assurance by his former employer that no record of the termination would appear in his file as the basis for the finding that nondisclosure of it was excusable.

---

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

> 86. Casino License-Disqualification Criteria. The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> . . . .
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
>
> . . . .

The Division urges that if this finding is adopted, the Commiss should make it clear that it is based upon the peculiar facts surrounding the termination, i.e., that the termination was the result of a hasty misapprehension of the actual events in which the Applicant committed no wrongful act. The Division would also emphasize the admission of a mistake by the former employer.

The Commission is of the view that the Division's concerns are well founded. To excuse the nondisclosure here on the sole basis that the Applicant had been told no record of his termination existed could well open the door to collusion between applicants and former employers to conceal negative employment histories. Moreover, as the Division correctly poin out, question 33 on the PHDF is not limited to terminations of which records exist, but all terminations. Thus, the mere absence of records of a termination should not in and of itself excuse a nondisclosure in any event.

Nevertheless, under the peculiar circumstances of this case, we are persuaded that the Applicant did not deliberately attempt to conceal the employment termination at hand from the Commission and the Division. We think the Applicant could have reasonably believed, as he has essentially asserted, that, because the termination was based upon an error and was later rescinded by his former employer, it was no longer a "discharge" within the meaning of question 33. It should be noted in this regard that the Applicant fully disclosed his employment with the Lit

Caesars Casino in response to question 31 on his PHDF. Moreover, he did disclose in response to question 33 another discharge, from the Las Vegas Club Casino in 1970. Finally, we note that the circumstances surrounding the Applicant's termination from Little Caesars do no reflect negatively upon his character, honesty or integrity. All of these circumstances indicate to us that the Applicant did not act in bad faith in failing to list the Little Caesars discharge in his answer to question 33. Accordingly, we find that this failure to disclose does not evince a "conscious disregard for the regulatory system" on the part of the Applicant, and that he is not thereby disqualified pursuant to N.J.S.A. 5:12-86(b). In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, at 13 (1979).

The Applicant also failed to disclose two arrests and one conviction. Question 46 on the PHDF inquires whether the Applicant has ever been arrested, indicted, charged or convicted of any criminal or disorderly persons offense. The Applicant responded: "No". However, the actual facts are otherwise. In March 1970, Applicant was arrested and charged with assault with a deadly weapon in Los Angeles, California. As a result, he was fined $50.00 by his own account.[2] In October 1974, also in California, the Applicant

---

[2] A State of California rap sheet on the Applicant indicates the amount was actually $75.00.

was arrested and charged with the sale of amphetamines, the sal of heroin and the sale of barbituates. As a result of this arrest, in June 1975 the Applicant pleaded guilty to possession of 21,000 amphetamine tablets and was given a two to ten year suspended sentence and a term of probation. The Applicant spent 81 days in jail during these proceedings.

When questioned at the hearing regarding the omission of the 1970 assault arrest, Applicant testified that he had forgotten about it and that it never entered his mind when filling out his PHDF. When questioned regarding the 1974 drug arrest and the 1975 plea of guilty, the Applicant testified essentially that it was his belief he was not obliged to report this information because his attorney had obtained a dismissal order or an expungement of the arrest and guilty plea.

The facts surrounding the Applicant's drug offense require illumination. Immediately after completing his probation term for this conviction, the Applicant consulted an attorney in June 1977 in an effort to obtain an expungement or dismissal[3] of his record. In the following months, the Applicant was of the

---

[3] The Applicant was not clear on the distinction between an expungement and a dismissal; he was interested simply in having his record cleared. However, the Applicant's attorney was seeking to have his conviction dismissed pursuant to California Penal Code §1203.4. The relief provided for under this statute does not include expungement.

belief that his attorney was taking the necessary steps to secure a dismissal or expungement. The Applicant submitted his PHDF in April 1978. At this time, he did not attempt to ascertain whether in fact these proceedings had been finalized. He testified that his last contact with his attorney was a couple of months earlier when the attorney had indicated that the appropriate proceedings had been instituted. It is noteworthy that the Applicant did obtain an order of dismissal of the original criminal charges on December 12, 1979. It is also noteworthy that the Applicant responded to Question 49 on the PHDF regarding prior possession or use of illegal drugs in such a way that the commission of a criminal offense was clearly indicated. Applicant answered the question as follows: "Possessed, Amphetamine, 22 Oct 74." The date supplied was the approximate date of his arrest[4] and the additional information was the substance of his conviction.

In his Initial Decision, the A.L.J. found with regard to both criminal incidents that the Applicant did not purposely withhold information regarding his arrest and conviction record. The Judge added his conclusion that these omissions constituted an unintentional and ignorant failure to disclose requested information.

---

[4] The correct date was October 25, 1974.

The Division's exception with regard to this finding relates to the following language in the Initial Decision:

> I am persuaded that the applicant, while careless in not consulting with his California attorney prior to filling out his PHD, believed that his criminal charges had been expunged/dismissed, and that he was entitled to state on his PHD that he had never been convicted of a crime. (A-3)

The Division urges that this language could be read to improperly justify nondisclosure of arrests and convictions on the mere basis of an applicant's asserted belief that expungement or dismissal proceedings have been instituted though not necessarily concluded. The Division adds that such a belief should not be held to justify nondisclosure since expungement petitions are often denied.

The Commission agrees with this proposition. We would add, however, that there are other reasons for modification of the A.L.J.'s above-quoted finding apparent from the record. First and foremost, it is not at all clear that the Applicant's professed belief that expungement proceedings had been instituted and that this fact justified nondisclosure was at all a reasonable one. As noted in the Initial Decision, the Applicant never made sure such proceedings had ever been instituted, let alone concluded, by consulting his attorney. In fact, the proceedings under California Penal Code §1203.4 were not commenced until November 20, 1979, seven months after the Applicant submitted his PHDF. In addition, those proceedings never involved expungement at all. Under California Penal Code §1203.4, the

relief available is vacation of the conviction involved, entry of a not guilty plea to reinstituted charges, and dismissal of those charges. As noted above, the Applicant obtained this relief on December 12, 1979. Under these circumstances, the Commission is of the opinion that a finding that the Applicant reasonably believed his arrest and conviction had been expunged is simply not supportable. Accordingly, we reject the finding of the A.L.J. in this regard.

However, the Division has taken the position that the Applicant did voluntarily disclose his entire criminal record in an interview with a Division investigator before being confronted with it by that investigator. The Division asserts further that this voluntary disclosure to the investigator coupled with the Applicant's answer to question 49 disclosing the basis for and date of the arrest in question is the proper basis for a finding that the Applicant acted in good faith and did not attempt to conceal his criminal record. The Commission agrees and on this basis we find that the Applicant is not disqualified in this regard pursuant to N.J.S.A. 5:12-86(b).

Before leaving the subject of nondisclosure, one other matter should be mentioned. Question 49 on his PHDF inquires about the Applicant's illegal drug involvement over the past ten years. As noted above, the Applicant stated in response to this question that he had possessed amphetamines in October 1974. This answer was shown to have been incomplete, however, during the course of oral testimony at the hearing when the Applicant admitted to marijuana use during the same period and at prior

times. The Division does not dispute the A.L.J.'s finding that this nondisclosure was unintentional. In fact, the Division did not press this issue when it arose at the hearing and the Applicant was only cursorily cross-examined with regard to it. This is quite understandable in light of the fact that the Applicant disclosed a much more serious matter than marijuana use in response to question 49. On this basis, the Commission adopts the A.L.J.'s finding that the Applicant inadvertently failed to disclose and did not attempt to conceal his marijuana use. See In the Matter of the Application of Gilbert Smith for Licensure as a Casino Employee, Docket No. 79-EA-70, at 9-10 (1980).

The major issue originally raised by the Division concerned the events surrounding the Applicant's 1975 California conviction for possession of amphetamines and the conviction itself. As set forth in the Prehearing Order, the Division asserted that the simple possession conviction itself indicated that licensure of the Applicant would be inimical to the policy of the Casino Control Act within the meaning of N.J.S.A. 5:12-86 (c)(4). The Division also alleged that under Section 86(g) of the Act[5], the Applicant's conduct leading to the conviction

---

[5] N.J.S.A. 5:12-86(g) provides for disqualification on the basis of:

> The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State;....

actually constituted distribution of amphetamines, a listed disqualifying offense in N.J.S.A. 5:12-86(c)(3).

The A.L.J. made no specific findings on these issues, but did specifically find that if the Applicant were disqualified on the basis of a Section 86(c) offense, he had nevertheless demonstrated his rehabilitation under N.J.S.A. 5:12-90(h). The Division does not except to this finding and, as the extended discussion of it in the Initial Decision indicates, there is ample evidence in the record to support it. Accordingly, the Commission adopts the finding of rehabilitation. Therefore, it is not necessary to specifically find under which subsection of Section 86(c) the Applicant's disqualification might have occurred on the basis of this offense.

The final issue considered in the Initial Decision is whether the Applicant has carried his burden of establishing by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b). The A.L.J. found that he had. The Commission is of the view that there is ample credible evidence to support this finding. The Applicant has had no criminal involvement in the past 5 years and was candid throughout the course of the investigatory process. He has submitted nine letters of recommendation attesting to his good character. In addition, his educational and business accomplishments during the past five years combine with the foregoing to support the conclusion that he now possesses the

requisite good character, honesty and integrity.

For the foregoing reasons, the Initial Decision of the Office of Administrative Law in this matter is adopted in part and rejected in part as specified above. The application of Kenneth John Yerike for licensure as a casino employee is granted.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi
JOSEPH P. LORDI, CHAIRMAN

DATED: January 29, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE APPLICATION OF KENNETH J. YERIKE FOR LICENSURE AS A CASINO EMPLOYEE (Dealer/Boxman)	:	INITIAL DECISION OAL DKT. NO. CCC 4171-79 AGENCY DKT. NO. 79-EA-122

APPEARANCES:

Kenneth I. Hyman, Esq., appeared on behalf of the applicant, Kenneth J. Yerike.

John J. Degnan, Attorney General of the State of New Jersey by Robert J. Melillo, Deputy Attorney General for the Division of Gaming Enforcement.

BEFORE THE HONORABLE R. JACKSON DWYER, A.L.J:

In April of 1978, Kenneth J. Yerike (applicant) filed an application, including a Personal History Disclosure (PHD) form with the Casino Control Commission (Commission) for licensure to work as a casino employee (dealer/boxman).

The Division of Gaming Enforcement (Division) wrote a letter to the Chairman of the Casino Control Commission, dated July 26, 1979, objecting to the applicant's licensure because of his prior criminal activity and poor work history. By letter dated August 30, 1979, the applicant was advised by the Commission's Senior Assistant Counsel that "there was a substantial possibility" that the Commission would deny his application, and that he had a right to a hearing. The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 6,

New Jersey Is An Equal Opportunity Employer

1980 at which time the issues were identified. A hearing was held on June 2, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on June 23, 1980 and from Kenneth I. Hyman, Esq. on July 11, 1980. On July 14 and July 22, 1980, I received additional correspondence on the submitted proposed findings of fact and conclusions of law. I closed the record on the latter date.

It is undisputed that the applicant filed a Personal History Diclosure Form (PHD) with the Casino Control Commission for licensure as a casino employee (Dealer/Boxman). Question 46 on the PHD asks: "Have you or any member of your immediate family, (as defined on Page IV of the application) ever been arrested, detained, charged with or convicted of a criminal or disorderly persons offense in this or any other jurisdiction?". The applicant placed an "X" in the block designated "no". The applicant was arrested and charged with assault with a deadly weapon in March of 1970 by the South Los Angeles, California Police Department. He spent three or four days in jail and paid a fine. The applicant was arrested in October of 1974 on charges of selling a controlled dangerous substance (amphetamines) and transporting and selling a controlled dangerous substance (heroin and barbiturates). He pleaded guilty to the offense of possession of amphetamines in June of 1975. The applicant was sentenced to serve 120 days in jail and a three year probationary term. The proceedings on the other charges were summarily suspended. The applicant was released from jail after serving 81 days, in addition to the 6 days he had served subsequent to his arrest. He was discharged for probation on May 13, 1977.

Question number 33 on the PHD asks: "Were you ever discharged or asked to resign from employment?". The applicant placed an "X" in the block designated "yes" and stated that he was formerly employed at the Las Vegas Club in Nevada and that he "was discharged because the club was 'over staffed'". He neglected to list his termination at Little Ceasar's Club in Nevada.

The Division asserts that the applicant, at the time he filed his PHD, was a college graduate and understood the plain meaning of the words "arrest", "conviction", "discharged" and "resigned" on the PHD. The applicant's answers were incomplete, untruthful and less than candid.

A somewhat more lengthy explanation of the applicant's contentions is required. The applicant asserts that he was under the impression that proceedings were initiated by his attorney, Frederick McBride, a California attorney, which resulted in the expungement of his 1974 narcotics arrest and his 1975 guilty plea to the possession of amphetamines. The applicant conceded that he was unaware if these proceedings had reached a favorable conclusion at the time he filled out his PHD. Moreover, he did not consult with his California attorney for several months prior to filling out his PHD to find out the current status of his expungement/dismissal petition. On December 12, 1970, the Superior Court of California did enter an order of dismissal in that matter. The applicant candidly discussed his guilty plea with a Division investigator during a personal interview in May of 1978.

I am persuaded that the applicant, while careless in not consulting with his California attorney prior to filling out his PHD, believed that his criminal charges had been expunded/dismissed, and that he was entitled to state on his PHD that he had never been convicted of a crime.

Applicant further asserts that in March of 1970, while 22 years old, he sailed from California to Catalina Island. While on that trip, he got drunk and was involved in an altercation. He was arrested. He was charged with assault with a deadly weapon. He had no such weapon in his possession. He paid a $50 fine. Some eight years later, he failed to recall that episode.

The record is devoid of any controverting proof that the facts are any different. That omission, in my opinion, was inadvertent.

The applicant also offered a very plausible explanation for his failure to reveal on his PHD his termination from Little Ceasar's casino. In April of 1975,the applicant was working as a Dealer at a crap game. A shift boss, who was overseeing the game, was unable to stand, and thereby became a boxman. The shift man/boxman, allegedly under the influence of drugs, lost control of the game and was incapable of rendering the necessary decisions to the fair and orderly progress of the game. The applicant assumed control of the game in violation of casino procedures. The applicant was fired the same day.

After the facts were fully revealed, the Casino manager, Edward Huffman, rehired the applicant. Huffman also assured the applicant that his discharge would not appear in his personnel file.

The Division is correct when it maintains that Question 33 calls for the disclosure of all terminations regardless of the circumstances. While I do not condone the omission, I am convinced that the applicant did not intentionally withhold this information, but believed that the casino had rectified a mistake that it had made against him.

Finally, during the course of the hearing, the applicant testified that he had occasionally used some marijuana prior to his arrest in 1974. This fact was not disclosed in response to question 49 on the PHD. I am similarly convinced that any such omission was not willful or malevolent, but rather was inadvertent and unintentional.

After having considered the entire record, including the testimony of the applicant and the exhibits submitted into evidence, I FIND:

1. The foregoing discussion is incorporated herein by reference.

2. The applicant served in the U.S. Army actively from September 1966 through September 6, 1968. He was in Vietnam during 1967 and 1968. He was presented the Army Commendation Medal. He was honorably discharged from the Army on September 22, 1972.

3. The applicant attended the University of Tampa from September 1968 to June 1969. He was employed as a "black jack" and "crap" dealer in Las Vegas from October 1969 to June 1972. From June 1972 to December 1974, the applicant was employed as a salesman by Zenith Labs, Inc., North Vale, New Jersey.

4. The applicant has neither used or possessed any controlled dangerous substance since the time of his arrest in October of 1974 - a period of approximately six years.

5. The applicant received a Bachelor of Science degree in Business Administration from the University of Nevada in June 1976.

6. The applicant received certificates of proficiency in Marine Meterology, Sailing, Boat Handling and Seamanship, Coastwise Navigation and Piloting, and Celestrial Navigation from the Coast Navigation School, Santa Barbara, from October 1977 through May of 1978.

7. The applicant was married in June of 1979.

8. The applicant is presently in good standing with the local gaming enforcement and casino control agencies in Nevada.

9. The applicant was certified by the University of the State of New York to teach craps and blackjact at the New York School of Gambling.

10. The applicant submitted numerous letters of recommendation, which were prepared, in most instances, by people who were fully aware of the applicant's guilty pleas to the charge of possession of amphetamines.

11. The applicant has established both short and long term goals for continued employment in the casino industry.

CONCLUSIONS OF LAW

N.J.S.A. 5:12-86 provides:

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

(a) . . .

(B) Failure of the applicant to provide information, documentation and assurances required by the Act or requested by the Commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;"

I CONCLUDE that the applicant did not purposely withhold any information regarding his prior arrests and conviction or employment history. Any such omissions on the PHD were inadvertent, unintentional and an ignorant failure to disclose.

The gist of the Division's contention also is that in June of 1975 the applicant pleaded guilty to the possession of 21,000 amphetamine pills in California which, in New Jersey, constitutes a violation of N.J.S.A. 24:21-20a1. The applicant was never convicted of intent to distribute and/or the distribution of a controlled dangerous substance (amphetamines) which, in New Jersey, constitutes a violation of N.J.S.A. 24:21-19a. However, N.J.S.A. 5:12-86g of the Act provides that an applicant will be disqualified if it is demonstrated that he or she committed acts which would constitute a disqualifying offense referred to in N.J.S.A. 5:12-86(c) of the Act, whether or not he or she was actually prosecuted for, or convicted of those offenses if they occurred within a ten year period preceeding an application for a licensure. Furthermore, the Division asserts that the licensure of the applicant would be inimical to the polices of the Act and to casino operations under N.J.S.A. 5:12-86(c).

The applicant contends that, since his arrest and plea to the lesser included offense of possession of amphetamines, he is now rehabilitated under N.J.S.A. 5:12-90h.

Trafficking in the illicit drug market is the nadir of activities. The applicant's prior criminal conduct can not be viewed lightly. He also bears a heavy burden to establish his rehabilitation, in my opinion, since he was both a seller as well as a user. It is equally clear that our society refuses to accept the notion that persons are forever beyond rehabilitation. The record contains impressive evidence of both the applicant's rehabilitation and his contrition. Some of the factors which militate for licensure are as follows: during the past five years, the applicant has never used or possessed any controlled dangerous substance; his record has been expunged. He is gainfully employed by Merchant's Shippers of Los Angeles, a freight forwarding company. He has received a Bachelor of Science degree in Business Administrator from the University of Nevada. He has received certificates of proficiency from the Coast Navigation School in Marine Meterology, Sailing, Boat Handling and Seamanship, Coastwise Navigation and Piloting and Celestial Navigation. He also married in June of 1979. He has acquired a sense of maturation and has both

short and long term goals related to employment in the casino industry. He produced numerous letters from responsible people attesting to his good character, honesty and integrity.

Having examined the criteria set forth in N.J.S.A. 5:12-90h, I CONCLUDE that the applicant has established by clear and convincing evidence his present rehabilitation.

I CONCLUDE that the applicant's licensure would not be inimical to the polices of the Act and to casino operations under N.J.S.A. 5:12-86(c). I do not have a scintialla of doubt that the applicant's prior drug related activities are now at an end and that he has redirected his life away from that unfortunate mistake in October of 1974.

I CONCLUDE that the applicant has demonstrated by clear and convincing evidences from his candid and convincing testimony, his numerous letters of recommendation and his accomplishments during the past six years that he possesses the requisite degree of good character, honesty and integrity under N.J.S.A. 5:12-90b.

It is, therefore, my recommended decision that a casino license permitting the applicant to work as a Dealer/Boxman 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.

August 18, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER

Receipt Acknowledged:

August 21, 1980
Date

Casino Control Commission

Mailed to Parties:

Date

Office of Administrative Law